

2001 DRAFTING REQUEST

Bill

Received: 01/05/2001

Received By: grantpr

Wanted: As time permits

Identical to LRB:

For: Administration-Budget 6-1923

By/Representing: Maternowski

This file may be shown to any legislator: NO

Drafter: grantpr

May Contact:

Alt. Drafters:

Subject: Education - handicapped ed.

Extra Copies: MJL

Pre Topic:

DOA:.....Maternowski -

Topic:

Special education changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	grantpr 01/05/2001	gilfokm 01/05/2001		_____			S&L
/1			martykr 01/06/2001	_____	lrb_docadmin 01/07/2001		

FE Sent For:

<END>

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1?	grantpr	1-1/Kmeg 16-01	Rmk	amh Rmk			

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① 115.76 (11) substitute ^{exp} parent of a child ^{for} "individual" page 1

① 115.76 (16) add at the end ... in accordance with the Least Restrictive Environment

② 115.77 (3) add at end ... and to ^{school-based improvement plans authorized under 20 USC} IDEA Section 613 (f) and (g) 20 USC 1413 (a), (f) & (g)

③ 115.77 (4)(d) eliminate, as it is no longer a requirement of IDEA 97

④ 115.782 (1) (2) last sentence change from "individualized education program team" to "local education agency"

⑤ 115.782 (2) (b) First sentence insert after evaluation of a child and as part of any reevaluation of a child under sub (4) add, if appropriate (as set by LEA) LEA ^{only for reevaluation} (i.e. after "ins (4)')

#11

115.787.(2)(c)(1)

add "Advance appropriate
toward" attaining the
annual goals

IDEA, Sect 614(b)(1)(A)

#12

add

An explanation of the
~~content~~ extent, if any,
to which

[IDEA Sec 614 d 1 A]

#13 add

"Beginning when the
child attains the age of
14, and updated annually

add

"statement of transition
services needs, identifying

IDEA 614 (d) ~~1~~

6 see note
re 115.78 (2) (a)

7 115.782 (2) d

3rd line
substitute for "individualized
~~team~~ education program
team" the following "the
local education agency

8 115.782 (3) (b) ~~delete lost sentence~~

~~"If no members individualized
program team"~~

and add
Upon completion of the
administration of tests
and other evaluations
materials, a copy of the
evaluation report ~~and~~
~~the documentation~~
~~of determination of~~
~~eligibility~~ will be given
to parents. IDEA, Sec 614(b)(4)

inserted.

115.782 (3) (c)

#9 delete lost 4 words
" with the notice under

kept out to 115.782 (1)(b)

change to

"upon completion of the
administration of tests
and other evaluation
materials"

IDEA, Sec 614 (b) (4)

#10 115.782 (4) (a) (1)

delete " evaluates a child
with a disability

change to: "The local education
agency will evaluate
a child with a
disability"

[IDEA, Sec 614, (c) (5)]

see A

Am 115.782 (4) (c) ?

?

#14 115.787 (2) (g) (3)

delete: the parental rights

X change + "his or her rights
under this act...

[IDEA, Sec 614 (d) (1) (A) (vii)]

#15 add 115.787 (2) ~~(g) (3)~~ (h) (2)

X How the child's parents will
be regularly informed
(by such means as periodic
report card)

#16 115.79

add a ~~#~~(5)

The placement decision
should be made by any
group that includes parents

[IDEA Sect 614 (f)]

of child

X
as per
det. by
LEA

115.75 STATE SUPERINTENDENT; EDUCATION PROGRAMS

(3) If the appropriation under s. 20.255 (2) (km) in any year is insufficient to pay the full amount of aid under this section, state aid payments shall be prorated among the alternative schools entitled to such aid.

History: 1979 c. 346; 1981 c. 20 s. 2202 (42) (c); 1983 a. 27 s. 2202 (42); 1987 a. 27; 1989 a. 336; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9.

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.

History: 1997 a. 164.

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 21 years old and who has not graduated from high school and, for the duration of a school term, any person who becomes 21 years old during that school term 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, the department of health and family services if the child with a disability resides in an institution or facility operated by the department of health and family services, or the department of corrections if the child with a disability resides in a Type 1 secured correctional facility, as defined in s. 938.02 (19), or a Type 1 prison, as defined in s. 301.01 (5).

