

~~3551
DN~~

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Fn

dn

regen.

VA

1 AN ACT *to repeal* 115.77 (4) (a), 115.77 (4) (c) to (g), 115.77 (4) (j) (intro.), 115.77
2 (4) (j) 6., 115.77 (4) (j) 8. to 10., 115.77 (7), 115.78 (4), 115.782 (2) (e), 115.782 (3)
3 (c), 115.787 (3) (d), 115.792 (2) (e) and 115.792 (2) (i); *to renumber* 115.77 (4)
4 (j) 1. to 5., 115.77 (4) (j) 7., 115.791 (3) (intro.), 115.791 (3) (a), 115.791 (3) (c) and
5 115.791 (3) (d); *to renumber and amend* 115.782 (2) (d), 115.791 (3) (b), 115.80
6 (5) and 115.80 (9) (a); *to amend* 115.76 (1), 115.76 (14), 115.76 (17), 115.77 (1m)
7 (e), 115.77 (4) (intro.), 115.77 (4) (i), 115.78 (1m) (intro.), 115.78 (1m) (c), 115.782
8 (1) (a), 115.782 (2) (a) (intro.), 115.782 (2) (b) 1., 115.782 (2) (b) 2. (intro.), a. and
9 b., 115.782 (3) (a), 115.782 (3) (b), 115.782 (4) (a) 1. and 2., 115.787 (2) (b),
10 115.787 (2) (c) (intro.), 115.787 (2) (e), 115.787 (2) (g) 3., 115.787 (3) (a), 115.787
11 (3) (b) 1., 115.787 (3) (b) 4., 115.787 (6) (a) 2., 115.792 (2) (d), 115.792 (2) (g),
12 115.792 (3) (b) (intro.), 115.792 (3) (b) 5., 115.792 (3) (b) 11., 115.80 (1) (a) 1.,
13 115.80 (1) (b), 115.80 (2), 115.80 (4), 115.80 (9) (b) 2., 115.81 (title) and 115.812
14 (1); *to repeal and recreate* 115.78 (3), 115.787 (2) (g) 1. and 2. and 115.787 (3)
15 (h) 2.; and *to create* 115.76 (9m), 115.761, 115.782 (2) (f), 115.787 (2) (bm),

1 115.787 (4) (c), 115.791 (3) (b) (intro.) and 2., 115.80 (1) (e), 115.80 (1) (f), 115.80
 2 (1) (g), 115.80 (1) (h), 115.80 (2m), 115.80 (5) (c) and 115.80 (9) (a) 1. and 2. of
 3 the statutes; **relating to:** special education programs for children with
 4 disabilities.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.
 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:

2-5 →

5 **SECTION 1.** 115.76 (1) of the statutes is amended to read:

6 115.76 (1) "Assistive technology device" means any item, piece of equipment
 7 or product system that is used to increase, maintain or improve the functional
 8 capabilities of a child with a disability other than a medical device that is surgically
 9 implanted or the replacement ^{e of} such a device.

10 ~~**SECTION 2.** 115.76 (9m) of the statutes is created to read:~~

11 ~~115.76 (9m) "Individualized education program team" or "team" means the~~
 12 ~~group of individuals appointed under s. 115.78.~~

2-12 →

13 **SECTION 3.** 115.76 (14) of the statutes is amended to read:

14 115.76 (14) "Related services" means transportation and such developmental,
 15 corrective and other supportive services as may be required to assist a child with a
 16 disability to benefit from special education, including speech-language pathology
 17 and audiology services; interpreting services; psychological services; physical and
 18 occupational therapy; recreation, including therapeutic recreation; social work
 19 services; school nursing services; counseling services, including rehabilitative

1 counseling; orientation and mobility services; medical services for diagnostic and
2 evaluative purposes only; and the early identification and assessment of disabling
3 conditions in children. *"Related services" does not include any*
medical device.

4 SECTION 4. 115.76 (17) of the statutes is amended to read:

5 115.76 (17) "Transition services" has the meaning given in 20 USC 1401 (30)
6 (34).

7 SECTION 5. 115.761 of the statutes is created to read:

8 115.761 Consent. In this subchapter, except in s. 115.797, if the consent of a
9 child's parent is necessary in order for an activity to occur, all of the following are
10 required for that consent to be considered given:

11 (1) The child's parent is fully informed, in his or her native language or other
12 mode of communication, of all information relevant to the action for which consent
13 is sought.

14 (2) The child's parent understands and agrees in writing to the carrying out of
15 the activity for which consent is sought.

16 (3) The consent describes the activity for which it is sought and lists the records
17 that will be released and to whom.

