

State of Wisconsin



1997 Senate Bill 384

Date of enactment: **April 21, 1998**

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1997 WISCONSIN ACT 164

AN ACT *to repeal* 115.28 (19) (a), 118.51 (5) (a) 5. and 121.54 (4) (b); *to renumber* 115.28 (19) (b) and 121.54 (4) (a); *to amend* 15.377 (1), 20.255 (1) (d), 20.255 (2) (b) (title), 20.255 (2) (bh), 20.255 (2) (br), 20.866 (2) (zh), 36.25 (19), 46.21 (1) (d), 46.23 (2) (a), 46.56 (1) (m), 46.56 (3) (a) 6., 46.56 (3) (d) 1. d., 46.56 (5) (a), 46.56 (8) (a), 46.56 (8) (g), 46.56 (15) (d), 48.14 (7), 48.345 (intro.), 48.345 (12) (d), 48.428 (3) (e), 48.60 (4), 51.05 (5), 51.06 (2), 51.42 (3) (ar) 7., 51.437 (4m) (g), 70.11 (10m), 70.11 (22), 79.03 (3) (b) 4. a., 79.10 (1) (e), chapter 115 (title), 115.28 (3), 115.28 (7) (c), 115.28 (11), 115.28 (13), 115.29 (5), 115.362 (4) (a), 115.37, subchapter III of chapter 115 (title) [precedes 115.51], 115.51 (1), 115.52 (1), 115.52 (5), 115.52 (7), 115.53 (2), 115.55, 115.74 (1) (a) 3., 116.08 (4), 118.15 (1) (dm), 118.15 (3) (a), 118.15 (3) (b), 118.22 (1) (a), 118.255 (2) (a), 118.255 (2) (b), 118.255 (2) (c), 118.255 (3), 118.255 (4), 118.29 (2) (a) (intro.), 118.29 (2) (b), 118.29 (3), 118.29 (4), 118.295, 118.31 (1), 118.33 (2) (m), 118.51 (1) (a), 118.51 (5) (a) 4., 118.51 (5) (a) 6., 118.51 (12), 118.51 (13m), 118.51 (14) (a) 2., 118.51 (17), 118.52 (6) (a), 118.55 (7r) (am), 118.55 (7r) (dm), 119.18 (20), 119.28 (1), 119.72 (2) (d), 120.13 (26m), 121.004 (10), 121.05 (1) (a) 1., 121.05 (1) (a) 2., 121.05 (1) (a) 6., 121.135 (title), 121.135 (1), 121.135 (2) (a) 1., 121.135 (2) (a) 2., 121.135 (2) (c), 121.135 (3), 121.14 (1), 121.14 (2) (b), 121.14 (3), 121.41 (1), 121.54 (3), 121.55 (3), 121.57 (1) (b), 121.58 (3), 121.76 (1) (a), 121.76 (1) (b), 121.77 (1) (b), 121.78 (3) (a), 121.83 (1) (a) 3. (intro.) and b., 121.83 (1) (c), 121.905 (3) (a), 121.905 (3) (b), 121.91 (4) (a) 3., 253.02 (1) (a), 253.12 (1) (g), 254.162 (1) (d), 340.01 (56) (a) 4., 346.475, 448.56 (1), 814.04 (intro.), 904.085 (2) (a), 938.34 (7d) (d) and 938.345 (1) (e); *to repeal and recreate* 15.377 (4), subchapter V of chapter 115 [precedes 115.758], 118.15 (4m) and 118.30 (2) (b) 1.; and *to create* 115.001 (15) of the statutes; **relating to:** special education programs for children with disabilities and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.377 (1) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

15.377 (1) COUNCIL ON THE EDUCATION OF THE BLIND. There is created in the department of public instruction a council on the education of the blind consisting of 3 members, who shall ~~be visually handicapped~~ have a visual impairment and shall have a recognized interest in and a demonstrated knowledge of the problems of the visual-

~~ly handicapped children who have visual impairments,~~ appointed by the state superintendent of public instruction for staggered 6-year terms. ~~“Visually handicapped”~~ “Visual impairment” means having a) a visual acuity equal to or less than 20/70 in the better eye with correcting lenses, or b) a visual acuity greater than 20/70 in the better eye with correcting lenses, but accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

SECTION 2. 15.377 (4) of the statutes, as affected by 1997 Wisconsin Act 27, is repealed and recreated to read:

15.377 (4) COUNCIL ON SPECIAL EDUCATION. There is created in the department of public instruction a council on special education to advise the state superintendent of public instruction about the unmet educational needs of children with disabilities, in developing evaluations and reporting on data to the federal department of education, in developing plans to address findings identified in federal monitoring reports, in developing and implementing policies relating to the coordination of services for children with disabilities and on any other matters upon which the state superintendent wishes the council's opinion; and to comment publicly on any rules proposed by the department of public instruction regarding the education of children with disabilities. The state superintendent of public instruction shall appoint the members of the council for 3-year terms, and shall ensure that a majority of the members are individuals with disabilities or parents of children with disabilities and that the council is representative of the state population, as determined by the state superintendent. The council shall be composed of individuals who are involved in, or concerned with, the education of children with disabilities, including all of the following:

- (a) Teachers of regular education and teachers of special education.
- (b) Representatives of institutions of higher education that train special education and related services personnel.
- (c) State and local education officials.
- (d) Administrators of programs for children with disabilities.
- (e) Representatives of agencies other than the department of public instruction involved in the financing or delivery of related services to children with disabilities.
- (f) Representatives of private schools and charter schools.
- (g) At least one representative of a vocational, community or business organization that provides transition services for children with disabilities.
- (h) Representatives from the department of corrections.
 - (i) Parents of children with disabilities.
 - (j) Individuals with disabilities.

SECTION 3. 20.255 (1) (d) of the statutes is amended to read:

20.255 (1) (d) *Principal repayment and interest.* A sum sufficient to reimburse s. 20.866 (1) (u) for the payment of principal and interest costs incurred in financing the acquisition, construction, development, enlargement or improvement of institutional facilities for the individuals with hearing impaired impairments and visually handicapped visual impairments under s. 115.52 and reference and loan library facilities under s. 43.05 (11).

SECTION 4. 20.255 (2) (b) (title) of the statutes is amended to read:

20.255 (2) (b) (title) *Aids for handicapped special education.*

SECTION 5. 20.255 (2) (bh) of the statutes is amended to read:

20.255 (2) (bh) (title) *Aid to county handicapped children's children with disabilities education boards.* The amounts in the schedule for aid to county handicapped children's children with disabilities education boards under s. 121.135.

SECTION 6. 20.255 (2) (br) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

20.255 (2) (br) (title) *Aid for handicapped special education transportation.* The amounts in the schedule for the payment of handicapped special education transportation aid under s. 115.88 (2). If the amount appropriated under this paragraph is insufficient to pay the full amount of aid under s. 115.88 (2), the balance shall be paid from the appropriation under par. (b). No moneys may be encumbered from the appropriation under this paragraph after June 30, 1993.

SECTION 7. 20.866 (2) (zh) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

20.866 (2) (zh) *Public instruction; state schools and library facilities.* From the capital improvement fund, a sum sufficient for the department of public instruction to acquire, construct, develop, enlarge or improve institutional facilities for the individuals with hearing impaired impairments and the visually handicapped individuals with visual impairments and reference and loan library facilities. The state may contract public debt in an amount not to exceed \$7,367,700 for this purpose.

SECTION 8. 36.25 (19) of the statutes is amended to read:

36.25 (19) MODEL SCHOOL SPECIAL EDUCATION PROGRAM. (a) The board may establish at the University of Wisconsin-Madison a model school for children with exceptional educational needs disabilities, as defined in s. 115.76 (3) (5). The school shall utilize practical demonstration techniques to train teachers and other support personnel under s. 115.28 (7) (c).

(b) The board may enter into an agreement with the school board of any school district to provide special education and other related services through the model school to children with exceptional educational needs disabilities. The board may charge tuition for children served in the model school. Tuition charges made under such agreements shall be based on the net cost of providing the special education and other related services.

SECTION 9. 46.21 (1) (d) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

46.21 (1) (d) "Human services" means the total range of services to people, including mental illness treatment, developmental disabilities services, physical disabilities

services, relief funded by a relief block grant under ch. 49, income maintenance, youth probation and parole services, alcohol and drug abuse services, services to children, youth and families, family counseling, ~~exceptional educational~~ early intervention services for children from birth to the age of 3 and manpower services. "Human services" does not include child welfare services under s. 48.48 (17) administered by the department in a county having a population of 500,000 or more.

SECTION 10. 46.23 (2) (a) of the statutes is amended to read:

46.23 (2) (a) "Human services" means the total range of services to people including, but not limited to, health care, mental illness treatment, developmental disabilities services, relief funded by a block grant under ch. 49, income maintenance, probation and parole services, alcohol and drug abuse services, services to children, youth and aging, family counseling, ~~exceptional educational~~ special education services and manpower services.

SECTION 11. 46.56 (1) (m) of the statutes is amended to read:

46.56 (1) (m) "Service coordination agency" means a county department, agency, school district, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board designated in an interagency agreement by a coordinating committee to provide intake and service coordination for one or more target groups of eligible children with severe disabilities and their families.

SECTION 12. 46.56 (3) (a) 6. of the statutes is amended to read:

46.56 (3) (a) 6. The largest school district in the county and any cooperative educational service agency, if it provides special education in the county, or any county ~~handicapped children's~~ children with disabilities education board in the county, and any other school district in the county that is willing to participate in the program, at the discretion of the administering agency.

SECTION 13. 46.56 (3) (d) 1. d. of the statutes is amended to read:

46.56 (3) (d) 1. d. Review determinations by the service coordination agency regarding eligibility, assessment, appropriate services, or funding of services at the request of any applicant, recipient, parent or participating county department, agency, school district, cooperative educational service agencies or county ~~handicapped children's~~ children with disabilities education boards. The committee shall adopt written procedures for conducting reviews.

SECTION 14. 46.56 (5) (a) of the statutes is amended to read:

46.56 (5) (a) The identity of every county department, agency, school district, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board, technical college

district or other organization that will participate in the program.

SECTION 15. 46.56 (8) (a) of the statutes is amended to read:

46.56 (8) (a) Referrals to the program may come from any county departments, agencies, school districts, cooperative educational service agencies, county ~~handicapped children's~~ children with disabilities education boards, technical college districts, courts assigned to exercise jurisdiction under chs. 48 and 938 or any other organization or the child with severe disabilities or his or her family may contact the administering agency or service coordination agency to request services.

SECTION 16. 46.56 (8) (g) of the statutes is amended to read:

46.56 (8) (g) The service coordinator shall assemble the results of all prior relevant assessments and evaluations documenting the service needs of the child with severe disabilities and the child's family, including ~~multi-disciplinary~~ individualized education program team evaluations under s. ~~415.80 (3)~~ 115.782 or independent educational evaluations, court-ordered evaluations under s. 48.295 or 938.295, family support program evaluations, community integration program or community options program assessments, and any other available medical, psychiatric, psychological, vocational or developmental evaluations.

SECTION 17. 46.56 (15) (d) of the statutes is amended to read:

46.56 (15) (d) In order to apply for funding, at least one school district, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board serving children with severe disabilities in the county must participate in the program.

SECTION 18. 48.14 (7) of the statutes is amended to read:

48.14 (7) Appeals under s. ~~415.81~~ 115.80 (7).

SECTION 19. 48.345 (intro.) of the statutes is amended to read:

48.345 Disposition of child adjudged in need of protection or services. (intro.) If the judge finds that the child is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, mentally ill or to have ~~exceptional educational needs~~ a disability specified in s. 115.76 (5) in facilities which exclusively treat those categories of children. The dispositions under this section are as follows:

SECTION 20. 48.345 (12) (d) of the statutes is amended to read:

48.345 (12) (d) This subsection does not apply to a child with ~~exceptional educational needs~~ a disability, as defined under s. 115.76 (3) (5).

SECTION 21. 48.428 (3) (e) of the statutes is amended to read:

48.428 (3) (e) The authority to act as the child's parent under ~~ss. 115.80, 115.81 subch. V of ch. 115~~ and s. 118.125.

SECTION 22. 48.60 (4) of the statutes is amended to read:

48.60 (4) (a) In this subsection, "child with ~~exceptional educational needs~~ a disability" has the meaning given in s. 115.76 (3) (5).

(b) Notwithstanding ~~ss. 115.85 (2), 121.78 (3) (a) and 121.79 (1) (a)~~, a child welfare agency shall pay for the costs incurred by a school district in providing special education and related services to a child with ~~exceptional educational needs~~ a disability who is a resident of the child welfare agency, if the child was placed in the child welfare agency pursuant to the interstate compact on the placement of children under s. 48.988.

SECTION 23. 51.05 (5) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

51.05 (5) SCHOOL ACTIVITIES. If an individual over the age of 2 and under the age of 22 and eligible for ~~schooling~~ special education and related services under ~~ss. 115.76 (2) and 115.85 subch. V of ch. 115~~ is committed, admitted or transferred to or is a resident of the Mendota mental health institute or Winnebago mental health institute, the individual shall attend a school program operated by the applicable mental health institute or a school outside the applicable mental health institute which is approved by the department of public instruction. A school program operated by the Mendota mental health institute or Winnebago mental health institute shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency.

SECTION 24. 51.06 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

51.06 (2) SCHOOL ACTIVITIES. If an individual over the age of 2 years and under the age of 22 years and eligible for ~~schooling~~ special education and related services under ~~ss. 115.76 (2) and 115.85 subch. V of ch. 115~~ is admitted to, is placed in or is a resident of a center, the individual shall attend a school program operated by the center or a school outside the center which is approved by the department of public instruction. A school program operated by the center shall be under the supervision of the department of public instruction and shall meet standards prescribed by that agency.

SECTION 25. 51.42 (3) (ar) 7. of the statutes is amended to read:

51.42 (3) (ar) 7. Acknowledge receipt of the notification received under s. ~~115.85 (4)~~ 115.812 (2).

SECTION 26. 51.437 (4m) (g) of the statutes is amended to read:

51.437 (4m) (g) Acknowledge receipt of the notification received under s. ~~115.85 (4)~~ 115.812 (2).