(11) "Native language", when used with reference to an individual of limited English proficiency, means the language normally used by the individual. *parent of a child*

(12) (a) "Parent" means any of the following:

1. A biological parent.
2. A husband who has consented to the artificial insemination of his wife under s. 891.40.
3. A male who is presumed to be the child's father under s. 891.41.
4. 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.
5. An adoptive parent.
6. A legal guardian.
7. A person acting as a parent of a child.
8. A person appointed as a sustaining parent under s. 48.428.
9. A person assigned as a surrogate parent under s. 115.792 (1) (a) 2.

10. A foster parent, if the right and the responsibility of all of the persons specified in subsds. 1. to 5. to make educational decisions concerning a child have been extinguished by termination of parental rights, by transfer of guardianship or legal custody or by other court order, and if the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions that are required of a parent under this subchapter and has no interests that would conflict with the interests of the child.

(b) "Parent" does not include any of the following:

1. A person whose parental rights have been terminated.
2. The state, a county or a child welfare agency, if a child was made a ward of the state, county or child welfare agency under ch. 880 or if a child has been placed in the legal custody or guardianship of the state, county or child welfare agency under ch. 48 or ch. 767.
3. 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 nondisabled children to the maximum extent appropriate. *in - see #1*

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

History: 1997 a. 164, 237; 1999 a. 116, 161.

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 standards 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 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.

History: 1997 a. 164; 1999 a. 161.

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 or 121.84 (1) (a) or (4), "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 interagency 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.

115.77 STATE SUPERINTENDENT; EDUCATION PROGRAMS

(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. ~~agency's instructional~~

(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 ss. 118.51 and 121.84 (1) (a) and (4), 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).

History: 1997 a. 164; 1999 a. 117.
When there was no reasonable cause to believe that a student was emotionally disturbed and required special education, there was no obligation to submit an exceptional needs referral on the student's behalf. *Hoffman v. East Troy Community School District*. 38 F. Supp.2d 750 (1999).

115.775 Duties of operators of certain charter schools.

(1) Except as provided in sub. (2), an operator of a charter school under s. 118.40 (2r) is a local educational agency, as defined in 20 USC 1401 (15), and shall comply with 20 USC 1400 to 1491o.

(2) The board of directors of the school district operating under ch. 119 is a local educational agency under this section and shall comply with 20 USC 1400 to 1491o if the board of directors enters into an agreement with an operator of a charter school under s. 118.40 (2r) under which the board of directors agrees to serve as the local educational agency.

History: 1999 a. 9.

115.777 Special education referrals. (1) (a) A physician, nurse, psychologist, social worker or administrator 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 or 121.84 (1) (a) or (4), 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 reason-

see # 3

2

ably 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 or 121.84 (1) (a) or (4), 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.

(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).

History: 1997 a. 164; 1999 a. 117.

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.

qualified to provide, or supervise the provision of, instruction, 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:

#6

This section 115.782(2) (A) should be removed from duties section and placed under section 115.782 evaluation

~~Section 614(1) B~~
IDEA, Section 614 (a), (b) provides this flexibility

115.782(2)(a) = IEP devt
(b) = team devt
(c) = RP

remove see section 115.79

3/10/14

115.782 STATE SUPERINTENDENT; EDUCATION PROGRAMS

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 a child is attending a public school in a nonresident school district under s. 118.51 or 121.84 (1) (a) or (4), when the individualized education program team conducts its initial evaluation of the child or any reevaluation of the child under sub. (4), the team shall include at least one person designated by the school board of the child's school district of residence who has knowledge or special expertise about the child.

(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.

History: 1997 a. 164; 1999 a. 117.

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,

(2) #5

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#11
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:

- attaining
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.

#14
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. 46.037.

(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 appropriate, 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 or 121.84 (1) (a) or (4), when the individualized education program team for the child develops the child's individualized education program, the team shall include at least one person designated by the school board of the school district in which the child resides who has knowledge or special expertise about the child.

(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.

History: 1997 a. 164; 1999 a. 117.

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 or 121.84 (1) (a) or (4), 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.

History: 1997 a. 164; 1999 a. 117.

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.

IDEA
Section 614(f)
makes it clear that
the IEP team
does not have to
~~be part~~ have
placement decisions
~~made by the IEP~~
These can be made
by a "group", that
includes parents,
as part of any
group making
placement decisions
add language to
115-79 (5)

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 or 121.84 (1) (a) or (4).

(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.

A(6)

(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 or 121.84 (1) (a) or (4).

(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.

History: 1997 a. 164; 1999 a. 117.