18 (4) The child's parent understands that the granting of consent is voluntary
19 and that it may be revoked at anytime, although revocation of consent is not
20 retroactive.

3-20

21 SECTION 6. 115.77 (1m) (e) of the statutes is amended to read:

22 115.77 (1m) (e) To the extent consistent with the number and location of
23 children with disabilities residing in the local educational agency who are enrolled
24 by their parents in private elementary and secondary schools located within the local
25 education agency, ensures that those children have an opportunity to participate in

1 special education and related services and that the amount spent to provide those
2 services by the local educational agency is equal to a proportionate amount of federal
3 funds made available under this subchapter.

4 **SECTION 7.** 115.77 (4) (intro.) of the statutes is amended to read:

5 115.77 (4) (intro.) A local educational agency shall submit to the division,
6 pursuant to a schedule and instructions established and published by the division,
7 ~~the agency's~~^a plan, including a program narrative, ~~for the provision of special~~
8 ~~education and related services that includes~~ all of the following:

9 **SECTION 8.** 115.77 (4) (a) ^{to (k)} of the statutes ^{are} repealed.

10 ~~**SECTION 9.** 115.77 (4) (c) to (g) of the statutes are repealed.~~

11 **SECTION 10.** 115.77 (4) (i) of the statutes is amended to read:

12 115.77 (4) (i) The local educational agency's plan for employing qualified
13 special education and related services staff, evaluating its staff's special education
14 in-service needs and the plan for meeting those needs.

15 **SECTION 11.** 115.77 (4) (j) (intro.) of the statutes is repealed.

16 **SECTION 12.** 115.77 (4) (j) 1. to 5. of the statutes are renumbered 115.77 (4) (p)
17 to (t).

18 **SECTION 13.** 115.77 (4) (j) 6. of the statutes is repealed.

19 **SECTION 14.** 115.77 (4) (j) 7. of the statutes is renumbered 115.77 (4) (u).

20 ~~**SECTION 15.** 115.77 (4) (j) 8. to 10. of the statutes are repealed.~~

21 **SECTION 16.** 115.77^x (7) of the statutes is repealed.

22 **SECTION 17.** 115.78 (1m) (intro.) of the statutes is amended to read:

23 115.78 (1m) APPOINTMENT OF TEAM. (intro.) The local educational agency shall
24 appoint an individualized education program team for each ~~whenever it proposes to~~

*that provides
assurances to the
division that the local
educational agency meets
the conditions required
by 20 usc 1413 (a),
including*

4-3

4-20

4-21

6
1 ~~evaluate a~~ child referred to it under s. 115.777. Each team shall consist of all of the
2 following:

3 SECTION 18. 115.78 (1m) (c) of the statutes is amended to read:

4 115.78 (1m) (c) At least one special education teacher who has extensive and
5 recent training and experience related to the child's known or suspected disability
6 as specified in s. 115.76 (5) (a) or, where appropriate, at least one special education
7 provider of the child.

8 SECTION 19. 115.78 (3) of the statutes is repealed and recreated to read:

9 115.78 (3) TIME LINE. (a) The local educational agency shall determine if a child
10 is a child with a disability within 60 days after the local educational agency receives
11 parental consent for the evaluation of the child under s. 115.782 (1) (b).

12 (b) The 60-day period under par. (a) does not apply to a local education agency
13 if any of the following occur:

14 1. A child enrolls in a school served by that local educational agency after the
15 60-day period has begun and before a determination by the child's previous local
16 education agency ^{al} ~~regarding~~ ^{as to} whether the child is a child with a disability, the
17 subsequent local education agency ^{al} is making sufficient progress to ensure a prompt
18 completion of the evaluation, and the child's parent and the subsequent local
19 education agency ^{al} agree to a specific time when the evaluation will be completed.

20 2. The child's parent repeatedly fails or refuses to produce the child for the
21 evaluation.