SECTION 27. 70.11 (10m) of the statutes is amended to read:

70.11 (10m) (title) ~~LIONS FOUNDATION CAMPS FOR VISUALLY HANDICAPPED CHILDREN~~ WITH VISUAL IMPAIRMENTS. Lands not exceeding 40 acres and the buildings thereon owned by the Wisconsin Lions Foundation and used as camps for ~~visually handicapped~~ children with visual impairments, so long as the property is used for such purposes and not for pecuniary profit of any individual.

SECTION 28. 70.11 (22) of the statutes is amended to read:

70.11 (22) (title) ~~CAMPS FOR HANDICAPPED PERSONS WITH DISABILITIES~~. Lands not exceeding 10 acres and the buildings thereon owned by the Wisconsin Easter Seal Society for Crippled Children and Adults, Incorporated, and known as Camp Wawbeek, used for camps for ~~physically handicapped~~ children and adults with orthopedic impairments and not to exceed 371 acres of wooded and meadowland adjacent thereto used in connection therewith, excluding a caretaker's home and 10 acres of land in connection therewith, so long as the property is used solely for such purposes and not for pecuniary profit of any individual.

SECTION 29. 79.03 (3) (b) 4. a. of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

79.03 (3) (b) 4. a. "Local general purpose taxes" means the portion of tax increments collected for payment to a municipality under s. 66.46 which is attributable to that municipality's own levy, the portion of environmental remediation tax increments collected for payment to a municipality or county under s. 66.462 that is attributable to that municipality's or county's own levy, general property taxes, excluding taxes for a county ~~handicapped children's~~ children with disabilities education board, collected to finance the general purpose government unit, property taxes collected for sewage and sanitary districts, mobile home fees, the proceeds of county sales and use taxes and municipal and county vehicle registration fees under s. 341.35 (1).

SECTION 30. 79.10 (1) (e) of the statutes is amended to read:

79.10 (1) (e) "School tax levies" means property taxes levied in a municipality for elementary and secondary school districts and for ~~handicapped children's~~ county children with disabilities education board programs under s. ~~115.86~~ 115.817, net of municipal surplus funds applied against those levies.

SECTION 31. Chapter 115 (title) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

CHAPTER 115
STATE SUPERINTENDENT; GENERAL
CLASSIFICATIONS AND DEFINITIONS;

**HANDICAPPED CHILDREN WITH
DISABILITIES**

SECTION 32. 115.001 (15) of the statutes is created to read:

115.001 (15) "State superintendent" means the state superintendent of public instruction.

SECTION 33. 115.28 (3) of the statutes is amended to read:

115.28 (3) SUPERVISION OF SCHOOLS. Supervise and inspect the public schools and day schools for ~~handi-~~capped children with disabilities, advise the principals and local authorities thereof and give assistance in organizing such schools.

SECTION 34. 115.28 (7) (c) of the statutes is amended to read:

115.28 (7) (c) Subject to s. 118.19 (4m), license and make rules for the examination and licensing of persons, including teachers, employed by to provide publicly funded special education programs, as and related services, as those terms are defined in s. 115.76 (10) (14) and (15).

SECTION 35. 115.28 (11) of the statutes is amended to read:

115.28 (11) DRIVER EDUCATION COURSES. Approve driver education courses offered by school districts, county ~~handicapped children's~~ children with disabilities education boards and technical college districts for the purposes of ss. 121.41 (1) and 343.16 (1) (c) 1. and establish minimum standards for driver education courses offered in private schools for the purposes of s. 343.16 (1) (c) 3. All driver education courses approved or for which standards are established under this subsection shall acquaint each student with the hazards posed by farm machinery and animals on highways and shall provide instruction in safely dealing with such hazards.

SECTION 36. 115.28 (13) of the statutes is amended to read:

115.28 (13) UNIFORM FINANCIAL FUND ACCOUNTING. Prescribe a uniform financial fund accounting system, applicable to all school districts and county ~~handicapped children's~~ children with disabilities education boards, which provides for the recording of all financial transactions inherent in the management of schools and county ~~handicapped children's~~ children with disabilities education board programs and the administration of the state's school aid programs.

SECTION 37. 115.28 (19) (a) of the statutes is repealed.

SECTION 38. 115.28 (19) (b) of the statutes is renumbered 115.28 (19).

SECTION 39. 115.29 (5) of the statutes is amended to read:

115.29 (5) TEACHER SUPPLY, INFORMATION AND ANALYSIS. Assist school boards, cooperative educational service agencies and county ~~handicapped children's~~ children with disabilities education boards to locate qualified

professional school personnel, assist qualified professional school personnel to locate vacant positions and provide information and analysis of the professional school personnel supply.

SECTION 40. 115.362 (4) (a) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

115.362 (4) (a) Each school board receiving a grant under sub. (2) (a) 2. shall ensure that its program meets standards established by the state superintendent by rule. The school board may establish the program individually or on a cooperative basis with one or more school districts, cooperative educational service agencies or county ~~handicapped children's~~ children with disabilities education boards.

SECTION 41. 115.37 of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

115.37 Council on the education of the blind. The council on the education of the blind shall make recommendations as to procedures and policies affecting any problem of ~~the visually handicapped~~ children with visual impairments before the department. The council shall advise on such services, activities, programs, investigations and researches as in its judgment will contribute to the welfare of ~~visually handicapped persons~~ with visual impairments. The state superintendent shall seek the advice of and consult with the council on problems and policy changes affecting ~~the visually handicapped persons~~ with visual impairments in the department's jurisdiction, and the council may initiate consultations with the department. Notwithstanding any provision to the contrary, the council shall have access to files, records and statistics kept in the department which relate to matters concerning ~~the visually handicapped~~ children with visual impairments.

SECTION 42. Subchapter III of chapter 115 (title [precedes 115.51]) of the statutes is amended to read:

CHAPTER 115

SUBCHAPTER III

**STATE SCHOOLS AND SCHOLARSHIPS
FOR THE HANDICAPPED**

SECTION 43. 115.51 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

115.51 (1) "Blind" includes persons ~~visually handi-~~capped with visual impairments, as determined by competent medical authority with the approval of the state superintendent.

SECTION 44. 115.52 (1) of the statutes is amended to read:

115.52 (1) The object of the Wisconsin school for the visually handicapped and the Wisconsin school for the deaf is to afford ~~the visually handicapped persons~~ with visual impairments and ~~the deaf persons~~ with hearing impairments a practical education and physical rehabilitation which may aid them to make a living, discharge their duties as citizens and secure to them all possible happiness.

SECTION 45. 115.52 (5) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

115.52 (5) The state superintendent may grant approval for the maintenance of a summer school at the school for the deaf whenever it will be to the advantage of deaf persons with hearing impairments and may grant approval for the maintenance of a summer school at the school for the visually handicapped whenever it will be to the advantage of ~~visually handicapped minors~~ children with visual impairments. There shall be a summer school each year at the school for the visually handicapped for ~~visually handicapped adults~~ with visual impairments.

SECTION 46. 115.52 (7) of the statutes is amended to read:

115.52 (7) The Wisconsin school for the deaf may provide instruction for preschool deaf children with hearing impairments and their parents. The Wisconsin school for the visually handicapped may provide instruction for preschool ~~visually handicapped~~ children with visual impairments and their parents. Such instruction or treatment shall be subject to the approval of, and shall comply with requirements established by, the department.

SECTION 47. 115.53 (2) of the statutes is amended to read:

115.53 (2) Arrange for vocational, trade or academic training for any pupil in either state school qualified to take such training advantageously, in either a public school or technical college or a private business establishment in Janesville or Delavan. The public school and the technical college shall be paid the regular tuition for full-time attendance and proportionally for part-time attendance by the school district responsible for the ~~pupil's placement in an appropriate program under s. 115.85 (1) provision of a free appropriate public education under subch. V.~~

SECTION 48. 115.55 of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

115.55 (title) ~~Library for the blind and visually handicapped persons with visual impairments.~~ Embossed, clear type or large type text books acquired by the school for the visually handicapped shall constitute a circulating collection for ~~the blind and visually handicapped~~ persons with visual impairments. The collection shall be kept at the school and be under the supervision of its superintendent. All ~~blind and visually handicapped~~ school age children with visual impairments of the state may use such books upon compliance with rules made by the superintendent and approved by the state superintendent.

SECTION 49. 115.74 (1) (a) 3. of the statutes is amended to read:

115.74 (1) (a) 3. ~~Placement rates~~ Rates of American Indian children ~~in classes for handicapped pupils~~ receiving special education and related services under subch. V of ch. 115 in comparison with statewide and district-wide ~~placement~~ rates.

SECTION 50. Subchapter V of chapter 115 [precedes 115.758] of the statutes, as affected by 1997 Wisconsin Acts 27 and 59, is repealed and recreated to read:

CHAPTER 115

SUBCHAPTER V

CHILDREN WITH DISABILITIES

115.758 Construction. To the extent possible, this subchapter shall be construed in a manner that is consistent with 20 USC 1400 to 1487.

115.76 Definitions. In this subchapter:

(1) “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.

(2) “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:

(a) The evaluation of the needs of the child, including a functional evaluation of the child in the child’s customary environment.

(b) Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by the child.

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices.

(d) Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitative plans and programs.

(e) Training or technical assistance for the child or, where appropriate, the child’s family.

(f) Training or technical assistance for professionals, including individuals providing education and rehabilitative services, employers or other individuals who provide services to, employ or are otherwise substantially involved in the major life functions of the child.

(3) “Child” means any person who is at least 3 years old but not yet 22 years old and who has not graduated from high school.

(4) “Child caring institution” means a child welfare agency licensed under s. 48.60.

(5) (a) “Child with a disability” means a child who, by reason of any of the following, needs special education and related services:

1. Cognitive disabilities.
2. Hearing impairments.
3. Speech or language impairments.
4. Visual impairments.
5. Emotional disturbance.
6. Orthopedic impairments.
7. Autism.
8. Traumatic brain injury.
9. Other health impairments.
10. Learning disabilities.

(b) “Child with a disability” may, at the discretion of the local educational agency and consistent with department rules, include a child who, by reason of his or her significant developmental delay, needs special education and related services.

(6) “Division” means the division for learning support, equity and advocacy in the department.

(7) “Free appropriate public education” means special education and related services that are provided at public expense and under public supervision and direction, meet the standards of the department, include an appropriate preschool, elementary or secondary school education and are provided in conformity with an individualized education program.

(8) “Hearing officer” means an independent examiner appointed to conduct hearings under s. 115.80.

(9) “Individualized education program” means a written statement for a child with a disability that is developed, reviewed and revised in accordance with s. 115.787.

(10) “Local educational agency”, except as otherwise provided, means the school district in which the child with a disability resides, or the department of health and family services or the department of corrections if such department is responsible for providing a free appropriate public education to the child.

(11) “Native language”, when used with reference to an individual of limited English proficiency, means the language normally used by the individual.

(12) “Parent” means a biological parent; a husband who has consented to the artificial insemination of his wife under s. 891.40; a male who is presumed to be the child’s father under s. 891.41; a male who has been adjudicated the child’s father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state; an adoptive parent; a legal guardian; a person acting as a parent of a child; a person appointed as a sustaining parent under s. 48.428; or a person assigned as a surrogate parent under s. 115.792 (1) (a) 2. “Parent” does not include any person whose parental rights have been terminated; the state or a county or a child welfare agency if a child was made a ward of the state or a county or child welfare agency under ch. 880 or if a child has been placed in the legal custody or guardianship of the state or a county or a child welfare agency under ch. 48 or ch. 767; or an American Indian tribal agency if the child was made a ward of the agency or placed in the legal custody or guardianship of the agency.

(13) “Person acting as a parent of a child” means a relative of the child or a private individual allowed to act as a parent of a child by the child’s biological or adoptive parents or guardian, and includes the child’s grandparent, neighbor, friend or private individual caring for the child with the explicit or tacit approval of the child’s biological

or adoptive parents or guardian. “Person acting as a parent of a child” does not include any person that receives public funds to care for the child if such funds exceed the cost of such care.

(14) “Related services” means transportation and such developmental, corrective and other supportive services as may be required to assist a child with a disability to benefit from special education, including speech–language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; counseling services, including rehabilitative counseling; orientation and mobility services; medical services for diagnostic and evaluative purposes only; and the early identification and assessment of disabling conditions in children.

(15) “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 in physical education.

(16) “Supplementary aids and services” means aids, services and other supports that are provided in regular education classes or other education–related settings to enable a child with a disability to be educated with non-disabled children to the maximum extent appropriate.

(17) “Transition services” has the meaning given in 20 USC 1401 (30).

115.762 Division for learning support, equity and advocacy. (1) APPOINTMENT OF ADMINISTRATOR. The state superintendent shall appoint the administrator of the division.

(2) STAFF. Subject to the approval of the state superintendent, the administrator of the division shall appoint qualified staff necessary to perform the duties required of the division.

(3) DIVISION DUTIES. The division is responsible for all of the following:

(a) Ensuring that all children with disabilities, including children who are not yet 3 years of age, who reside in this state and who are in need of special education and related services are identified, located and evaluated.

(am) Ensuring that a free appropriate public education is available to all children with disabilities who reside in this state, including such children who are suspended or expelled from school.

(b) Developing and implementing a practical method to determine which children with disabilities are receiving special education and related services.

(c) Complying with the requirements of this subchapter and applicable federal law, including 20 USC 1415 (k).

(d) Coordinating and supervising the provision of all publicly funded special education and related services for children with disabilities in this state and ensuring that such education and services meet the educational stan-

dards of the department, including any criteria established by the department relating to enrollment.

(e) Pursuant to s. 115.77 (4), approving the plan for the provision of all special education and related services provided by a local educational agency.

(g) Monitoring and enforcing local educational agency and child caring institution compliance with this subchapter and applicable federal law, including [20 USC 1415](#) (k).

(h) Maintaining current information on all publicly funded special education and related services within this state and making this information public.

(i) Coordinating a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education and related services personnel and that meets the requirements of applicable federal law, including participation, as appropriate, by institutions of higher education, state and local agencies and other public and private organizations.

(j) Examining data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local educational agencies or compared to such rates for nondisabled children within such agencies. If such discrepancies are occurring, the division shall review and, if appropriate, revise or require the affected local educational agency to revise its policies, procedures and practices relating to the development and implementation of individualized education programs, the use of behavioral interventions and procedural safeguards to ensure that such policies, procedures and practices comply with this subchapter.

(4) LIMITATION. Nothing in this subchapter requires that special education and related services be provided to a child with a disability who is at least 18 years old but not yet 22 years old and who, in the child's educational placement before his or her incarceration in a state prison, was not identified as a child with a disability or for whom an individualized education program was not developed.