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 resolu-

tion 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

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Date (time) needed

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LRB-1828, 1
PE: KMG

DOA BUDGET DRAFT

Use the appropriate components and routines developed for bills.

>>FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION<<

AN ACT ... [DO NOT generate catalog]; relating to: the budget.

.....
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Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

attached

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

SECTION #.

Section #. 115.77 (3) of the statutes is amended to read:

115.77 (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.

History: 1997 a. 164; 1999 a. 117.

or for the purposes specified in ²⁰ 20 USC 1413 (a), (f), or (g)

SEC. RP.; 115.77 (4) (d)

Section #. 115.78 (2) (a) of the statutes is renumbered 115.782(1)(ag) and amended to read:

~~The local educational agency shall evaluate~~

115.782 (1) (ag) 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.

History: 1997 a. 164; 1999 a. 117.

SEC. RP, 115-78(2)(c) ✓

~~SEC. RN, 115-782(1)(a), 115-782(1)(ar)~~

Sec. Am; 115.782 (2) (e)

115.782 (2) (e) Each ~~individualized education program team participant~~ ^{person} 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~~ ^{person's} at a ~~team meeting~~ ^{person's} a written summary of the ~~participant's~~ findings that will assist with program planning.

History: 1997 a. 164; 1999 a. 117.

persons who are participating in the evaluation of the child

Section #. 115.782 (3) (b) of the statutes is amended to read:

115.782 (3) (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 ^{also} 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).~~

History: 1997 a. 164; 1999 a. 117.

The local educational agency shall give
a copy of the evaluation report
to the child's parents.

Section #. 115.782 (3) (c) of the statutes is amended to read:

115.782 (3) (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)~~

History: 1997 a. 164; 1999 a. 117.

Section #. 115.782 (4) (a) (intro.) of the statutes is amended to read:

115.782 (4) (a) (intro.) A local educational agency shall ~~ensure that the individualized education program team does~~^{do} all of the following:

History: 1997 a. 164; 1999 a. 117.

Section #. 115.787 (2) (g) 1. of the statutes is amended to read:

115.787 (2) (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.

History: 1997 a. 164; 1999 a. 117.

of the transition
services needed by the
child

(End)

ANALYSIS

HEAD EDUCATION

SUB PRIMARY AND SECONDARY EDUCATION

This bill makes various ~~changes~~ ^{changes} to the statutes pertaining to children with disabilities, including the following:

1. The bill allows state aid for special education to be used by local educational agencies ^(LEAs) for ^{certain} purposes that are specified under federal law for federal aid, including school-based improvement plans.
2. The bill provides that the individualized education program team, appointed by an LEA ~~local educational agency~~ to evaluate a child to determine whether the child is

disabled and to develop an individualized education program for a child with a disability, is not responsible for determining the appropriate special education placement for the child. Under the bill, the LEA ~~the local educational agency~~ is responsible for determining the child's placement. Current law ~~requires that~~ directs the LEA to ensure that the child's parents participate in that determination.

~~3~~

FE-5L

DN

Peter :

1. I did not include the change to ^{requested} s. 115.76 (16) because I did not see could not detect a substantive ~~change~~ difference. In addition, s. 115.77 (4) (h) requires the LEA to include in its plan a description of how it will ensure that children with disabilities are educated in the least ^{restrictive} ~~restrictive~~ environment.

2. I amended s. 115.77 (3), ~~as requested~~ the suggested language but modified ~~slightly~~ for several reasons.

First) I ~~read~~ ~~20 USC 1413 (a) and (f)~~ and did not see "school-based improvement plans" mentioned ^{in 20 USC 1413 (a) or (f).}

Second, I assume that you want to allow

~~only federal aid, not state aid, to be used for these purposes. Finally, federal aid may be used only in compliance with federal law; there's no need to reiterate that in our state statutes.~~

2 I did not insert the word "attaining" in s. 115.787(2)(c) 1. because I don't think the ~~word~~ addition would change the meaning of the provision.

3 - I did not insert "if any" in s. 115.787(2)(d) because I don't think ~~the~~ the addition would change the meaning of the provision.

4. I did not insert "updated" in ~~s. 115.787~~ s. 115.787(2)(g) 1. because I don't think the addition would change the meaning of the provision.