22 SECTION 20. 115.78 (4) of the statutes is repealed.

23 SECTION 21. 115.782 (1) (a) of the statutes is amended to read:

24 115.782 (1) (a) ~~The local educational agency shall notify~~ ^{Notify} the parents of the
25 child, in accordance with s. 115.792, of any evaluation procedures the agency

5-1 →

5-22 →

1 proposes to conduct, ~~the qualifications of the individuals who will conduct the~~
2 ~~evaluation and their names, if known.~~

6-2 →
3 SECTION 22. 115.782 (2) (a) (intro.) of the statutes is amended to read:

4 115.782 (2) (a) (intro.) In conducting the evaluation, the ~~individualized~~
5 ~~education program team~~ shall not use any single procedure measure or assessment
6 as the sole criterion for determining whether a child is a child with a disability or for
7 determining an appropriate educational program for the child. The ~~individualized~~
8 ~~education program team~~ shall do all of the following:
↓ local educational agency

6-8 →
9 SECTION 23. 115.782 (2) (b) 1. of the statutes is amended to read:

10 115.782 (2) (b) 1. Review existing evaluation data on the child, including
11 evaluations and information provided by the child's parents, ~~previous interventions~~
12 and the effects of those interventions, current classroom-based, local or state
13 assessments ~~and observations~~ classroom based and observations by teachers and related services
14 providers ~~in the classroom~~ (smiley face)

15 SECTION 24. 115.782 (2) (b) 2. (intro.), a. and b. of the statutes are amended to
16 read:

17 115.782 (2) (b) 2. (intro.) On the basis of that review and information provided
18 by the child's parents, identify the additional data, if any, that are needed, ~~and the~~
19 ~~qualifications of the evaluators that are needed,~~ to determine all of the following:

20 a. Whether the child ~~has a particular category of~~ is a child with a disability and
21 the educational needs of the child or, in case of a reevaluation of a child, whether the
22 child continues to have such a disability and such educational needs.

23 b. The present levels of performance ~~and educational~~ academic achievement
24 and related developmental needs of the child.

6-24 →

1 SECTION 25. 115.782 (2) (d) of the statutes is renumbered 115.78 (1m) (h) and
2 amended to read:

3 115.78 (1m) (h) If ~~a~~ the child is attending a public school in a nonresident
4 school district under s. 118.51 or 121.84 (1) (a) or (4), ~~when the individualized~~
5 ~~education program team conducts its initial evaluation of the child or any~~
6 ~~reevaluation of the child under sub. (4), the team shall include~~ at least one person
7 designated by the school board of the child's school district of residence who has
8 knowledge or special expertise about the child.

9 SECTION 26. 115.782 (2) (e) of the statutes is repealed.

10 SECTION 27. 115.782 (2) (f) of the statutes is created to read:

11 115.782 (2) (f) The local educational agency shall ensure that the evaluation
12 of a child with a disability who transfers from one school district to another ^{school district} in the
13 same school year is coordinated with the child's prior and subsequent schools as
14 necessary and as expeditiously as possible to ensure prompt completion of the
15 evaluation.

16 SECTION 28. 115.782 (3) (a) of the statutes is amended to read:

17 115.782 (3) (a) Upon the completion of the administration of tests assessments
18 and other evaluation ~~materials~~ ^{measures}, the ~~individualized education program team~~ shall
19 determine whether the child is a child with a disability. ~~The individualized education~~
20 ~~program team~~ may not determine that a child is a child with a disability ~~solely~~
21 ~~because the child has received insufficient~~ instruction in reading, including in the
22 essential components of reading instruction, as defined in 20 USC 6368 (3), or math [↑]
23 or because the child has limited proficiency in English. ^{lack of instruction}
24

SECTION 29. 115.782 (3) (b) of the statutes is amended to read:

and the educational
needs of the child. The
group

shall appoint a team of qualified professionals who in conjunction
with the child's parents

The local educational agency

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

115.782 (3) (b) If the ~~team~~ 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 for special education. The local educational agency shall give a copy of the evaluation report, including the documentation of eligibility, to the child's parents with the notice of placement under s. 115.792 (2).

SECTION 30. 115.782 (3) (c) of the statutes is repealed.

SECTION 31. 115.782 (4) (a) 1. and 2. of the statutes are amended to read:

115.782 (4) (a) 1. ~~Evaluates~~ ^{Evaluate} a child with a disability in accordance with this section before determining that the child is no longer a child with a disability, except that an evaluation is not required before the termination of a child's eligibility for special education and related services because he or she graduated ^{from secondary school} with a regular diploma or because he or she reached the age of 21. In those circumstances, the local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting his or her postsecondary goals.

8-16 →

the educational or related services needs of the child, including the child's academic performance

LRB-3831/P1
PG:lmk:ch&pg
SECTION 31

Reevaluate

1

2. ~~Reevaluates~~ a child with a disability in accordance with this section if the

2 local educational agency determines that ~~conditions~~ warrant a reevaluation or if the

3 child's parent or teacher requests a reevaluation, but at least once every 3 years. The

4

~~individualized education program team~~ shall reevaluate a child no more frequently

5 than once a year unless the child's parent and the local educational agency agree

6 otherwise, and at least once every 3 years unless the child's parent and the local

7 educational agency agree that a reevaluation is unnecessary.