115.77 Local educational agency duties. (1) In sub. (1m) (a) to (d), except as provided in s. 118.51 (12) (a) and (b) 2., if a child with a disability is attending a public school in a nonresident school district under s. 118.51, "local educational agency" means the school district that the child is attending.

(1m) A local educational agency shall demonstrate to the satisfaction of the division that it does all of the following:

(a) Identifies, locates and evaluates all children with disabilities who are in need of special education and related services, including such children who are not yet 3 years of age. A local educational agency may provide special education and related services to children with disabilities who are not yet 3 years of age under an inter-

agency agreement with a county agency responsible for the early intervention program under s. 51.44.

(b) Makes available a free appropriate public education to children with disabilities as required by this subchapter and applicable state and federal law.

(bg) Includes children with disabilities in statewide and local educational agency-wide assessments, with appropriate modifications where necessary, or in alternative assessments for those children who cannot participate in statewide or local educational agency-wide assessments.

(c) Ensures that children participating in early intervention programs under s. 51.44 who will participate in preschool programs assisted under this subchapter experience a smooth and effective transition to those preschool programs and that, by the 3rd birthday of such a child, an individualized education program has been developed and is being implemented for the child. The local educational agency shall participate in transition planning conferences arranged by the county administrative agency, as defined in s. HFS 90.03 (10), Wis. adm. code.

(d) Ensures that children with disabilities who are enrolled in private schools and facilities are provided special education and related services, in accordance with individualized education programs, at no cost to them or to their parents, if such children are placed in, or referred to, such schools or facilities by a local educational agency to satisfy the requirements of this subchapter or applicable federal law.

(e) To the extent consistent with the number and location of children with disabilities residing in the local educational agency who are enrolled by their parents in private elementary and secondary schools, ensures that those children have an opportunity to participate in special education and related services and that the amount spent to provide those services by the local educational agency is equal to a proportionate amount of federal funds made available under this subchapter.

(f) Establishes written policies and procedures for implementing this subchapter and applicable federal law.

(g) Makes available to any person, upon request, all documents relating to the agency's eligibility for funds under this subchapter.

(h) Regularly publicizes information regarding its special education procedures and services.

(2) The local educational agency shall provide the division with information necessary to enable the division to carry out its duties under this subchapter and applicable federal law.

(3) Any state or federal aid that is made available to a local educational agency for special education and related services shall be used by the local educational agency to comply with this subchapter.

(4) A local educational agency shall submit to the division, pursuant to a schedule and instructions established and published by the division, the agency's plan, including a program narrative, for the provision of special education and related services that includes all of the following:

(a) The extent to which special education and related services is or is not organized around particular disabilities.

(b) The licensure and other preparation or experience of special education staff.

(c) The age ranges of pupils who are children with disabilities.

(d) The range of severity of disability among children with disabilities.

(e) The ratio of pupils to full-time equivalent staff, including both the ratio of pupils assigned to special education instructional and related services staff and to total special education instructional, support and administrative staff.

(f) The way parents participate in the development and review of the plan.

(g) The extent to which children with disabilities receive special education or related services beyond the school term.

(h) The way the local educational agency provides for a continuum of alternative placements that addresses the unique needs of children with disabilities and ensures that such children receive their educational programming in the least restrictive environment, including the agency's use of placements out of the agency and out of the state and private placements.

(i) The local educational agency's plan for employing qualified special education and related services staff, evaluating its staff's special education in-service needs and the plan for meeting those needs.

(j) The local educational agency's plan for evaluating its system for the design and delivery of special education and related services and for addressing any needs that are identified by the evaluation, including all of the following:

1. The local educational agency's graduation rate for children with disabilities and how the rate compares to the agency's graduation rate for nondisabled children.

2. The local educational agency's rate of suspension and expulsion of children with disabilities and how the rate compares to the agency's rate of suspension and expulsion of nondisabled children.

3. The local educational agency's overall incidence rate of children with disabilities and the agency's incidence rates of particular disabilities.

4. The rate of participation of the local educational agency's children with disabilities in statewide and local educational agency-wide assessments and the results of those assessments.

5. The rate of participation of the local educational agency's children with disabilities in alternative assessments and the results of those assessments.

6. The number of referrals under s. 115.777 and the percentage of those referrals resulting in the provision of special education and related services.

7. The number of children with disabilities placed in appropriate, interim, alternative educational settings under [20 USC 1415](#) (k) (1) (A) (ii).

8. General information about the satisfaction of parents of children with disabilities and adult pupils who are receiving special education and related services with special education and related services.

9. General information about persons who no longer attend high school and who received special education and related services provided by the local educational agency, such as whether they are employed, are living independently and are enrolled in postsecondary education.

10. If the local educational agency is a school district, the number of children with disabilities who attend the school district under s. 118.51, the disability of each such child and the special education or related services received by each such child.

(k) A roster of all of the agency's special education and related services staff, their function, their social security numbers and their special education licensure.

(L) Statements of assurance as required by applicable federal law.

(m) Information relating to access of private school pupils to the local educational agency's special education and related services.

(n) Any other information the division requires to permit its review and approval of the plan.

(7) Annually, the local educational agency shall provide a special education performance report to all parents of children enrolled in the local educational agency and to the division that includes the local educational agency's performance with regard to the factors referenced in the agency's evaluation of its plan under sub. (4) (j) as well as the statewide average with regard to factors in sub. (4) (j) 1. to 5.

(8) The local educational agency shall serve children with disabilities who are attending a charter school under contract with the local educational agency under s. 118.40 in the same manner as it serves children with disabilities attending schools of the local educational agency, and shall provide funds under this subchapter to such charter schools in the same manner as it provides funds under this subchapter to schools of the local educational agency.

(9) The local educational agency shall exercise its authority in compliance with [20 USC 1415](#) (k).

115.777 Special education referrals. (1) (a) A physician, nurse, psychologist, social worker or administra-

tor of a social agency who reasonably believes that a child brought to him or her for services has a disability shall refer the child to the local educational agency. If the local educational agency to whom the referral is made is the school district in which the child resides but the child is attending a public school in a nonresident school district under s. 118.51, the school board of the school district in which the child resides shall provide the name of the child and related information to the school board of the school district that the child is attending.

(b) A person who is required to be licensed under s. 115.28 (7), who is employed by a local educational agency and who reasonably believes a child has a disability, shall refer the child to the local educational agency. If the local educational agency to whom the referral is made is the school district that the child is attending but the child is a nonresident attending a public school in that school district under s. 118.51, the school board of the school district that the child is attending shall provide the name of the child and related information to the school board of the child's school district of residence.

(c) Any person other than those specified under par. (a) or (b) who reasonably believes that a child is a child with a disability may refer the child to a local educational agency. If the local educational agency to whom the referral is made is the school district in which the child resides but the child is attending a public school in a nonresident school district under s. 118.51, the school board of the school district in which the child resides shall provide the name of the child and related information to the school board of the school district that the child is attending.

(2) (a) All referrals shall be in writing and shall include the name of the child and the reasons why the person believes that the child is a child with a disability.

(b) Before submitting a referral to a local educational agency under sub. (1) (a) or (b), a person required to make a referral under sub. (1) (a) or (b) shall inform the child's parent that he or she is going to submit the referral.

(3) A local educational agency shall do all of the following:

(a) Establish written procedures for accepting and processing referrals.

(b) Document and date the receipt of each referral.

(c) Provide information and in-service opportunities to all of its licensed staff to familiarize them with the agency's referral procedures.

(d) At least annually, inform parents and persons required to make referrals under sub. (1) (a) about the agency's referral and evaluation procedures.

115.78 Individualized education program team; timeline. (1) **DEFINITION.** In this section, for a child who is attending a public school in a nonresident school district under s. 118.51, "local educational agency" means the school board of the school district that the child is attending.

(1m) **APPOINTMENT OF TEAM.** The local educational agency shall appoint an individualized education program team for each child referred to it under s. 115.777. Each team shall consist of all of the following:

(a) The parents of the child.

(b) At least one regular education teacher of the child if the child is, or may be, participating in a regular educational environment.

(c) At least one special education teacher who has extensive and recent training and experience related to the child's known or suspected disability as specified in s. 115.76 (5) (a) or, where appropriate, at least one special education provider of the child.

(d) A representative of the local educational agency who is qualified to provide, or supervise the provision of, special education, is knowledgeable about the general curriculum and is knowledgeable about and authorized to commit the available resources of the local educational agency.

(e) An individual who can interpret the instructional implications of evaluation results, who may be a team participant under pars. (b) to (d) or (f).

(f) At the discretion of the parent or the local educational agency, other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate.

(g) Whenever appropriate, the child.

(2) **DUTIES OF TEAM.** The individualized education program team shall do all of the following:

(a) Evaluate the child under s. 115.782 to determine the child's eligibility or continued eligibility for special education and related services and the educational needs of the child.

(b) Develop an individualized education program for the child under s. 115.787.

(c) Determine the special education placement for the child under s. 115.79.

(3) **TIMELINE.** (a) The local educational agency shall notify the parents of the educational placement of their child within 90 days after the local educational agency receives a special education referral for the child under s. 115.777 or initiates a reevaluation of the child under s. 115.782 (4).

(b) Before the expiration of the 90-day period, if a local educational agency needs an extension, it shall inform the child's parent of the need and reasons for an extension and request the child's parent to agree in writing to a specific extension of time beyond the 90-day period.

(c) If the parent does not agree to an extension, the local educational agency may request an extension from the division. The local educational agency shall inform the division of the reasons for the request. The division may grant a specific extension of time beyond the 90-day period if the local educational agency shows that it has acted in good faith and that there is good cause to grant the extension. If the division grants an extension, it shall

notify the parent of the extension and the reasons for granting it.

(d) Subject to pars. (a) to (c), if the parents of the child or the local educational agency staff determines at any point during the process of the evaluation, development of the individualized education program or placement of the child that additional time is needed to permit meaningful parental participation, the local educational agency shall provide it.

(4) INFORMATION. At the beginning of any meeting to address the evaluation, individualized education program or placement of a child, the local educational agency staff shall inform the child's parents of their right to be provided with additional time under sub. (3) (d) and their right to a copy of the evaluation report under s. 115.782 (3) (b) or (c).

115.782 Evaluations. (1) NOTICE: CONSENT. (a) The local educational agency shall notify the parents of the child, in accordance with s. 115.792, of any evaluation procedures the agency proposes to conduct, the qualifications of the individuals who will conduct the evaluation and their names, if known.

(b) The local educational agency proposing to conduct an initial evaluation shall obtain informed consent from the child's parent before the evaluation is conducted. Parental consent for the evaluation does not constitute consent for placement for receipt of special education and related services. If the child's parents do not consent to the evaluation, the local educational agency may continue to pursue an evaluation by using the procedures under s. 115.797 or 115.80.

(2) CONDUCT OF EVALUATION. (a) In conducting the evaluation, the individualized education program team shall not use any single procedure as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child. The individualized education program team shall do all of the following:

1. Use a variety of assessment tools and strategies to gather relevant functional and developmental 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 individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities.

2. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

3. Ensure all of the following:

a. That tests and other evaluation materials used to assess a child under this section 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, unless it is clearly not feasible to do so.

b. That any standardized tests that are 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 tests.

c. That the child is assessed in all areas of suspected disability.

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

(b) As part of an initial evaluation of a child and as part of any reevaluation of a child under sub. (4), the individualized education program team and other qualified professionals, as determined by the local educational agency, shall do all of the following:

1. Review existing evaluation data on the child, including evaluations and information provided by the child's parents, previous interventions and the effects of those interventions, current classroom-based assessments and observations, and observations by teachers and related services providers.

2. On the basis of that review and information provided by the child's parents, identify the additional data, if any, that are needed, and the qualifications of the evaluators that are needed, to determine all of the following:

a. Whether the child has a particular category of disability or, in case of a reevaluation of a child, whether the child continues to have such a disability.

b. The present levels of performance and educational needs of the child.

c. 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.

d. 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 individualized education program and to participate, as appropriate, in the general curriculum.

(c) The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified under par. (b) 2.

(d) If the child being evaluated is attending a public school in a nonresident school district under s. 118.51, as part of its initial evaluation of the child and as part of any reevaluation of the child under sub. (4), the individualized education program team shall collaborate with appropriate personnel designated by the school board of the child's school district of residence.

(e) Each individualized education program team participant who administers tests, assessments or other evaluation materials as part of an evaluation or reevaluation

of a child under this section shall prepare and make available to all team participants at a team meeting a written summary of the participant's findings that will assist with program planning.

(3) DETERMINATION OF ELIGIBILITY FOR SPECIAL EDUCATION. (a) Upon the completion of the administration of tests and other evaluation materials, the individualized education program team shall determine whether the child is a child with a disability. The individualized education program team may not determine that a child is a child with a disability solely because the child has received insufficient instruction in reading or math or because the child has limited proficiency in English.

(b) If the individualized education program team determines that a child is a child with a disability, the team shall prepare an evaluation report that includes documentation of determination of eligibility. The local educational agency shall ask each individualized education program team participant if he or she wants a copy of the evaluation report or additional time before the individualized education program team develops the child's individualized education program. If any individualized education program team participant requests a copy of the evaluation report at any point in the process of developing the child's individualized education program or considering the child's educational placement, the local educational agency shall give a copy of the report to each individualized education program team participant before continuing with the process. If no individualized education program team participant requests a copy of the evaluation report, the local educational agency shall give a copy to the child's parents with the notice of placement under s. 115.792 (2).

(c) If the individualized education program team determines that a child is not a child with a disability, the team shall prepare an evaluation report. The report shall identify any educational needs of the child and any services offered by the local educational agency from which the child may benefit and shall include information about any programs and services, other than those offered by the local educational agency, that may benefit the child. The local educational agency shall give a copy of the evaluation report to the child's parents with the notice under s. 115.792 (1) (b).

(4) REEVALUATIONS. (a) A local educational agency shall ensure that the individualized education program team does all of the following:

1. Evaluates a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

2. Reevaluates a child with a disability in accordance with this section if the local educational agency determines that conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years.

(b) The local educational agency shall obtain informed consent from the child's parent before reevaluating a child with a disability, except that such consent need not be obtained if the local educational agency has taken reasonable measures to obtain such consent and the child's parents have failed to respond.