5. I did not make the change requested to s. 115.787(2)(g)3. Federal law requires a statement that the child has been informed of his or her ~~rights~~ that transfer to the child upon reaching the age of majority "under section 615m." ~~Section 615~~

Section 115.787(2)(g)3. requires a statement that the child has been informed of the ^{parental} rights that transfer to the child ~~on~~ reaching the age of 18 ~~under~~ "under s. 115.807."

I've compared ~~A comparison~~ of sections 615m and ^(s.) 115.807, and these ^{they are} almost identical, so I don't think the ~~change~~ ^{language} requested ~~change~~ makes a substantive change.

6. I did not make the change requested to ^{s.} 115.787(2)(h)2. ^{because it} ~~It~~ would have no legal effect.

7. I did not make the changes^s requested to ss. 115.78(2)(a) or 115.782(2)(a) (Intro.), (b) (Intro.),^v or (d) relating to ^{evaluations.} ~~who contacts~~ ~~conduct~~ ~~the~~ ~~evaluation~~ ~~I~~ ~~check~~ Both federal law (see 20 USC 1414(c)) and federal regulations (see 34 CFR ^{300.531 and} 300.533) ~~both~~ appear to [⊕] require involvement of the IEP team in evaluations^s and reevaluations^s. In addition, the ^{Reg} Federal Register of March 12, 1999, which provides commentary on the federal regulations, states that "section 300.533(a) requires^s that a group that includes the individuals^s described in s. 300.344 ... [the IEP team] and other ~~the~~ qualified professionals, ^{as} ~~an~~ appropriate, review the existing evaluation ^{data} and

determine what additional data ^{are} ~~are~~ needed." If you have different information or more recent, clarifying information, please let me know.

8. I ~~would~~ amended s-115.782 (2)(c) [✓] to clarify that ~~other~~ persons ~~that~~ ^{members of} in addition to the IEP team may be involved in the child's evaluation.

9. I did not create s-115.79 (5), relating to placement decisions being made by a group that includes the child's parents, because s. 115.792 (1)(a) 1. currently requires that "the parents of a child may participate ⁱⁿ ~~in~~ meetings ^s about the ~~placement~~ placement of the child...."

10. As requested,
I amended s. 115.782 (3)(b) and
(c) but deleted the cross-references, in
both paragraphs, to s. 115.792. Is that
your intent?

I could not tell
from your instructions whether you wanted
the cross-references deleted, but without the
deletions I see no substantive change.
With the deletions, however, it is unclear
when the LEA is required to give
a copy of the report to the child's
parents. Do you want to clarify this
or resolve this issue?

Peter

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1828/1dn
PG:king:km

January 6, 2001

Peter:

1. I did not include the change requested to s. 115.76 (16) because I could not detect a substantive difference. In addition, s. 115.77 (4) (h) requires the LEA to include in its plan a description of how it will ensure that children with disabilities are educated in the least restrictive environment.
2. I did not insert the word "attaining" in s. 115.787 (2) (c) 1. because I don't think the addition would change the meaning of the provision.
3. I did not insert "if any" in s. 115.787 (2) (d) because I don't think the addition would change the meaning of the provision.
4. I did not insert "updated" in s. 115.787 (2) (g) 1. because I don't think the addition would change the meaning of the provision.
5. I did not make the change requested to s. 115.787 (2) (g) 3. Federal law requires a statement that the child has been informed of his or her rights that transfer to the child upon reaching the age of majority "under section 615m." Section 115.787 (2) (g) 3. requires a statement that the child has been informed of the parental rights that transfer to the child on reaching the age of 18 "under s. 115.807." I've compared section 615m and s. 115.807, and they are almost identical, so I don't think the language requested makes a substantive change.
6. I did not make the change requested to s. 115.787 (2) (h) 2. because it would have no legal effect.
7. I did not make the changes requested to ss. 115.78 (2) (a) or 115.782 (2) (a) (intro.), (b) (intro.), or (d) relating to evaluations. Both federal law (see 20 USC 1414 (c)) and federal regulations (see 34 CFR 300.531 and 300.533) appear to *require* involvement of the IEP team in evaluations and reevaluations. In addition, the Federal Register of March 12, 1999, which provides commentary on the federal regulations, states that "section 300.533 (a) requires that a group that includes the individuals described in s. 300.344 ... [the IEP team] and other qualified professionals, as appropriate, review the existing evaluation data and determine what additional data are needed." If you have different information or more recent, clarifying information, please let me know.
8. I amended s. 115.782 (2) (e) to clarify that persons in addition to members of the IEP team may be involved in the child's evaluation.