9-7

8 SECTION 32. 115.787 (2) (b) of the statutes is amended to read:

9 115.787 (2) (b) A statement of measurable annual goals for the child, including

10 benchmarks or short-term objectives, related to meeting academic and functional

11 goals, designed to meet the child's needs that result from the child's disability to

12 enable the child to be involved in and make progress in the general curriculum, and

13 to meeting meet each of the child's other educational needs that result from the

14 child's disability.

15 SECTION 33. 115.787 (2) (bm) of the statutes is created to read:

16 115.787 (2) (bm) For a child with a disability who takes alternate assessments

17 aligned with alternate achievement standards, a description of benchmarks or

18 short-term objectives.

19 SECTION 34. 115.787 (2) (c) (intro.) of the statutes is amended to read:

20 115.787 (2) (c) (intro.) A statement of the special education and related services

21 and supplementary aids and services, based on peer-reviewed research to the extent

22 practicable, to be provided to the child, or on behalf of the child, and a statement of

23 the program modifications or supports for school personnel that will be provided for

24 the child to do all of the following:

9-24

25 SECTION 35. 115.787 (2) (e) of the statutes is amended to read:

1 115.787 (2) (e) 1. A statement of any individual ~~modifications in the~~
2 ~~administration of any~~ appropriate accommodations that are necessary to measure
3 the academic achievement and functional performance of the child on statewide or
4 local educational agency-wide assessment of pupil achievement that are needed for
5 ~~the child to participate in the assessment~~ assessments.

6 2. If the individualized education program ^{plain} team determines that a child ^{plain} will
7 ~~not participate in~~ will take an alternate assessment on a particular statewide or local
8 educational agency-wide assessment of pupil achievement, or part of such an
9 assessment, a statement of why that assessment is not the child cannot participate
10 in the regular assessment and why the particular alternate assessment selected is
11 appropriate for the child and how the child will be assessed through alternative
12 means.

13 **SECTION 36.** 115.787 (2) (g) 1. and 2. of the statutes are repealed and recreated
14 to read:

15 115.787 (2) (g) 1. Beginning not later than in the first individualized education
16 program that will be in effect when the child is 16, and updated annually thereafter,
17 a statement of appropriate, measurable ^{postsecondary} ~~annual~~ goals for the child based on
18 age-appropriate transition assessments related to training, education, employment
19 and, where appropriate, independent living skills.

20 2. ~~2.~~ description of the transition services, including courses of study, needed
21 to assist the child in reaching the goals under subd. 1.

22 **SECTION 37.** 115.787 (2) (g) 3. of the statutes is amended to read:

23 115.787 (2) (g) 3. Beginning at least one year before the child attains the age
24 of 18, and annually thereafter ~~until the child is no longer eligible for special~~
25 ~~education and related services,~~ ^{keep} a statement that the child has been informed of the

*Beginning not later than in the first individualized
education program that will be in effect when the child is 16, and
updated annually thereafter, a*

1 parental child's rights that will transfer to the child on reaching the age of 18 under
2 s. 115.807.

11-2

3 SECTION 38. 115.787 (3) (a) of the statutes is amended to read:

4 115.787 (3) (a) In developing each child's individualized education program,
5 the individualized education program team shall consider the strengths of the child,
6 the concerns of the child's parents for enhancing the education of their child and, the
7 results of the initial evaluation or most recent reevaluation of the child, and the
8 academic, developmental, and functional needs of the child.

9 SECTION 39. 115.787 (3) (b) 1. of the statutes is amended to read:

10 115.787 (3) (b) 1. In the case of a child whose behavior impedes his or her
11 learning or that of others, consider, ~~when appropriate, strategies, including the use~~
12 of positive behavioral interventions, and supports to address that behavior.

and other strategies

13 SECTION 40. 115.787 (3) (b) 4. of the statutes is amended to read:

14 115.787 (3) (b) 4. Consider the ~~communicative~~ communication needs of the
15 child, and, in the case of a child who is hearing impaired, consider the child's
16 language and ~~communicative~~ communication needs, opportunities for direct
17 communications with peers and professional personnel in the child's language and
18 ~~communicative~~ communication mode, academic level and full range of needs,
19 including opportunities for direct instruction in the child's language and
20 ~~communicative~~ communication mode.