(c) If the individualized education program team and other qualified professionals, as determined by the local educational agency, find under sub. (2) (b) 2. that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall notify the child's parents of that finding and the reasons for it and the right of the child's parents to request an assessment to determine whether the child continues to be a child with a disability. The local educational agency is not required to conduct such an assessment unless the child's parents request it.

115.787 Individualized education programs. (1)

REQUIREMENT THAT PROGRAM BE IN EFFECT. At the beginning of each school year, each local educational agency shall have in effect, for each child with a disability, an individualized education program.

(2) REQUIRED COMPONENTS. An individualized education program shall include all of the following:

(a) A statement of the child's present level of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for a preschool child, as appropriate, how the disability affects the child's participation in appropriate activities.

(b) A statement of measurable annual goals for the child, including benchmarks or short-term objectives, related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, and to meeting each of the child's other educational needs that result from the child's disability.

(c) A statement of the special education and related services and supplementary aids and services 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 for the child to do all of the following:

1. Advance appropriately toward the annual goals.
2. Be involved and progress in the general curriculum in accordance with par. (a) and participate in extracurricular and other nonacademic activities.
3. Be educated and participate with other children with disabilities and nondisabled children in the activities described in this subsection.

(d) An explanation of the extent to which the child will not participate with nondisabled children in regular classes, in the general curriculum and in extracurricular and other nonacademic activities.

(e) 1. A statement of any individual modifications in the administration of any statewide or local educational agency-wide assessment of pupil achievement that are needed for the child to participate in the assessment.

2. If the individualized education program team determines that a child will not participate in a particular statewide or local educational agency-wide assessment of pupil achievement, or part of such an assessment, a statement of why that assessment is not appropriate for the child and how the child will be assessed through alternative means.

(f) The projected date for the beginning of the services and modifications described in par. (c) and the anticipated frequency, location and duration of those services and modifications.

(g) 1. Beginning when the child attains the age of 14, and annually thereafter until the child is no longer eligible for special education and related services, a statement identifying the courses of study needed to prepare the child for a successful transition to his or her goals for life after secondary school, such as participation in advanced placement courses or a vocational education program.

2. Beginning when the child attains the age of 16, or earlier if that is determined to be appropriate by the individualized education program team, and annually thereafter until the child is no longer eligible for special education and related services, a statement of the needed transition services of the child, including, when appropriate, a statement of the interagency responsibilities or any cooperative arrangements between and among persons.

3. Beginning at least one year before the child attains the age of 18, and annually thereafter until the child is no longer eligible for special education and related services, a statement that the child has been informed of the parental rights that will transfer to the child on reaching the age of 18 under s. 115.807.

(h) A statement of all of the following:

1. How the child's progress toward the annual goals described in par. (b) will be measured.

2. How the child's parents will be regularly informed, at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the effective period of the individualized education program.

(3) DEVELOPMENT. (a) In developing each child's individualized education program, the individualized education program team shall consider 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 evaluation or most recent reevaluation of the child.

(b) The individualized education program team shall do all of the following:

1. In the case of a child whose behavior impedes his or her learning or that of others consider, when appropri-

ate, strategies, including positive behavioral interventions, and supports to address that behavior.

2. In the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's individualized education program.

3. In the case of a child who is visually impaired, provide for instruction in Braille and the use of Braille unless the individualized education program 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.

4. Consider the communicative needs of the child, and, in the case of a child who is hearing impaired, consider the child's language and communicative needs, opportunities for direct communications with peers and professional personnel in the child's language and communicative mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communicative mode.

5. Consider whether the child requires assistive technology devices and services.

(c) The regular education teacher of the child, as a participant on the individualized education program team, shall, to the extent appropriate, participate in the development of the individualized education program of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications and support for school personnel.

(d) If a child is attending a public school in a nonresident school district under s. 118.51, the individualized education program team for the child shall develop the child's individualized education program in collaboration with appropriate personnel designated by the school board of the school district in which the child resides.

(e) The local educational agency shall give a copy of the child's individualized education program to the child's parents with the notice of placement under s. 115.792 (2).

(4) REVIEW AND REVISION. (a) The individualized education program team shall do all of the following:

1. Review the child's individualized education program periodically, but at least annually, to determine whether the annual goals for the child are being achieved.

2. Revise the individualized education program as appropriate to address all of the following:

a. Any lack of expected progress toward the annual goals and in the general curriculum.

b. The results of any reevaluation conducted under s. 115.782.

c. Information about the child provided to or by the child's parents, as described in s. 115.782.

- d. The child's anticipated needs.
- e. Other matters.

(b) The regular education teacher of the child, as a participant on the individualized education program team, shall, to the extent appropriate, participate in the review and revision of the individualized education program of the child.

(5) **FAILURE TO MEET TRANSITION OBJECTIVES.** If a participating agency, other than the local educational agency, fails to provide transition services in accordance with sub. (2) (g) 2., the local educational agency shall reconvene the individualized education program team to identify alternative strategies to meet the transition objectives for the child set out in the individualized education program.

(6) **CHILDREN WITH DISABILITIES IN STATE PRISONS.** (a) 1. The requirements relating to participation of children with disabilities in general assessments under sub. (2) (e) do not apply to a child with a disability who is convicted of a crime under state law and incarcerated in a state prison.

2. The requirements relating to transition planning and transition services under sub. (2) (g) 1. and 2. do not apply with respect to a child with a disability who is convicted of a crime under state law and incarcerated in a state prison and whose eligibility under this subchapter will end, because of his or her age, before he or she will be released from prison.

(b) If a child with a disability is convicted of a crime and incarcerated in a state prison, the child's individualized education program team may modify the child's individualized education program or placement notwithstanding the requirements of sub. (1) and s. 115.79 (1) if the department of corrections has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(7) **CONSTRUCTION.** Nothing in this section requires the individualized education program team to include information under one component of a child's individualized education program that is already contained under another component of the individualized education program.

115.79 Educational placements. Each local educational agency shall ensure that all of the following occur:

(1) An evaluation is conducted under s. 115.782 before special education and related services are provided to a child with a disability.

(2) An educational placement is provided to implement a child's individualized education program. Except as provided in s. 118.51 (12) (a) and (b) 2., if a child with a disability is attending a public school in a nonresident school district under s. 118.51, the school board of the school district that the child is attending shall provide an educational placement for the child and shall pay tuition charges instead of the school district in which the child resides if required by the placement.

(3) 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 nondisabled children.

(4) Special classes, separate schooling or other removal of a child with a disability from the regular educational environment occurs only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

115.791 Reimbursement for private school placement. (1) If the parents of a child with a disability who previously received special education and related services under the authority of a local educational agency enroll the child in a private elementary or secondary school without the consent of or referral by the local educational agency, a court or a hearing officer may require the local educational agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the local educational agency had not made a free appropriate public education available to the child in a timely manner before that enrollment.

(2) The cost of reimbursement described in sub. (1) may be reduced or denied if any of the following applies:

(a) At the most recent individualized education program meeting that the parents attended before removal of the child from the local educational agency, the parents did not inform the individualized education program team of their concerns, their rejection of the placement proposed by the local educational agency to provide a free appropriate public education to their child and their intent to enroll the child in a private school at public expense; or at least 10 business days, including any holidays that occur on a business day, before the removal of the child from the local educational agency, the parents did not give written notice to the local educational agency of their concerns, their rejection of the placement and their intent to enroll the child in a private school at public expense.

(b) If, before the parents' removal of the child from the local educational agency, the local educational agency notified the parents under s. 115.792 of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation.

(c) A court finds the parents' actions unreasonable.

(3) Notwithstanding the notice requirement in sub. (2) (a), the cost of reimbursement may not be reduced or denied for failure to provide such notice if any of the following apply:

(a) The parent is illiterate and cannot write in English.

(b) Compliance with sub. (2) (a) would likely result in physical or serious emotional harm to the child.

(c) The local educational agency prevented the parent from providing such notice.

(d) The parents had not received notice, pursuant to s. 115.792, of the notice requirement in sub. (2) (a).

(4) Subject to s. 115.77 (1m) (d) and (e), this section does not require a local educational agency to pay the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local educational agency made a free appropriate public education available to the child and the child's parents elected to place the child in a private school or facility.

115.792 Procedural safeguards. (1) SAFEGUARDS ENSURED. (a) The local educational agency shall establish and maintain procedures to ensure all of the following:

1. That the parents of a child may examine all records relating to the child and may participate in meetings about the identification, evaluation and educational placement of the child, and the provision of a free appropriate public education to the child, and may obtain an independent educational evaluation of the child.

2. That a child's rights are protected by the assignment of an individual, who shall not be an employe of the department, the local educational agency or any other agency that is involved in the education or care of the child, to act as a surrogate for the child's parents whenever the child's parents are not known; the local educational agency cannot, after reasonable efforts, locate the child's parents; or the child is a ward of the state.

3. That a child's parents are offered an opportunity to use mediation under s. 115.797.

(b) The local educational agency shall establish and maintain procedures to ensure that a child's parents are provided prior written notice whenever the local educational agency 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. In this paragraph, "local educational agency" includes the nonresident school district that a child is attending under s. 118.51.

(2) NOTICE. The notice required under sub. (1) (b) shall be in the native language of the child's parents unless the local educational agency determines that it clearly is not feasible to do so and shall include all of the following:

(a) A description of the action proposed or refused by the local educational agency.

(b) An explanation of why the local educational agency proposes or refuses to take the action.

(c) A description of any other options that the local educational agency considered and the reasons why it rejected those options.

(d) A description of each evaluative procedure, test, record or report that the local educational agency used as a basis for the proposed or refused action.

(e) If the notice proposes to evaluate or reevaluate the child, the qualifications of the evaluators and their names, if known.

(f) A description of any other factors that are relevant to the local educational agency's proposal or refusal.

(g) A statement that the parents of a child with a disability have procedural safeguards under this section and, if this notice is not an initial referral for evaluation, or reevaluation, or a notice of an individualized education program meeting, the way in which the parents may obtain a description of the procedural safeguards under sub. (3).

(h) Sources for parents to contact to obtain assistance in understanding this subchapter.

(i) The rights specified in s. 115.78 (4).

(3) PROCEDURAL SAFEGUARDS NOTICE. (a) In this subsection, "local educational agency" includes the nonresident school district that a child is attending under s. 118.51.

(b) The local educational agency shall give to the parents of a child with a disability, upon the child's initial referral for evaluation, upon each notification of an individualized education program meeting and upon reevaluation of the child, a full explanation written so as to be easily understood by the general public, and in the native language of the child's parents unless it clearly is not feasible to do so, of the procedural safeguards available under this section and under applicable federal law relating to all of the following:

1. Independent educational evaluation.

2. Prior written notice.

3. Parental consent.

4. Access to educational records.

5. Opportunity to present complaints.

6. The child's placement during pendency of due process proceedings.

7. Procedures for pupils who are subject to placement in interim alternative educational settings under [20 USC 1415](#) (k).

8. Requirements for the unilateral placement by parents of pupils in private schools at public expense.

9. Mediation.

10. Hearings under s. 115.80.

11. Civil actions.

12. Attorney fees.

115.797 Mediation. (1) DEFINITIONS. In this section:

(a) "Dispute" means any disagreement between parties concerning the proposal or refusal to initiate or change the evaluation, individualized education program or educational placement of a child with a disability or the provision of a free appropriate public education to such a child. "Dispute" includes any such disagreement between parties in which other processes, including a hearing under s. 115.80 or litigation, have been requested or commenced.

(b) “Mediation” has the meaning given in s. 802.12 (1) (e).

(c) “Party” means a competent adult pupil or the parent of a child or incompetent adult pupil who is the subject of a dispute, and the local educational agency.

(2) REQUEST FOR MEDIATION, CONSENT OF PARTIES. (a) The division shall establish a program for the mediation of disputes between parties. A party may request the division to arrange for mediation of a dispute at any time. The request shall be in writing, shall briefly describe the dispute and shall identify both parties. Both parties may jointly request mediation.

(b) If only one of the parties requests mediation, within 5 business days after receiving the request the division shall notify the other party in writing of the request for mediation. The notice shall include all of the following:

1. An explanation of mediation and its advantages.
2. A statement that participation in mediation is voluntary and that agreement or refusal to participate will not affect the resolution of the dispute in any pending or potential adjudicative process, or the timing of that process, unless the parties agree otherwise.
3. A request that the party notify the division within 5 business days after receiving the notice regarding the party’s consent or refusal to participate in mediation.

(c) If the division does not receive timely response under par. (b) 3. or if the other party notifies the division under par. (b) 3. of its refusal to participate in mediation, the division shall so notify the party that requested mediation.

(3) APPOINTMENT OF MEDIATOR. (a) A party that requests mediation may nominate a mediator from the roster under sub. (4). If a party nominates a mediator, the division shall include in the notice under sub. (2) (b) the name of the nominated mediator.

(b) 1. If both parties nominate the same person as mediator, the division shall appoint that person as mediator if he or she is on the roster under sub. (4) and available to mediate.

2. If both parties request mediation but neither party nominates a mediator, the division shall propose a mediator from the roster under sub. (4).

3. If both parties consent to mediation but the party that requests mediation does not nominate a mediator, the nominated mediator is not available or the other party does not consent to the appointment of the nominated mediator, the division shall propose a mediator from the roster under sub. (4).

(c) Whenever the division proposes a mediator under par. (b) 2. or 3., it shall send information about the mediator’s training and experience to both parties. Within 3 business days after receiving the information, either party may request the division to propose a different mediator from the roster under sub. (4).

(4) ROSTER OF MEDIATORS. (a) In consultation with the council on special education, the division shall maintain a roster of mediators qualified to resolve disputes. The division may include a person on the roster if all of the following apply:

1. The division determines that the person has the appropriate skills and knowledge to act as a mediator under this section.

2. The person participates in a training program of at least 5 days’ duration that has been approved by the division.

3. The person agrees to mediate, at the rate of compensation established by the division, the number of disputes required by the division each year.

4. The person consents to be observed by a division representative at any mediation session if the parties consent.

(b) The division may not maintain a person on the roster unless he or she participates in at least one day of additional training approved by the division each year.

(c) Subject to subch. II of ch. 111, the division may remove from the roster any person whom it believes cannot serve effectively as a mediator.

(5) MEDIATION. (a) Unless both parties agree otherwise, mediation shall commence within 21 days after the mediator is appointed and shall not delay hearings or appeals related to the dispute. All mediation sessions shall be held in a location that is convenient to the parties.