9. I did not create s. 115.79 (5), relating to placement decisions being made by a group that includes the child's parents, because s. 115.792 (1) (a) 1. currently requires that "the parents of a child may participate in meetings about the ... placement of the child"

10. As requested, I amended s. 115.782 (3) (b) and (c) but deleted the cross-references, in both paragraphs, to s. 115.792. Is that your intent?

Peter R. Grant
Managing Attorney
Phone: (608) 267-3362
E-mail: peter.grant@legis.state.wi.us



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-1828/1

PG:kmg:km

DOA:.....Maternowski – Special education changes

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
EDUCATION

PRIMARY AND SECONDARY EDUCATION

This bill makes various changes to the statutes pertaining to children with disabilities, including the following:

1. The bill allows state aid for special education to be used by local educational agencies (LEAs) for certain purposes that are specified under federal law for federal aid, including school-based improvement plans.

2. The bill provides that the individualized education program team, appointed by an LEA to evaluate a child to determine whether the child is disabled and to develop an individualized education program for a child with a disability, is not responsible for determining the appropriate special education placement for the child. Under the bill, the LEA is responsible for determining the child's placement. Current law directs the LEA to ensure that the child's parents participate in that determination.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 115.77 (3) of the statutes is amended to read:

2 115.77 (3) Any state ~~or federal~~ aid that is made available to a local educational
3 agency for special education and related services ~~shall~~ may be used by the local
4 educational agency only to comply with this subchapter or for the purposes, specified
5 in 20 USC 1413 (a), (f), or (g).

6 **SECTION 2.** 115.77 (4) (d) of the statutes is repealed.

7 **SECTION 3.** 115.78 (2) (c) of the statutes is repealed.

8 **SECTION 4.** 115.782 (2) (e) of the statutes is amended to read:

9 115.782 (2) (e) Each ~~individualized education program team participant person~~
10 who administers tests, assessments or other evaluation materials as part of an
11 evaluation or reevaluation of a child under this section shall prepare and make
12 available to all ~~team participants~~ persons who are participating in the evaluation of
13 the child, at a ~~team~~ meeting, a written summary of the ~~participant's~~ person's findings
14 that will assist with program planning.

15 **SECTION 5.** 115.782 (3) (b) of the statutes is amended to read:

16 115.782 (3) (b) If the individualized education program team determines that
17 a child is a child with a disability, the team shall prepare an evaluation report that
18 includes documentation of determination of eligibility. The local educational agency
19 shall give a copy of the evaluation report to the child's parents. The local educational
20 agency shall also ask each individualized education program team participant if he
21 or she wants a copy of the evaluation report or additional time before the
22 individualized education program team develops the child's individualized
23 education program. If any individualized education program team participant
24 requests a copy of the evaluation report at any point in the process of developing the
25 child's individualized education program or considering the child's educational

1 placement, the local educational agency shall give a copy of the report to each
2 individualized education program team participant before continuing with the
3 process. ~~If no individualized education program team participant requests a copy of~~
4 ~~the evaluation report, the local educational agency shall give a copy to the child's~~
5 ~~parents with the notice of placement under s. 115.792 (2).~~

6 **SECTION 6.** 115.782 (3) (c) of the statutes is amended to read:

7 115.782 (3) (c) If the individualized education program team determines that
8 a child is not a child with a disability, the team shall prepare an evaluation report.
9 The report shall identify any educational needs of the child and any services offered
10 by the local educational agency from which the child may benefit and shall include
11 information about any programs and services, other than those offered by the local
12 educational agency, that may benefit the child. The local educational agency shall
13 give a copy of the evaluation report to the child's parents ~~with the notice under s.~~
14 ~~115.792 (1) (b).~~

15 **SECTION 7.** 115.782 (4) (a) (intro.) of the statutes is amended to read:

16 115.782 (4) (a) (intro.) A local educational agency shall ~~ensure that the~~
17 ~~individualized education program team does~~ do all of the following:

18 **SECTION 8.** 115.787 (2) (g) 1. of the statutes is amended to read:

19 115.787 (2) (g) 1. Beginning when the child attains the age of 14, and annually
20 thereafter until the child is no longer eligible for special education and related
21 services, a statement of the transition services needed by the child, identifying the
22 courses of study needed to prepare the child for a successful transition to his or her
23 goals for life after secondary school, such as participation in advanced placement
24 courses or a vocational education program.

25 (END)