11-20

21 SECTION 41. 115.787 (3) (d) ^{and (e)} of the statutes ^{are} ~~is~~ repealed.

22 SECTION 42. 115.787 ⁽²⁾ ~~(3)~~ (h) 2. of the statutes is repealed and recreated to read:

23 115.787 ⁽²⁾ ~~(3)~~ (h) 2. When periodic reports, such as quarterly reports or other
24 periodic reports issued concurrently with report cards, on the progress ^{child's} ~~the child is~~
25 making toward meeting the annual goals under sub d will be provided.

move

attaining

described in par. (b)

to the child's parents

1 SECTION 43. 115.787 (4) (c) of the statutes is created to read:

2 115.787 (4) (c) After the annual individualized education program meeting for
3 a school year, the child's parent and the local educational agency may agree not to
4 convene an individualized education program ^{team} meeting for the purpose of making
5 changes to the child's individualized education program and instead may develop a
6 written document to modify the child's current individualized education program.

7 SECTION 44. 115.787 (6) (a) 2. of the statutes is amended to read:

8 115.787 (6) (a) 2. The requirements relating to ~~transition planning~~ annual
9 goals and transition services under sub. (2) (g) 1. and 2. do not apply with respect to
10 a child with a disability who is convicted of a crime under state law and incarcerated
11 in a state prison and whose eligibility under this subchapter will end, because of his
12 or her age, before he or she will be released from prison.

13 SECTION 45. 115.791 (3) (intro.) of the statutes is renumbered 115.791 (3) (a)
14 (intro.).

15 SECTION 46. 115.791 (3) (a) of the statutes is renumbered 115.791 (3) (b) 1.

16 SECTION 47. 115.791 (3) (b) (intro.) and 2. of the statutes are created to read:

17 115.791 (3) (b) (intro.) Notwithstanding the notice requirement in sub. (2) (a),
18 a court or hearing officer may determine not to reduce or deny the cost of
19 reimbursement for failure to provide such notice if any of the following apply:

20 2. Compliance with sub. (2) (a) would likely result in serious emotional harm
21 to the child.

22 SECTION 48. 115.791 (3) (b) of the statutes is renumbered 115.791 (3) (a) 2. and
23 amended to read:

24 115.791 (3) (a) 2. Compliance with sub. (2) (a) would likely result in serious
25 physical ~~or serious emotional~~ harm to the child.

INS.
12-6

12-12

1 **SECTION 49.** 115.791 (3) (c) of the statutes is renumbered 115.791 (3) (a) 3.

2 **SECTION 50.** 115.791 (3) (d) of the statutes is renumbered 115.791 (3) (a) 4.

3 **SECTION 51.** 115.792 (2) (d) of the statutes is amended to read:

4 115.792 (2) (d) A description of each evaluative evaluation procedure, test
5 assessment, record[^] or report that the local educational agency used as a basis for the
6 proposed or refused action.

7 **SECTION 52.** 115.792 (2) (e) of the statutes is repealed.

8 **SECTION 53.** 115.792 (2) (g) of the statutes is amended to read:

9 115.792 (2) (g) A statement that the parents of a child with a disability have
10 procedural safeguards under this section and, if this notice is not an initial referral
11 for evaluation, ~~or reevaluation, or a notice of an individualized education program~~
12 ~~meeting~~, the way in which the parents may obtain a description of the procedural
13 safeguards under sub. (3).

14 **SECTION 54.** 115.792 (2) (i) of the statutes is repealed.

15 **SECTION 55.** 115.792 (3) (b) (intro.) of the statutes is amended to read:

16 115.792 (3) (b) (intro.) The local educational agency shall give to the parents
17 of a child with a disability, once a year but also upon the child's initial referral for
18 evaluation, upon ~~each notification of an individualized education program meeting~~
19 ~~and upon reevaluation of the child~~ the first occurrence of the filing of a request for
20 a hearing under s. 115.80, and upon request by the child's parent, a full explanation
21 written so as to be in an easily understood by the general public understandable
22 manner, and in the native language of the child's parents unless it clearly is not
23 feasible to do so, of the procedural safeguards available under this section and under
24 applicable federal law relating to all of the following:

25 **SECTION 56.** 115.792 (3) (b) 5. of the statutes is amended to read:

or parental request

SECTION 56

1 115.792 (3) (b) 5. Opportunity to present and resolve complaints.

including the period in which the child's parents may

2 **SECTION 57.** 115.792 (3) (b) 11. of the statutes is amended to read:

request a hearing and the opportunity for the

3 115.792 (3) (b) 11. Civil actions, including the period in which to file a civil

local educational

4 action.

agency to resolve the

14-4 →

5 **SECTION 58.** 115.80 (1) (a) 1. of the statutes is amended to read:

issues presented

6 115.80 (1) (a) 1. A parent, or the attorney representing the child, may file a

by the request

7 written request with the division for a hearing within one year after the refusal or