(b) The parents of the child or adult pupil and 2 representatives of the local educational agency may participate in mediation. With the consent of both parties, other persons may participate in mediation. With the consent of both parties, a division representative may observe the mediation sessions.

(c) At the commencement of mediation, the mediator shall inform the parties of the information that is required to be reported to the division for the purpose of administering the mediation program. The division may not require a mediator to disclose the substance of any matter discussed or communication made during mediation.

(d) Either party may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator. The mediator may recess a mediation session to consult privately with a party. If the mediator does so, he or she shall disclose the general purpose of the consultation but may not reveal other information about the consultation without the consent of the party consulted.

(e) Unless both parties and the mediator agree otherwise, no person may record a mediation session.

(f) Discussions that occur during mediation are confidential and may not be used as evidence in any subsequent hearing or civil proceeding. The mediator may require the parties to sign a confidentiality pledge before the commencement of mediation.

(g) The mediator and either party may withdraw from mediation at any time.

(h) No adverse inference may be drawn by any hearing officer or adjudicative body from the fact that a party did not consent to mediation, that a mediator or party withdrew from mediation or that mediation did not result in settlement of the dispute.

(6) AGREEMENTS. If the parties resolve the dispute or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is reduced to writing, that it is signed by the parties and that a copy is given to each party. The resolution or agreement is legally binding upon the parties.

(7) MEDIATOR COMPENSATION. (a) The division shall establish a schedule for the compensation of mediators and the reimbursement of their expenses. The department shall pay mediators from the appropriation under s. 20.255 (1) (me).

(b) If the parties agree that the amount of compensation paid to a mediator should be greater than the schedule under par. (a) allows, the additional compensation is the responsibility of the parties.

(c) If the parties have agreed to mediation by a mediator who is not on the roster under sub. (4), the mediator's compensation is the responsibility of the parties.

(8) PROGRAM EVALUATION. The division may require that mediators, and may request that parties, participate in the evaluation of the mediation program. The division shall ensure that mediators and parties may participate in evaluating the program without being required to identify themselves or the other mediation participants. The division may not disclose a party's or mediator's evaluation to any other mediation participant without the party's or mediator's consent.

(9) CONTRACT FOR SERVICES. The department may contract with a private, nonprofit agency to administer the mediation program under this section or for mediator training or other services, including outreach and promotion, related to the administration of the program.

115.80 Due process hearings. (1) (a) 1. A parent, or the attorney representing the child, may file a written request with the division for a hearing whenever the local educational agency proposes or refuses to initiate or change his or her child's evaluation, individualized education program, educational placement or the provision of a free appropriate public education. The division shall develop a model form to assist parents in filing a request under this subdivision.

2. The parent, or the attorney representing the child, shall include in the request under subd. 1. the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to

the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time.

(b) A local educational agency may file a written request with the division for a hearing to override a parent's refusal to grant consent for an initial evaluation, a reevaluation or an initial educational placement or to contest the payment of an independent educational evaluation.

(c) A parent, the attorney representing the child or a local educational agency may file a written request for a hearing as provided in [20 USC 1415](#) (k).

(d) Upon receiving a request for a hearing, the division shall give to the child's parents a copy of the procedural safeguards available to the parents under s. 115.792 and under federal regulations.

(2) The division shall maintain a list of qualified hearing officers who are not employed by or under contract with the department or the local educational agency, other than being appointed under this subsection, to serve as hearing officers in hearings under this section. Upon receipt of a written request for a hearing under sub. (1), the division shall appoint a hearing officer from the list.

(3) Any party to a hearing conducted under this section may be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities and may present evidence and confront, cross-examine and compel the attendance of witnesses. A party shall be provided with written or, at the option of the child's parents, electronic findings of facts and decisions, and, upon request, a written or, at the option of the child's parents, an electronic, verbatim record of the hearing.

(4) At least 5 business days before a hearing is conducted under this section, other than an expedited hearing under [20 USC 1415](#) (k), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. The hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(5) A hearing officer may administer oaths and affirmations, issue subpoenas and enforce subpoenas under ss. 885.01 (4) and 885.12, regulate the course of the hearing and hold conferences for the settlement or simplification of the issues. The hearing officer is not bound by common law or statutory rules of evidence. The hearing officer shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The hearing officer shall give effect to the rules of privilege recognized by law. A hearing officer has the authority to issue an order consistent with this subchapter and [20 USC 1415](#) (k) and to order whatever remedy is reasonably necessary to bring the parties into compliance with this subchapter. The hear-

ing officer's decision shall consist of findings of fact and conclusions of law and shall be based upon a preponderance of the evidence. The findings of fact shall be based solely upon the evidence received at the hearing.

(6) The hearing officer shall issue a decision within 45 days after the receipt of the request for the hearing under sub. (1). The hearing officer may order an independent educational evaluation of the child at local educational agency expense and grant specific extensions of time for cause at the request of either party. If the hearing officer grants an extension of time, he or she shall include that extension and the reason for the extension in the record of the proceedings. The local educational agency shall pay the cost of the hearing.

(7) Any party aggrieved by the decision of the hearing officer may bring a civil action in the circuit court for the county in which the child resides or in a U.S. district court. An action filed in circuit court shall be commenced within 45 days after service of the decision of the hearing officer. In any action brought under this subsection, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate. Sections 227.52 to 227.58 do not apply to actions under this subsection.

(8) Except as provided in 20 USC 1415 (k), during the pendency of any proceedings under this section, the local educational agency may not change the educational placement of a child unless the child's parents agree to the change. If the child is applying for initial admission to a public school, the child shall, with the consent of the child's parents, be placed in the public school program until all proceedings under this section have been completed. In this subsection, "local educational agency" includes the nonresident school district that a child is attending under s. 118.51.

(9) (a) Subject to par. (b), a circuit court may award reasonable attorney fees and actual costs to the parents of a child with a disability who is the prevailing party in any action or proceeding brought in circuit court under this section.

(b) 1. Fees and costs may not be awarded under par. (a) for services performed after a written offer of settlement to a parent if all of the following apply:

a. The offer is made within the time prescribed by s. 807.01 for actions in circuit court and at least 11 days before the hearing begins for administrative hearings.

b. The offer is not accepted within 10 days.

c. The court or hearing officer finds that the relief granted to the parents is not more favorable to the parents than the offer of settlement.

2. Fees and costs may not be awarded under par. (a) if they relate to any meeting of the individualized education program team unless the meeting is convened as a result of an administrative hearing or judicial action, or for

mediation under s. 115.797 that is conducted before filing a request for a hearing under sub. (1).

(c) Notwithstanding par. (b), fees and costs may be awarded under par. (a) to a parent who is the prevailing party and whose rejection of a settlement offer was substantially justified.

(d) 1. Except as provided in subd. 2., whenever the court finds any of the following it shall reduce the amount of the fees awarded under par. (a):

a. During the course of the action, the parent unreasonably protracted the final resolution of the controversy.

b. The attorney representing the parent did not provide to the division the information specified in sub. (1) (a) 2.

2. A court may not reduce the amount of the fees awarded under par. (a) if it finds that the state or a local educational agency unreasonably protracted the final resolution of the controversy or violated this subchapter.

(10) Sections 227.44 to 227.50 do not apply to hearings conducted under this section.

115.807 Transfer of parental rights at age of majority. When a child with a disability, other than a child with a disability who has been determined to be incompetent under ch. 880, reaches the age of 18, all of the following apply:

(1) The local educational agency shall provide any notice required by this subchapter to both the individual and the individual's parents.

(2) All other rights accorded to the individual's parents under this subchapter transfer to the individual.

(3) The local educational agency shall notify the individual and the individual's parents of the transfer of rights.

115.81 Children in child caring institutions. (1) DEFINITIONS. In this section:

(a) "County department" means a county department under s. 46.215, 46.22 or 46.23.

(b) "Originating local educational agency" means the local educational agency that was responsible for providing a free, appropriate public education to the child before the placement of the child in a child caring institution.

(2) ESTABLISHMENT OF PROGRAM. Subject to the approval of the division, a child caring institution may establish and maintain special education and related services for children with disabilities.

(3) REFERRAL. (a) Whenever a county department recommends to a court that a child be placed in a child caring institution or whenever a state agency anticipates placing a child in a child caring institution, the county department or state agency shall notify the originating local educational agency.

(b) For each child identified in a notice under par. (a), the originating local educational agency shall do all of the following:

1. If the child is a child with a disability, as soon as reasonably possible and after consulting with a county department or a state agency, as appropriate, appoint an individualized education program team to review and revise, if necessary, the child's individualized education program and develop an educational placement offer.

2. If the child has not been identified as a child with a disability:

a. Appoint staff to review the child's education records and develop a status report for the child and send a copy of the report to the county department or state agency, as appropriate, within 30 days after receiving the notice under par. (a).

b. If the originating local educational agency has reasonable cause to believe that the child is a child with a disability, appoint an individualized education program team to conduct an evaluation of the child under s. 115.782. The originating local educational agency may include appropriately licensed staff of the child caring institution in the team if that staff is available. The individualized education program team shall conduct the evaluation. If the individualized education program team determines that the child is a child with a disability, the individualized education program team, in consultation with a county department or a state agency, as appropriate, shall develop an individualized education program and an educational placement offer.

(4) RESPONSIBILITY FOR EDUCATIONAL PLACEMENT. Whenever the originating local educational agency offers an educational placement in a child caring institution under sub. (3) (b) 1. or 2. b., all of the following apply:

(a) The originating local educational agency shall do all of the following:

1. Ensure that the child receives a free appropriate public education.

2. Ensure that the child's treatment and security needs are considered when determining the least restrictive environment for the child.

3. While the child resides at a child caring institution, appoint an individualized education program team to conduct reevaluations of the child in the manner provided under s. 115.782 (4).

4. While the child resides at a child caring institution, after consulting with the child caring institution and a county department or a state agency, as appropriate, refer the child to another local educational agency if the originating local educational agency determines that the child's special education needs may be appropriately served in a less restrictive setting in the other local educational agency.

5. If the child is leaving the child caring institution, assign staff or an individualized education program team to develop a reintegration plan for the child in cooperation with a county department and staff of the child caring institution.

(b) The county department or state agency, as appropriate, shall do all of the following:

1. Consider the child's educational needs when selecting a child caring institution for the child.

2. In cooperation with the originating local educational agency and staff of the child caring institution, participate in the individualized education program team evaluation of the child and the development of the individualized education program for the child.

3. Notify the local educational agency that will be responsible for providing a free, appropriate public education to the child whenever the county department or state agency anticipates removing the child from the child caring institution.

4. In cooperation with the originating local educational agency and staff of the child caring institution, develop a reintegration plan for the child if the child is leaving the child caring institution.

5. Pay all of the child caring institution related costs of educating the child while the child resides in the child caring institution.

(c) Whenever a local educational agency receives a referral under par. (a) 4., the local educational agency shall assign staff to determine whether the child can appropriately receive special education and related services provided in the local educational agency. If the assigned staff determine that the child can appropriately receive special education and related services in the local educational agency, the local educational agency shall provide such services for the child and is eligible for state tuition payments under s. 121.79 (1) (a). If the assigned staff determine that the child cannot appropriately receive special education and related services in the local educational agency, the local educational agency shall keep a written record of the reasons for that determination.

115.812 Placement disputes; school board referrals; interagency cooperation.

(1) PLACEMENT DISPUTES. If a dispute arises between a local educational agency and the department of health and family services, the department of corrections or a county department under s. 46.215, 46.22 or 46.23, or between local educational agencies under s. 115.81 (4) (c), over the placement of a child, the state superintendent shall resolve the dispute. This subsection applies only to placements in nonresidential educational programs made under s. 48.57 (1) (c) and to placements in child caring institutions made under s. 115.81.

(2) SCHOOL BOARD REFERRALS. Annually on or before August 15, each local educational agency shall report to the appropriate county departments under ss. 51.42 and 51.437 the names of children who reside in the local educational agency, are at least 16 years of age, are not expected to be enrolled in an educational program 2 years from the date of the report and may require services described under s. 51.42 or 51.437 (1). This subsection

does not affect a local educational agency's responsibility to make services available to children with disabilities.

(3) INTERAGENCY COOPERATION. (a) A school board, cooperative educational service agency and county children with disabilities education board may enter into an agreement with a county administrative agency, as defined in s. HFS 90.03 (10), Wis. adm. code, to allow the employes of the school board, agency or county children with disabilities education board to participate in the performance of evaluations and the development of individualized family service plans under s. 51.44.

(b) 1. In this paragraph, "public agency" has the meaning given in s. 166.20 (1) (i), except that it excludes a local educational agency.

2. If a public agency that is required by federal or state law or by an interagency agreement to provide or pay for the location, identification or evaluation of a child with a disability, including a child with a disability who is not yet 3 years of age, or for assistive technology devices or services, supplementary aids or services, transition services or special education or related services for a child with a disability, and fails to do so, the local educational agency shall provide or pay for the services. The public agency shall reimburse the local educational agency for the cost of providing the services.

115.817 Children with disabilities education board. (1) DEFINITIONS. In this section "board" means the county children with disabilities education board.

(2) ESTABLISHMENT. (a) A county board of supervisors may determine to establish a special education program, including the provision of related services for children with disabilities, for school districts in the county.

(b) The program may provide for one or more special schools, classes, treatment or instruction centers for children with one or more types of disabilities.

(c) A school district shall be included under the county program only to the extent approved by formal action of the school board.

(3) ORGANIZATION. (a) The board shall consist of 3 or more persons, as determined by the county board of supervisors, elected by the county board or appointed by the chairperson of the county board, as the rules of the county board direct. Board members shall be electors selected from that part of the county participating in the program and shall be representative of the area the board serves. The board may include school board members, members of the county board of supervisors and other electors. Board members shall hold office for a term of 3 years, except that the terms of office of members of the first board shall be 3 years, 2 years and one year. Board members shall receive compensation and reimbursement for mileage in an amount fixed by the county board of supervisors, but not more than that of county board members.

(b) The board annually shall select one member as chairperson and one as secretary. The county treasurer

shall serve as board treasurer but shall not be a member of the board.

(c) The board shall appoint an advisory committee whose membership includes school district administrators representative of the area the board serves.

(4) APPLICATION. Upon authorization of the county board, the board shall apply to the division for the establishment of a program or part of a program to provide special education and related services. The application shall state whether the program or part will be available in the county at large or only to certain school districts.

(5) BOARD DUTIES. (a) The board shall have charge of all matters pertaining to the organization, equipment, operation and maintenance of such programs and may do all things necessary to perform its functions, including the authority to erect buildings subject to county board approval and employ teachers and other personnel. The board shall prepare an annual budget, which shall be subject to approval of the county board under s. 65.90 unless a resolution is adopted under sub. (9) (c), and shall include funds for the hiring of staff, the purchase of materials, supplies and equipment and the operation and maintenance of buildings or classrooms.

(b) 1. At the close of each fiscal year, the board shall employ a licensed accountant to audit its accounts and certify the audit. The cost of the audit shall be paid from board funds.

3. The department shall establish by rule a standard contract and minimum standards for audits performed under this paragraph.

(c) If the county board of supervisors establishes an integrated service program for children with severe disabilities under s. 59.53 (7), the county children with disabilities education board shall participate in an integrated service program for children with severe disabilities under s. 59.53 (7), and may enter into written interagency agreements or contracts under the program.

(d) Annually by October 1, the board and the school boards of the school districts participating in the county program shall submit a report to the state superintendent that specifies the portion of each school day that each pupil enrolled in the county program who is also enrolled in the school district of the pupil's residence spent in county program classes in the previous school year and the portion of the school day that the pupil spent in school district classes in the previous school year. The state superintendent shall develop guidelines for a full-time equivalency methodology. The state superintendent is not required to promulgate the guidelines as rules.

(6) ASSIGNMENT OF FUNCTIONS. (a) The board may not assign by resolution or by contract the full administrative or instructional services of the board.

(b) The ability of the board to contract with the board of control of a cooperative educational service agency, a school board or other public agency in the county for a portion of administrative or instructional services is not

prohibited by par. (a). The board shall be responsible for all programs contracted under this paragraph.

(7) **WITHDRAWAL AND DISSOLUTION.** (a) The school board of any school district that is included under the administration of a board may withdraw from participation in any part of the program only with the approval of the state superintendent after conference with the board and a determination by the state superintendent that such withdrawal is in the interest of the program in the county and the school district affected. Such withdrawal shall be effective only if the school board has the approval of the division to establish an equivalent part of a program. Such withdrawal shall be effective either December 31 or June 30 provided that 12 months' notice has been given to the board. The withdrawing school district shall be liable for its proportionate share of all operating costs until its withdrawal becomes effective, shall continue to be liable for its share of debt incurred while it was a participant and shall receive no share in the assets.

(b) A program established under this section may be dissolved by action of the county board, but such dissolution shall not take place until the end of the school term in which the action was taken. When a program is dissolved, assets and liabilities shall be distributed under s. 66.03 to all units which participated in the program.

(8) **TRANSPORTATION.** The board may promulgate a plan for the transportation at county expense of children who are receiving special education and related services under this section, special education and related services provided at day care centers or special education and related services provided by a private organization within whose attendance area the child resides and which is situated not more than 5 miles beyond the boundaries of the area the board serves, as measured along the usually traveled route. The plan, upon approval of the state superintendent, shall govern the transportation of such children. Any such plan for transportation during the school term supersedes ss. 115.88 and 121.54 (3).

(9) **AREA TAXED.** (a) The tax for the operation and maintenance of each part of a special education program and for the transportation of children under sub. (8) shall be levied against the area of the county participating in the part of the program.

(b) Beginning July 1, 1981, no board, except a board that has constructed or acquired building facilities, may continue to operate under this section if the area taxed under par. (a) constitutes less than 50% of the full value of taxable property within the county.

(c) Upon the adoption of a resolution by a majority of the school boards that are located in whole or in part in the county and are participating in the county program under sub. (2) (c), this subsection shall not apply commencing on the effective date of the resolution. A resolution adopted under this paragraph between January 1 and June 30 in any year shall be effective on January 1 of the year commencing after its adoption. A resolution

adopted under this paragraph between July 1 and December 31 in any year shall be effective on January 1 of the 2nd year commencing after its adoption. In the year in which the resolution is effective, the county budget under s. 59.60 or 65.90 shall include a line item for the special education program.

(10) **STATE AIDS.** (a) The board may apply for and receive the state aid under ss. 115.88 and 121.41 (1) for the transportation, board and lodging, treatment and instruction of children participating in programs under this section.

(b) The board may apply for and receive the state aid under ss. 121.135 and 121.14. This paragraph does not apply beginning on the effective date of a resolution adopted under sub. (9) (c).

(c) All state aid shall be paid to the county treasurer and credited to the fund of the board.

(11) **VIOLATIONS.** The state superintendent shall withhold aid from any board that violates this section.

115.82 Admission and transportation of nonresidents. (1) A cooperative educational service agency, county children with disabilities education board or school district that provides special education and related services shall admit a nonresident if the program is appropriate for the child's disability. Refusal to admit a child does not relieve the local educational agency that is responsible for providing a free, appropriate public education to the child under this subchapter from that responsibility.

(2) In addition to the requirements of s. 121.54 (3), when board and lodging are not furnished to a nonresident child with a disability, the school district in which the child resides shall provide transportation, except as follows:

(a) If there is a plan of transportation under s. 115.817 (8), the county children with disabilities education board shall provide transportation.

(b) If the child is attending a public school in a nonresident school district under s. 118.51, the nonresident school district shall provide transportation.

115.88 State aid. (1) **PERSONNEL.** A school board, board of control of a cooperative educational service agency or, upon authorization of the county board, a county children with disabilities education board may employ, for a special education program, either full- or part-time licensed teachers, licensed coordinators of special education, licensed school social workers, licensed school psychologists, paraprofessionals, licensed consulting teachers to work with any teacher of regular education programs who has a child with a disability in a class and any other personnel approved by the department. The board may contract with private or public agencies for physical or occupational therapy services on the basis of demonstrated need.

(1m) **PROGRAM AID.** (a) If, upon receipt of the plan under s. 115.77 (4), the state superintendent is satisfied

that the special education program has been maintained during the preceding school year in accordance with law, the state superintendent shall certify to the department of administration in favor of each county, cooperative educational service agency and school district maintaining such special education program a sum equal to 63% of the amount expended by the county, agency and school district during the preceding year for salaries of personnel enumerated in sub. (1), including the salary portion of any authorized contract for physical or occupational therapy services, except as provided in par. (b), and other expenses approved by the state superintendent. The department of administration shall pay such amounts to the county, agency and school district from the appropriation under s. 20.255 (2) (b).

(b) Salaries of licensed school psychologists and licensed school social workers shall be reimbursed at 51% without regard to whether they are employed in a program for children with disabilities. The school district, county children with disabilities education board or cooperative educational service agency shall include in the plan under s. 115.77 (4) any information required by the state superintendent relating to use of a school psychologist or school social worker.

(2) TRANSPORTATION AID. If upon receipt of the plan under s. 115.77 (4) the state superintendent is satisfied that the transportation of children with disabilities has been maintained during the preceding year in accordance with the law, the state superintendent shall certify to the department of administration in favor of each county, cooperative educational service agency or school district transporting such pupils 63% of the amount expended for such transportation. Pupils for whom aid is paid under this subsection shall not be eligible for aid under s. 121.58 (2) or (4). The department of administration shall pay such amounts to the county, agency or school district from the appropriations under s. 20.255 (2) (b) and (br). This subsection applies to any child with a disability who requires special assistance in transportation, including any such child attending regular classes who requires special or additional transportation. This subsection does not apply to any child with a disability attending regular or special classes who does not require any special or additional transportation.

(3) BOARD AND LODGING AID. There shall be paid the amount expended for board and lodging and transportation between the boarding home and the special education program of nonresident children enrolled under s. 115.82 (1) in the special education program. The department shall certify the full amount to the department of administration which shall pay such amount from the appropriation under s. 20.255 (2) (b) to the school district, cooperative educational service agency, county children with disabilities education board, state agency of another state or private, nonsectarian special education service

which operates the special education program while providing board, lodging and transportation.

(4) HOSPITALS AND CONVALESCENT HOME AID. The full cost of special education for children in hospitals and convalescent homes for orthopedically disabled children shall be paid from the appropriation under s. 20.255 (2) (b). The supervision of such instruction shall be under the department and the school board of the school district in which the hospital or convalescent home is located. The school board of the district in which the hospital or convalescent home is located shall submit to the department an itemized statement of all revenues and expenditures for the actual cost of such instruction and any other information it requires.

(6) AID FOR INSTRUCTION OUTSIDE OF DISTRICT. From the appropriation under s. 20.255 (2) (b) there shall be paid the full cost of salary and travel expenses, in amounts determined in advance by the state superintendent, to school districts for providing special education outside the school district of employment.

(7) OFFSETTING RECEIPTS. In any school year, the following revenues shall be deducted from costs aidable under this section before aids are calculated under this section:

(a) Any federal operational revenues expended on costs aidable under this section.

(b) That portion of state tuition payments attributable to the special annual tuition rate under s. 121.83 (1) (c), regardless of the school year in which the services were provided. The tuition revenues shall be allocated to the most appropriate part of a program.

(8) ENROLLMENT OUT OF STATE. If a child with a disability is enrolled in a public special education program located in another state and the state superintendent is satisfied that the program in which the child is enrolled complies with this subchapter, the state superintendent shall certify to the department of administration in favor of the school district in which the child resides or the school district attended by the child under s. 118.51 a sum equal to the percentage of the approved costs under subs. (1) and (2) of the amount expended by the school district during the preceding year for the additional costs associated with the child's special education program. The department of administration shall pay the amount to the school district from the appropriation under s. 20.255 (2) (b).

(9) DISTRIBUTION SCHEDULE. Each county, cooperative educational service agency and school district entitled to state aid under this section shall receive 15% of its total aid entitlement in each month from November to March and 25% of its total entitlement in June.

115.882 Proration of state aid. If the sum of the appropriations under s. 20.255 (2) (b) and (br) in any one year is insufficient to pay the full amount of aid under ss. 115.88 and 118.255, funds in the appropriations shall be

used first for the purpose of s. 115.88 (4) and any remaining funds shall be prorated among the counties, school districts and cooperative educational service agencies entitled thereto.

115.897 Exhaustion of remedies. Before the filing of a civil action under any federal law seeking any relief that is also available under this subchapter, the procedures under s. 115.80 shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

115.898 Rule making. Section 227.16 (2) (b) does not apply to a proposed rule if the proposed rule brings ch. PI 11, Wis. Adm. Code, into conformity with 1997 Wisconsin Act (this act).

115.90 Noncompliance; remedies.

(1) If, as the result of a monitoring procedure or a complaint investigation, the state superintendent finds that a local educational agency has violated this subchapter, the state superintendent may require the local educational agency to submit a corrective plan addressing the violation.

(2) If the state superintendent, after reasonable notice and an opportunity for a hearing, finds that a local educational agency has failed to comply with any requirement in this subchapter, the state superintendent shall reduce or eliminate special education aid to the local educational agency until he or she is satisfied that the local educational agency is complying with that requirement.

(3) If the state superintendent finds that a corrective plan under sub. (1) has not been implemented, or that withholding aid under sub. (2) has been inadequate to ensure compliance with this subchapter, the state superintendent shall request the attorney general to proceed against the local educational agency for injunctive or other appropriate relief.

SECTION 51. 116.08 (4) of the statutes is amended to read:

116.08 (4) Whenever an agency performs any service or function under chs. 115 to 121 by contract with a county board or any agency thereof, with a school board or with a county ~~handicapped children's~~ children with disabilities education board, the contract may authorize the agency to make claim for and receive the state aid for performing the service or function. The agency shall transmit a certified copy of the contract containing the authority to collect state aid to the department. When an agency receives the state aid, it shall pay over or credit the amount of state aid received to the proper county or agency thereof, school district or county ~~handicapped children's~~ children with disabilities education board for which the service or function was performed according to the contract therefor.

SECTION 52. 118.15 (1) (dm) of the statutes is amended to read:

118.15 (1) (dm) The school board shall render its decision, in writing, within 90 days of a request under par.

(d), except that if the request relates to a child who has been ~~examined by a multidisciplinary~~ evaluated by an individualized education program team under s. ~~115.80~~ 115.782 and has not been recommended for special education, the school board shall render its decision within 30 days of the request. If the school board denies the request, the school board shall give its reasons for the denial.

SECTION 53. 118.15 (3) (a) of the statutes is amended to read:

118.15 (3) (a) Any child who is excused by the school board because the child is temporarily not in proper physical or mental condition to attend a school or an educational program ~~under s. 115.85 (2)~~, but who can be expected to return to a school or the program upon termination or abatement of the illness or condition. The school attendance officer may request the parent or guardian of the child to obtain a written statement from a licensed physician, dentist, chiropractor, optometrist or psychologist or Christian Science practitioner living and residing in this state, who is listed in the Christian Science Journal, as sufficient proof of the physical or mental condition of the child. An excuse under this paragraph shall be in writing and shall state the time period for which it is valid, not to exceed 30 days.

SECTION 54. 118.15 (3) (b) of the statutes is amended to read:

118.15 (3) (b) Any child excused by the school board in accordance with the school board's written attendance policy under s. 118.16 (4) and with the written approval of the child's parent or guardian. The child's truancy, discipline or school achievement problems or ~~exceptional educational needs~~ disabilities as described in s. 115.76 ~~(3)~~ (5) may not be used as the reason for an excuse under this paragraph. The excuse shall be in writing and shall state the time period for which it is effective, not to extend beyond the end of the current school year.

SECTION 55. 118.15 (4m) of the statutes is repealed and recreated to read:

118.15 (4m) No school board, board of control of a cooperative educational service agency or county children with disabilities education board, or person employed by a school board, cooperative educational service agency or county children with disabilities education board, may in any manner compel a pregnant girl to withdraw from her educational program.

SECTION 56. 118.22 (1) (a) of the statutes is amended to read:

118.22 (1) (a) "Board" means a school board, technical college district board, board of control of a cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board, but does not include any board of school directors in a city of the 1st class.

SECTION 57. 118.255 (2) (a) of the statutes is amended to read:

118.255 (2) (a) If a school board, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board provides physical or mental health treatment services to its pupils, it may also provide such services within the private school facilities to those private school pupils who are referred to the public school board, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board by the administrator of a private school for evaluation for possible servicing. There shall be no charge for health treatment services provided to any pupils unless public school students or their parents are charged for similar services. For purposes of state aid, as it is provided under s. 115.88 to the public school district, for the health treatment service program, private school pupils receiving such health treatment services shall be counted among the pupils of the public school district receiving such services, although each child may receive health treatment services within the child's own school facilities, whether public or private.