8 proposal of the local educational agency to initiate or change his or her child's

9 evaluation, individualized education program, educational placement or the

10 provision of a free appropriate public education, except that, if the local educational

11 agency has not previously provided the parent or the attorney representing the child

12 with notice of the right to request a hearing under this subdivision, he or she may

13 file a request under this subdivision within one year after the local educational

14 agency provides the notice unless the parent was prevented from requesting a

15 hearing due to specific misrepresentation by the local educational agency that it had

16 resolved the problem forming the basis of the request for a hearing, or due to the local

17 educational agency's withholding of information from the parent that was required

18 to be provided to the parent under this subchapter. The division shall develop a

19 model form to assist parents in filing a request under this subdivision.

20 **SECTION 59.** 115.80 (1) (b) of the statutes is amended to read:

21 115.80 (1) (b) A local educational agency may file a written request with the

22 division for a hearing to override a parent's refusal to grant consent for an initial

23 evaluation, or a reevaluation or an initial educational placement or to contest the

24 payment of an independent educational evaluation.

25 **SECTION 60.** 115.80 (1) (e) of the statutes is created to read:

1 115.80 (1) (e) 1. If the parent of a child with a disability files a written request
 2 with the division for a hearing, and the local educational agency has not previously
 3 sent a written notice to the parent regarding the subject matter of the hearing
 4 request under s. 115.792 (1) (b), the local educational agency shall, within 10 days
 5 of the division receiving the hearing request, send to the child's parent a written
 6 explanation of why the ^{local educational} agency proposed or refused to take the action raised in the
 7 hearing request, a description of other options that the individualized education
 8 program team considered and the reason why those options were rejected, a
 9 description of each evaluation procedure, assessment, record, or report that the
 10 ^{local educational} agency used as the basis for the proposed or refused action, and a description of the
 11 ^{local educational} factors that are relevant to the agency's proposal or refusal. A response by a local
 12 educational agency under this paragraph does not preclude the agency from
 13 asserting that the parent's request for a hearing is insufficient under subd. 2.

14 2. A hearing ~~requested by a parent or attorney under par. (a) 1~~, may not occur
 15 until the ~~parent or attorney~~ files a request that meets the requirements of par. (a)
 16 2. The request under par. (a) 2. shall be considered sufficient unless the ~~agency~~ ^{party receiving the} request
 17 notifies the hearing officer and the ~~parent~~ ^{other party} in writing that the ~~agency~~ ^{receiving party} believes the
 18 request does not meet the requirements. ^{of par. (a) 2} Within 5 days of receiving a notice under
 19 this subdivision, the hearing officer shall determine whether the request meets the
 20 requirements under par. (a) 2. and notify the parties.

21 **SECTION 61.** 115.80 (1) (f) of the statutes is created to read:

22 115.80 (1) (f) The ~~local educational agency~~ ^{noncomplaining party} shall send to the ~~child's parent~~ ^{party} a
 23 written response that addresses the issues raised in the hearing request within 10
 24 days of the division receiving the request, except that the ~~agency~~ ^{party requesting the hearing} has 15 days in

party requesting the hearing, or the attorney representing that party,

party

① which to respond if the ~~agency~~^{party} notifies the hearing officer under par. (e) 2. that the
2 request is insufficient.

3 SECTION 62. 115.80 (1) (g) of the statutes is created to read:

④ 115.80 (1) (g) A ~~parent~~^{party} filing a written request for a hearing under par. (a) ⑤
⑤ may amend its request only if the ~~local educational agency~~^{other party} consents in writing and
6 is given the opportunity to resolve the issues presented by the request at a meeting
7 under sub. (2m), or if the hearing officer grants permission at least 5 days before the
8 hearing is scheduled to occur.

9 SECTION 63. 115.80 (1) (h) of the statutes is created to read:

10 115.80 (1) (h) A hearing requested under par. (a) 1. may occur if the local
11 educational agency has not resolved the issues presented by the request to the
12 satisfaction of the parent within 30 days of the receipt of the request.

13 SECTION 64. 115.80 (2) of the statutes is amended to read:

14 115.80 (2) The division shall maintain a list of qualified hearing officers who
15 are not employed by or under contract with the department or the local educational
16 agency, other than being appointed under this subsection, and who do not have a
17 personal or professional interest that conflicts with the person's objectivity in the
18 hearing, to serve as hearing officers in hearings under this section. A hearing officer
19 must possess knowledge of, and the ability to understand, state and federal special
20 education laws, rules, and regulations, and legal interpretations by federal and state
21 courts. A hearing officer also must possess the knowledge and ability to conduct
22 hearings and render and write decisions in accordance with appropriate, standard
23 legal practice. Upon receipt of a written request for a hearing under sub. (1), the
24 division shall appoint a hearing officer from the list.

25 SECTION 65. 115.80 (2m) of the statutes is created to read:

sub. (1)

1 115.80 (2m) (a) Except as provided in par. (c), within 15 days of the division
 2 receiving a request for a hearing under ~~par~~ (a) 1. and before the hearing is conducted,
 3 the local educational agency shall convene a meeting with the child's parents and the
 4 relevant members of the individualized education program team who have specific
 5 knowledge of the facts identified in the hearing request. At the meeting, the ^{child's} parents
 6 ~~may~~ ^{shall} discuss ~~the subject matter of~~ the hearing request and the facts that form the
 7 basis of the request and the ^{local educational} agency may resolve the issues.

8 (b) The meeting under par. (a) shall include a representative of the local
 9 educational agency who is authorized to make decisions on behalf of the agency. The
 10 meeting may not include an ~~agency~~ ^{of the local educational agency} attorney unless the child's parent is accompanied
 11 by an attorney.

12 (c) The parents and the local educational agency may agree in writing to waive
 13 the meeting under par. (a) or use mediation under s. 115.797.

14 (d) If the child's parents and the local educational agency resolve the subject
 15 matter of the hearing request at the meeting under par. (a), they shall execute ^{and sign} a
 16 ~~written signed~~ ^{legally binding} agreement that is enforceable except that either the parent or the
 17 ^{local educational} agency may void the agreement within 3 business days of its execution.

18 SECTION 66. 115.80 (4) of the statutes is amended to read:

19 115.80 (4) At least 5 business days before a hearing is conducted under this
 20 section, other than an expedited hearing under 20 USC 1415 (k), each party shall
 21 disclose to all other parties all evaluations completed by that date and
 22 recommendations based on the offering party's evaluations that the party intends to
 23 use at the hearing. The hearing officer may bar any party that fails to comply with
 24 this subsection from introducing the relevant evaluation or recommendation at the
 25 hearing without the consent of the other party. The party requesting the hearing

in the circuit court for the county in which the local educational agency is located;

1 may not raise issues at the hearing that were not raised in the notice filed under sub.

2 (1) (a) ²¹ unless the other party agrees.

3 **SECTION 67.** 115.80 (5) of the statutes is renumbered 115.80 (5) (a) and
4 amended to read:

5 115.80 (5) (a) A hearing officer may administer oaths and affirmations, issue
6 subpoenas and enforce subpoenas under ss. 885.01 (4) and 885.12, regulate the
7 course of the hearing and hold conferences for the settlement or simplification of the
8 issues. The hearing officer is not bound by common law or statutory rules of evidence.
9 The hearing officer shall admit all testimony having reasonable probative value, but
10 shall exclude immaterial, irrelevant or unduly repetitious testimony. The hearing
11 officer shall give effect to the rules of privilege recognized by law. A hearing officer
12 has the authority to issue an order consistent with this subchapter and 20 USC 1415
13 (k) and to order whatever remedy is reasonably necessary to bring the parties into
14 compliance with this subchapter.

15 (b) The hearing officer's decision shall consist of findings of fact and conclusions
16 of law and shall be based upon a preponderance of the evidence. The findings of fact
17 shall be based solely upon the evidence received at the hearing. The decision shall
18 be made on substantive grounds based on a determination of whether the child
19 ^{has} received a free appropriate public education.

20 **SECTION 68.** 115.80 (5) (c) of the statutes is created to read:

21 115.80 (5) (c) In matters alleging a procedural violation, a hearing officer may
22 find that a child did not receive a free appropriate public education only if the
23 procedural inadequacies impeded the child's right to a free appropriate public
24 education, significantly impeded the parents' opportunity to participate in the
25 decision making process regarding the provision of a free appropriate public

1 education to the child, or caused a deprivation of educational benefits. Nothing in
2 this paragraph precludes a hearing officer from ordering a local educational agency
3 to comply with procedural requirements.

4 **SECTION 69.** 115.80 (9) (a) of the statutes is renumbered 115.80 (9) (a) (intro.)
5 and amended to read:

6 115.80 (9) (a) (intro.) Subject to par. (b), a circuit court may award reasonable
7 attorney fees and actual costs to the parents of a child with a disability who is the
8 prevailing party in any action or proceeding brought in circuit court under this
9 section. to any of the following:

10 **SECTION 70.** 115.80 (9) (a) 1. and 2. of the statutes are created to read:

- 11 115.80 (9) (a) 1. A prevailing party who is the parent of a child with a disability.
- 12 2. A prevailing party who is the local educational agency, against the attorney
- 13 of a parent or against the parent.