SECTION 58. 118.255 (2) (b) of the statutes is amended to read:

118.255 (2) (b) A school board, cooperative educational service agency, or county ~~handicapped children's~~ children with disabilities education board providing services under this section may enter into agreements with the administrator of a private school on the scheduling, space and other necessary arrangements for performance of such health treatment services. A school board, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board shall not pay any private school for any services or facilities provided under this section. Control of the health treatment services program shall rest with the public school board, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board.

SECTION 59. 118.255 (2) (c) of the statutes is amended to read:

118.255 (2) (c) A school board, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board may provide health treatment services only within private school facilities located within the boundaries of the school district, cooperative educational service agency or county.

SECTION 60. 118.255 (3) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

118.255 (3) The school board, cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board maintaining health treatment services shall report annually to the department, and at such other times as the department directs, such information as the department requires.

SECTION 61. 118.255 (4) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

118.255 (4) If the state superintendent is satisfied that the health treatment services program has been maintained during the preceding school year in accordance with law, the state superintendent shall certify to the department of administration in favor of each school board, cooperative educational service agency and county ~~handicapped children's~~ children with disabilities education board maintaining such health treatment services, an amount equal to 63% of the amount expended for items listed in s. 115.88 ~~(1)~~ (1m) by the school board, cooperative educational service agency and county ~~handicapped children's~~ children with disabilities education board during the preceding year for these health treatment services. The department of administration, upon such certification shall distribute the amounts to the appropriate school board, cooperative educational service agency and county ~~handicapped children's~~ children with disabilities education board.

SECTION 62. 118.29 (2) (a) (intro.) of the statutes is amended to read:

118.29 (2) (a) (intro.) Notwithstanding chs. 441, 447, 448 and 450, a school bus operator validly authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he or she is operating, any school employe or volunteer, county ~~handicapped children's~~ children with disabilities education board employe or volunteer or cooperative educational service agency employe or volunteer authorized in writing by the administrator of the school district, the board or the agency, respectively, or by a school principal, and any private school employe or volunteer authorized in writing by a private school administrator or private school principal:

SECTION 63. 118.29 (2) (b) of the statutes is amended to read:

118.29 (2) (b) Any school district administrator, county ~~handicapped children's~~ children with disabilities education board administrator, cooperative educational service agency administrator, public or private school principal or private school administrator who authorizes an employe or volunteer to administer a drug or prescription drug to a pupil under par. (a) is immune from civil liability for the act of authorization unless it constitutes a high degree of negligence.

SECTION 64. 118.29 (3) of the statutes is amended to read:

118.29 (3) EMERGENCY CARE; CIVIL LIABILITY EXEMPTION. Any school bus operator validly authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he or she is operating and any public or private school employe or volunteer, county ~~handicapped children's~~ children with disabilities education board employe or volunteer or cooperative educational service agency employe or volunteer, other than a health care professional, who in good faith renders emergency care to a pupil of a public or private school is immune from civil liability for his or her acts or omissions in rendering such emergency care.

The immunity from civil liability provided under this subsection is in addition to and not in lieu of that provided under s. 895.48 (1).

SECTION 65. 118.29 (4) of the statutes is amended to read:

118.29 (4) WRITTEN POLICIES. Any school board, county ~~handicapped children's~~ children with disabilities education board, cooperative educational service agency or governing body of a private school whose employes or volunteers may be authorized to administer drugs or prescription drugs to pupils under this section shall adopt a written policy governing the administration of drugs and prescription drugs to pupils. In developing the policy, the school board, board, agency or governing body shall seek the assistance of one or more appropriate health care professionals who are employes of the school board, board, agency or governing body or are providing services or consultation under s. 121.02 (1) (g). The policy shall include procedures for obtaining and filing in the school or other appropriate facility the written instructions and consent required under sub. (2) (a), for the periodic review of such written instructions, for the storing of drugs and prescription drugs, for record keeping and for the appropriate instruction of persons who may be authorized to administer drugs or prescription drugs to pupils under this section.

SECTION 66. 118.295 of the statutes is amended to read:

118.295 Suicide intervention; civil liability exemption. Any school board, private school, county ~~handicapped children's~~ children with disabilities education board or cooperative educational service agency, and any officer, employe or volunteer thereof, who in good faith attempts to prevent suicide by a pupil is immune from civil liability for his or her acts or omissions in respect to the suicide or attempted suicide. The civil liability immunity provided in this section is in addition to and not in lieu of that provided under s. 895.48 (1).

SECTION 67. 118.30 (2) (b) 1. of the statutes is repealed and recreated to read:

118.30 (2) (b) 1. If a pupil is enrolled in a special education program under subch. V of ch. 115, the school board shall comply with s. 115.77 (1) (bg).

SECTION 68. 118.31 (1) of the statutes is amended to read:

118.31 (1) In this section, “corporal punishment” means the intentional infliction of physical pain which is used as a means of discipline. “Corporal punishment” includes, but is not limited to, paddling, slapping or prolonged maintenance of physically painful positions, when used as a means of discipline. “Corporal punishment” does not include actions consistent with an individualized education program developed under s. ~~115.80 (4) (a)~~ 115.787 or reasonable physical activities associated with athletic training.

SECTION 69. 118.33 (2) (m) of the statutes is amended to read:

118.33 (2) (m) Adopt policies to accommodate pupils with exceptional educational interests, needs or requirements, not limited to children with ~~exceptional educational needs~~ disabilities, as defined under s. 115.76 (3) (5).

SECTION 70. 118.51 (1) (a) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

118.51 (1) (a) “Child with ~~exceptional educational needs~~ a disability” has the meaning given in s. 115.76 (3) (5).

SECTION 71. 118.51 (5) (a) 4. of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

118.51 (5) (a) 4. Whether the special education program or related services described in the child’s individualized education program under s. ~~115.80 (4)~~ 115.787 (2) are available in the nonresident school district or whether there is space available in the special education program identified in the child’s individualized education program, including any class size limits, pupil–teacher ratios or enrollment projections established by the nonresident school board.

SECTION 72. 118.51 (5) (a) 5. of the statutes, as created by 1997 Wisconsin Act 27, is repealed.

SECTION 73. 118.51 (5) (a) 6. of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

118.51 (5) (a) 6. Whether the child has been ~~reported~~ referred to his or her resident school board under s. ~~115.80~~ 115.777 (1) or identified by his or her resident school board under s. ~~115.80 (2)~~ 115.77 (1m) (a) but not yet evaluated by a ~~multidisciplinary~~ an individualized education program team appointed by his or her resident school board under s. ~~115.80 (3)~~ 115.78 (1).

SECTION 74. 118.51 (12) of the statutes, as created by 1997 Wisconsin Act 27, is amended to read:

118.51 (12) SPECIAL EDUCATION PROGRAM OR RELATED SERVICES. (a) *Unavailable after enrollment.* If the individualized education program for a pupil, developed or revised under s. ~~115.80 (4)~~ 115.787 after a child begins attending public school in a nonresident school district under this section, requires a special education program or related service that is not available in the nonresident school district or if there is no space available in the special education program identified in the child’s individualized education program, including any class size limits, pupil–teacher ratios or enrollment projections established by the nonresident school board, the nonresident school board may notify the child’s parent and the child’s resident school board that the program or service is not available in the nonresident school district. If such notice is provided, the child shall be transferred to his or her resident school district, which shall provide an educational placement for the child under ~~ss. 115.80 (4m) and 115.85 s. 115.79 (2)~~.

(b) *Undue financial burden.* 1. If the costs of the special education program or services required in the individualized education program under s. ~~415.80 (4) 115.787 (2)~~ for a child with ~~exceptional educational needs a disability~~ whose parent has submitted an application under sub. (3) (a), as proposed to be implemented by the nonresident school district, would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, its ability to pay tuition costs for the pupil and the per pupil special education program or services costs for children with ~~exceptional educational needs disabilities~~ continuing to be served by the resident school district, the child's resident school board may notify the child's parent and the nonresident school board by the first Friday following the first Monday in April that the pupil may not attend the nonresident school district to which the child has applied.

2. If the costs of the special education program or services required in an individualized education program for a pupil, developed or revised under s. ~~415.80 (4) 115.787~~ after a child begins attending public school in a nonresident school district under this section, as implemented or proposed to be implemented by the nonresident school district, would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, its ability to pay tuition costs for the pupil and the per pupil special education program or services costs for children with ~~exceptional educational needs disabilities~~ continuing to be served by the resident school district, the child's resident school board may notify the pupil's parent and the nonresident school board that the program or services impose such an undue financial burden on the resident school district. If such notice is provided, the child shall be transferred to his or her resident school district, which shall provide an educational placement for the child under ~~ss. 415.80 (4m) and 415.85 s. 115.79 (2)~~. The pupil's parent may appeal a required transfer under this subdivision to the department within 30 days after receipt of the notice. The department shall affirm the resident school board's determination unless the department finds that the determination was arbitrary or unreasonable.

SECTION 75. 118.51 (13m) of the statutes, as created by [1997 Wisconsin Act 27](#), is amended to read:

118.51 (13m) PARTICIPATION IN CERTAIN PROGRAMS. A pupil attending a public school in a nonresident school district under this section shall be considered a resident of the nonresident school district for the purposes of participating in programs of a cooperative educational service agency or a county ~~handicapped children's children~~ with disabilities education board.

SECTION 76. 118.51 (14) (a) 2. of the statutes, as created by [1997 Wisconsin Act 27](#), is amended to read:

118.51 (14) (a) 2. If the pupil is a child with ~~exceptional educational needs a disability~~ and transportation of the pupil is required in the individualized education program developed for the child under s. ~~415.80 (4) 115.787 (2)~~ or is required under s. 121.54 (3), the nonresident school district shall provide such transportation for the child.

SECTION 77. 118.51 (17) of the statutes, as created by [1997 Wisconsin Act 27](#), is amended to read:

118.51 (17) SPECIAL EDUCATION TUITION. The resident school board shall pay to the nonresident school board, for each child who is attending public school in the nonresident school district under this section and is enrolled in a program for children with ~~exceptional educational needs disabilities~~, tuition calculated using the daily tuition rate under s. 121.83 for children enrolled in such programs in the nonresident school district, or an amount agreed to by the school boards of the 2 school districts.

SECTION 78. 118.52 (6) (a) of the statutes, as created by [1997 Wisconsin Act 27](#), is amended to read:

118.52 (6) (a) *Individualized education program requirements.* The school board of a pupil's resident school district shall reject a pupil's application to attend a course in a public school in a nonresident school district if the resident school board determines that the course conflicts with the individualized education program for the pupil under s. ~~415.80 (4) 115.787 (2)~~.

SECTION 79. 118.55 (7r) (am) of the statutes, as created by [1997 Wisconsin Act 27](#), is amended to read:

118.55 (7r) (am) A school board may refuse to permit a pupil to attend a technical college under this subsection if the pupil is a child with ~~exceptional educational needs a disability~~, as defined in s. 115.76 ~~(3) (5)~~, and the school board determines that the cost to the school district under par. (dm) would impose an undue financial burden on the school district.

SECTION 80. 118.55 (7r) (dm) of the statutes, as created by [1997 Wisconsin Act 27](#), is amended to read:

118.55 (7r) (dm) If a pupil who is attending a technical college under this subsection is a child with ~~exceptional educational needs a disability~~, as defined in s. 115.76 ~~(3) (5)~~, the payment under par. (d) shall be adjusted to reflect the cost of any special services required for the pupil.

SECTION 81. 119.18 (20) of the statutes is amended to read:

119.18 (20) DIPLOMAS. The board may grant diplomas in testimony of the completion of high school or special education requirements, including the requirements of special schools established under s. 119.28 ~~and special classes, centers or services established under s. 115.83.~~

SECTION 82. 119.28 (1) of the statutes is amended to read:

119.28 (1) The board shall establish and maintain such special schools for children with ~~exceptional educational needs~~ disabilities, as defined in s. 115.76 (3) (5), as are required to accommodate pupils of school age desiring to attend school. The board shall prescribe the courses of study and the educational and other activities in special schools.

SECTION 83. 119.72 (2) (d) of the statutes is amended to read:

119.72 (2) (d) Children who have language, psychomotor development, social, behavioral or educational problems that warrant intervention, as determined by the board, other than children with ~~exceptional educational needs~~ disabilities, as defined under s. 115.76 (3) (5).

SECTION 84. 120.13 (26m) of the statutes is amended to read:

120.13 (26m) (title) ~~CONTRACTS WITH COUNTY HANDICAPPED CHILDREN'S~~ CHILDREN WITH DISABILITIES EDUCATION BOARDS. Contract with a county ~~handicapped children's~~ children with disabilities education board for special education services. The costs of such services shall be included in the school district's shared cost under s. 121.07 (6). This subsection applies beginning on the effective date of a resolution adopted under s. ~~115.86~~ 115.817 (9) (c).

SECTION 85. 121.004 (10) of the statutes is amended to read:

121.004 (10) **TEACHERS EMPLOYED.** "Teacher" means a person holding a license or certificate under s. 115.28 (7), but does not include any person under s. 115.29 (3). In computing the number of teachers employed, professional workers who devote less than full time to their professional duties shall be counted in proportion to the time devoted to such duties. Teachers who devote full time to ~~handicapped children~~ with disabilities shall not be counted.

SECTION 86. 121.05 (1) (a) 1. of the statutes is amended to read:

121.05 (1) (a) 1. Pupils enrolled concurrently in the school district and in a special education program operated by a county ~~handicapped children's~~ children with disabilities education board and in facilities of the school district. This subdivision does not apply beginning on the effective date of a resolution adopted under s. ~~115.86~~ 115.817 (9) (c);

SECTION 87. 121.05 (1) (a) 2. of the statutes is amended to read:

121.05 (1) (a) 2. Pupils enrolled in home instruction or any other school district special education program under s. ~~115.83~~;

SECTION 88. 121.05 (1) (a) 6. of the statutes is amended to read:

121.05 (1) (a) 6. Pupils enrolled in a special education program operated by a county ~~handicapped children's~~ children with disabilities education board under contract with the school board. This subdivision applies

beginning on the effective date of a resolution adopted under s. ~~115.86~~ 115.817 (9) (c).

SECTION 89. 121.135 (title) of the statutes is amended to read:

121.135 (title) State aid to county handicapped children's children with disabilities education boards.

SECTION 90. 121.135 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

121.135 (1) If, upon receipt of the ~~report plan~~ under s. ~~115.84~~ 115.77 (4), the state superintendent is satisfied that there are children participating in a special education program provided by a county ~~handicapped children's~~ children with disabilities education board, the state superintendent shall certify to the department of administration from the appropriation under s. 20.255 (2) (bh) in favor of the county ~~handicapped children's~~ children with disabilities education board the amount determined under sub. (2), except as provided under sub. (3).

SECTION 91. 121.135 (2) (a) 1. of the statutes is amended to read:

121.135 (2) (a) 1. "Additional general aid" means the amount determined by calculating the percentage of a school district's shared costs that would be paid under s. 121.08 if its membership included each pupil who is a resident of the school district and solely enrolled in a special education program provided by a county ~~handicapped children's~~ children with disabilities education board and the school district's shared costs were increased by the costs of the county ~~handicapped children's~~ children with disabilities education board program for all pupils participating in the county ~~handicapped children's~~ children with disabilities education board program who are residents of the school district, and multiplying the costs of the county ~~handicapped children's~~ children with disabilities education board program by that percentage.

SECTION 92. 121.135 (2) (a) 2. of the statutes is amended to read:

121.135 (2) (a) 2. "Costs of the county ~~handicapped children's~~ children with disabilities education board program" means the gross cost of the county ~~handicapped children's~~ children with disabilities education board program minus all nonduplicative revenues and other financing sources except property taxes and state aid paid under this section in the previous school year.

SECTION 93. 121.135 (2) (c) of the statutes is amended to read:

121.135 (2) (c) The state superintendent shall pay the additional general aid to the county ~~handicapped children's~~ children with disabilities education board. If a school district is eligible for minimum aid under s. 121.10, the state superintendent shall pay to the county ~~handicapped children's~~ children with disabilities education board the minimum aid amount for which the school district is eligible under s. 121.10 for those pupils enrolled solely in the county ~~handicapped children's~~ children with disabilities

children with disabilities education board program who are residents of the school district.

SECTION 94. 121.135 (3) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

121.135 (3) This section does not apply beginning on the effective date of a resolution adopted under s. ~~115.86~~ [115.817](#) (9) (c), except that in the school year beginning July 1 of the year prior to the effective date of the resolution, the state superintendent shall certify to the department of administration from the appropriation under s. 20.255 (2) (bh) in favor of the county ~~handicapped children's~~ children with disabilities education board an amount equal to one-half the amount specified under sub. (2) for each pupil enrolled.

SECTION 95. 121.14 (1) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

121.14 (1) State aid shall be paid to each district or county ~~handicapped children's~~ children with disabilities education board only for those academic summer classes or laboratory periods for which the state superintendent has given prior review and approval as to the content of such classes or laboratory periods so as to assure that such classes and laboratory periods are only for necessary academic purposes. Recreational programs and team sports shall not be eligible for aid under this section, and pupils participating in such programs shall not be counted as pupils enrolled under s. 121.004 (5) nor shall costs associated with such programs be included in shared costs under s. 121.07 (6).

SECTION 96. 121.14 (2) (b) of the statutes is amended to read:

121.14 (2) (b) Annually on or before October 1, the school district clerk or chairperson of the county ~~handicapped children's~~ children with disabilities education board shall file with the department a report stating the summer average daily membership equivalent.

SECTION 97. 121.14 (3) of the statutes is amended to read:

121.14 (3) References to county ~~handicapped children's~~ children with disabilities education boards under subs. (1) and (2) (b) do not apply beginning on the effective date of a resolution adopted under s. ~~115.86~~ [115.817](#) (9) (c).

SECTION 98. 121.41 (1) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

121.41 (1) STATE AID. To promote a uniformly effective driver education program among high school and technical college pupils, each school district operating high school grades, each county ~~handicapped children's~~ children with disabilities education board which provides the substantial equivalent of a high school education and each technical college district shall receive \$100 for each pupil of high school age who completes a course in driver education approved by the department under s. 115.28 (11), but in no case may the state aid exceed the actual cost of instruction. If the appropriation under s.

20.255 (2) (em) is inadequate in any year to provide \$100 per pupil, the state aid shall be prorated after the appropriation for administration is deducted. Such state aid shall be paid at the same time as the state aid under s. 121.08 is paid.

SECTION 99. 121.54 (3) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

121.54 (3) (title) TRANSPORTATION FOR CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS ~~DISABILITIES~~. Every school board shall provide transportation for children with ~~exceptional educational needs~~ disabilities, as defined in s. 115.76 ~~(3) (5)~~, to any public or private elementary or high school, to the Wisconsin school for the visually handicapped or the Wisconsin school for the deaf or to any special ~~educational~~ education program for children with ~~exceptional educational needs~~ disabilities sponsored by a state tax-supported institution of higher education, including a technical college, regardless of distance, if the request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this subsection.

SECTION 100. 121.54 (4) (a) of the statutes is renumbered 121.54 (4).

SECTION 101. 121.54 (4) (b) of the statutes, as affected by [1997 Wisconsin Act 27](#), is repealed.

SECTION 102. 121.55 (3) of the statutes is amended to read:

121.55 (3) If the estimated cost of transporting a pupil under s. 121.54 (2) (b) 1. is more than 1.5 times the school district's average cost per pupil for bus transportation in the previous year, exclusive of transportation for kindergarten pupils during the noon hour and for ~~handicapped~~ pupils with disabilities, the school board may fulfill its obligation to transport a pupil under s. 121.54 (2) (b) 1. by offering to contract with the parent or guardian of the pupil. The contract shall provide for an annual payment for each pupil of not less than \$5 times the distance in miles between the pupil's residence and the private school he or she attends, or the school district's average cost per pupil for bus transportation in the previous year exclusive of transportation for kindergarten pupils during the noon hour and for ~~handicapped~~ pupils with disabilities, whichever is greater, but the payment shall not exceed the actual cost nor may the aids paid under s. 121.58 (2) (a) for the pupil exceed the cost thereof. A school board which intends to offer a contract under this subsection shall notify the parent or guardian of the private school pupil of its intention at least 30 days before the commencement of the school term of the public school district.

SECTION 103. 121.57 (1) (b) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

121.57 (1) (b) This subsection also applies to ~~handicapped~~ children with disabilities. The state superinten-

dent may grant permission for a ~~handicapped~~ child with a disability to be transported to a school in another school district if an acceptable form of transportation is provided and if such school offers equal or better educational opportunities for the child.

SECTION 104. 121.58 (3) of the statutes is amended to read:

121.58 (3) STATE AID FOR BOARD AND LODGING. A school district which provides board and lodging or housing under s. 121.57 (2) in lieu of transportation shall be paid state aid for such board and lodging or housing at the rate of not more than \$6 per week of 5 days for each pupil so boarded and lodged or housed, but not to exceed 60% of the cost. For children with ~~exceptional educational needs disabilities, as defined in s. 115.76 (5),~~ such state aid shall be supplemented by the state aid under s. 115.88 in an amount not to exceed the full cost of such board and lodging.

SECTION 105. 121.76 (1) (a) of the statutes is amended to read:

121.76 (1) (a) "Agency of service" means a school board, board of control of a cooperative educational service agency, county ~~handicapped children's~~ children with disabilities education board or governing body of a nonsectarian private school or university model school, which provides services for which tuition may be charged.

SECTION 106. 121.76 (1) (b) of the statutes is amended to read:

121.76 (1) (b) "Pupil" includes a child with ~~exceptional educational needs~~ a disability, as defined in ss. ~~115.76 (2) and (3) (5).~~

SECTION 107. 121.77 (1) (b) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

121.77 (1) (b) If facilities are adequate, a school board, board of control of a cooperative educational service agency or county ~~handicapped children's~~ children with disabilities education board may admit nonresident pupils who meet its entrance requirements. Nonresident pupils shall have all of the rights and privileges of resident pupils and shall be subject to the same rules and regulations as resident pupils. The agency of service shall charge tuition for each nonresident pupil.

SECTION 108. 121.78 (3) (a) of the statutes is amended to read:

121.78 (3) (a) Special education ~~programs and related services~~ under ~~s. 115.85 (2) subch. V of ch. 115.~~

SECTION 109. 121.83 (1) (a) 3. (intro.) and b. of the statutes are amended to read:

121.83 (1) (a) 3. (intro.) If the pupil is ~~enrolled in a program for children with exceptional educational needs~~ receives special education and related services under subch. V of ch. 115:

b. The federal and state aid for pupil transportation and ~~exceptional~~ special education and related services shall be added.

SECTION 110. 121.83 (1) (c) of the statutes is amended to read:

121.83 (1) (c) If the pupil is ~~enrolled in a program for children with exceptional educational needs~~ receives special education and related services under subch. V of ch. 115, the special annual tuition rate is the sum of instructional and specified services costs unique to that program divided by the average daily membership of all pupils enrolled in the program, including those for whom tuition is paid.

SECTION 111. 121.905 (3) (a) of the statutes is amended to read:

121.905 (3) (a) Calculate the sum of the amount of aid received under ss. 121.08, 121.10 and 121.105 and subch. VI in the previous school year and property taxes levied for the previous school year, excluding funds described under s. 121.91 (4) (c), and the costs of the county ~~handicapped children's~~ children with disabilities education board program, as defined in s. 121.135 (2) (a) 2., for pupils who were school district residents and solely enrolled in a special education program provided by a county ~~handicapped children's~~ children with disabilities education board in the previous school year.

SECTION 112. 121.905 (3) (b) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

121.905 (3) (b) Divide the result in par. (a) by the sum of the average of the number of pupils enrolled in the 3 previous school years and the number of pupils enrolled who were school district residents and solely enrolled in a special education program provided by a county ~~handicapped children's~~ children with disabilities education board program in the previous school year.

SECTION 113. 121.91 (4) (a) 3. of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

121.91 (4) (a) 3. Notwithstanding subd. 2., if a school board increases the services that it provides by adding responsibility for providing a service that is transferred to it from another governmental unit for a child with ~~exceptional educational needs~~ a disability, as defined in s. 115.76 ~~(3) (5),~~ or for a limited-English speaking pupil, as defined in s. 115.955 (7), the limit otherwise applicable under sub. (2m) in the current school year is increased by an amount equal to the estimated cost of providing the service less the estimated amount of aid that the school district will receive for the child or pupil in the following school year under s. 115.88 ~~(4) (1m)~~ to (6) and (8), 115.995 or 118.255, as determined by the state superintendent. A school board that transfers or receives responsibility for providing a service under this subdivision shall notify the state superintendent. A school board that transfers responsibility for providing a service under this subdivision shall provide the state superintendent with an estimate of the reduction in cost attributable to the transfer, even if that estimate is zero. The state superintendent shall notify the transferring school district when a receiving school district notifies the state superintendent that it

has received responsibility for providing a service transferred to it under this subdivision.

SECTION 114. 253.02 (1) (a) of the statutes is amended to read:

253.02 (1) (a) “Children with special health care needs” means children who have health problems that require intervention beyond routine and basic care, including children with or at risk for disabilities, ~~handicapping conditions~~, chronic illnesses and conditions, health-related educational problems and health-related behavioral problems.

SECTION 115. 253.12 (1) (g) of the statutes is amended to read:

253.12 (1) (g) “Other severe disability” means a severe sensory impairment, severe ~~physical handicap or~~ orthopedic impairment or developmental delay that results from injury, infection or disease, is chronic in nature and requires long-term care.

SECTION 116. 254.162 (1) (d) of the statutes is amended to read:

254.162 (1) (d) School-based programs serving children under 6 years of age, including kindergartens, ~~programs~~ special education and related services for children with ~~exceptional educational needs~~ disabilities, as defined in s. 115.76 (5), and other early childhood programs.

SECTION 117. 340.01 (56) (a) 4. of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

340.01 (56) (a) 4. Children with disabilities, as defined under s. 115.76 (2) ~~with exceptional educational needs of a type specified under s. 115.76 (3) (a) to (L) (5)~~, to or from an educational program approved by the department of public instruction.

SECTION 118. 346.475 of the statutes is amended to read:

346.475 (title) Human service vehicles; loading or unloading handicapped children with disabilities. No person who operates a human service vehicle may stop to load or unload passengers who are ~~handicapped children~~ with disabilities unless the vehicle is entirely off the traveled portion of the roadway in an area where stopping, standing or parking is not prohibited and the children do not have to cross the roadway in order to be loaded or unloaded.

SECTION 119. 448.56 (1) of the statutes, as affected by [1997 Wisconsin Act 27](#), is amended to read:

448.56 (1) WRITTEN REFERRAL. Except as provided in this subsection and s. 448.52, a person may practice

physical therapy only upon the written referral of a physician, chiropractor, dentist or podiatrist. Written referral is not required if a physical therapist provides services in schools to children with ~~exceptional educational needs~~ disabilities, as defined in s. 115.76 (5), pursuant to rules promulgated by the department of public instruction; provides services as part of a home health care agency; provides services to a patient in a nursing home pursuant to the patient’s plan of care; provides services related to athletic activities, conditioning or injury prevention; or provides services to an individual for a previously diagnosed medical condition after informing the individual’s physician, chiropractor, dentist or podiatrist who made the diagnosis. The affiliated credentialing board may promulgate rules establishing additional services that are excepted from the written referral requirements of this subsection.

SECTION 120. 814.04 (intro.) of the statutes is amended to read:

814.04 Items of costs. (intro.) Except as provided in ss. 93.20, 106.04 (6) (i) and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as follows:

SECTION 121. 904.085 (2) (a) of the statutes, as affected by [1997 Wisconsin Act 59](#), is amended to read:

904.085 (2) (a) “Mediation” means mediation under s. 93.50 (3), conciliation under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3. or 111.87, mediation under s. ~~115.812~~ 115.797, negotiation under s. 289.33 (9), mediation under ch. 655 or s. 767.11, or any similar statutory, contractual or court-referred process facilitating the voluntary resolution of disputes. “Mediation” does not include binding arbitration or appraisal.

SECTION 122. 938.34 (7d) (d) of the statutes is amended to read:

938.34 (7d) (d) This subsection does not apply to a juvenile who is a child with ~~exceptional educational needs~~ a disability, as defined under s. 115.76 (3) (5).

SECTION 123. 938.345 (1) (e) of the statutes is amended to read:

938.345 (1) (e) Place any juvenile not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, or mentally ill or to ~~have exceptional educational needs~~ be a child with a disability, as defined in s. 115.76 (5), in facilities which exclusively treat those categories of juveniles.