19-13

14 **SECTION 71.** 115.80 (9) (b) 2. of the statutes is amended to read:

15 115.80 (9) (b) 2. Fees and costs may not be awarded under par. (a) if they relate
16 to any meeting of the individualized education program team unless the meeting is
17 convened as a result of an administrative hearing or judicial action, or for mediation
18 under s. 115.797 ~~that is conducted before filing a request for a hearing under sub. (1)~~ ^g _{keep}

19 For the purposes of this subdivision, a meeting held under sub. (2m) is neither a
20 meeting convened as a result of an administrative hearing or judicial action nor an
21 administrative hearing or judicial action. ~~g~~ ~~keep~~

19-21

22 **SECTION 72.** 115.81 (title) of the statutes is amended to read:

23 115.81 (title) **Children in child caring institutions residential care**
24 **centers.**

25 **SECTION 73.** 115.812 (1) of the statutes is amended to read:

X

2-5:

Section #. 115.758 of the statutes is amended to read:

115.758 Construction. To the extent possible, this subchapter shall be construed in a manner that is consistent with 20 USC 1400 to ~~1487~~ ^{keep} 1482 and ^{is} consistent with the

History: 1997 a. 164.

purposes specified in 20 USC
1401 (d)

2-12-11

Section #. 115.76 (3) of the statutes is amended to read:

115.76 (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.

History: 1997 a. 164, 237; 1999 a. 116, 161; 2001 a. 59.

child who is
and includes a homeless,
a child who is a ward of the state,
and
a child who is attending a private
school



2-12:2



Section #. 115.76 (5) (a) (intro.) of the statutes is amended to read:

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

History: 1997 a. 164, 237; 1999 a. 116, 161; 2001 a. 59.

disabilities, impairments, disturbances, or
injuries; and regardless of its^{the} severity

3-20:1

✓

Section #. 115.762 (3) (c) of the statutes is amended to read:

115.762 (3) (c) Complying with the requirements of this subchapter and applicable federal law, including 20 USC 1415 (k) ~~and~~ and 42 USC 11432 to 11434 a

History: 1997 a. 164; 1999 a. 161; 2001 a. 59.

X

SEC. RC; 115.762 (3)(e)

115.762 (3)(e) Determining local educational agency eligibility for assistance, including determining whether a local educational agency is failing to comply with any of the requirements of the plan submitted to the division under s. 115.77(4) ○

→

✓

3-25:2

Section #. 115.762 (3) (g) of the statutes is amended to read:

115.762 (3) (g) Monitoring and enforcing local educational agency and residential care center for children and youth compliance with this subchapter and applicable federal law, including 20 USC 1415 (k) and 42 USC 11431 to 11434 a

History: 1997 a. 164; 1999 a. 161; 2001 a. 59.

SEC. RC, 115.762 (3) (h)

115.762 (3) (h) Developing and maintaining a performance plan in compliance with 20 USC 1416 (b) ○

SEC. RC, 115.762 (3) (i)

115.762 (3) (i) Establishing and maintaining qualifications to ensure that personnel necessary to carry out ^{the requirements of} this subchapter are appropriately and adequately ^{prepared} and ^{trained} in compliance with 20 USC 1412 (a) (14) ; are requiring that local educational agencies take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities under this subchapter. ○



3-20;3

Section #. 115.762 (3) (j) of the statutes is amended to read:

including data disaggregated by race and ethnicity

115.762 (3) (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 ^{positive} behavioral interventions ^{and supports} and procedural safeguards to ensure that such policies, procedures and practices comply with this subchapter.

History: 1997 a. 164; 1999 a. 161; 2001 a. 59.



3-25:4

✓

Section #. 115.77 (1m) (intro.) of the statutes is amended to read:

115.77 **(1m)** (intro.) A local educational agency shall demonstrate to ~~the satisfaction of~~ the division that it does all of the following:

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



3-20-05

✓

Section #. 115.77 (1m) (b) of the statutes is amended to read:

115.77 (1m) (b) Makes available a free appropriate public education to children with disabilities as required by this subchapter and applicable state and federal law.

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

except that a local educational agency that provides special education and related services to a child with a disability who is participating in an early intervention program under 5.51-44 is not required to provide the child with a free appropriate public education



3-20; 6

Section #. 115.77[✓] (1m) (bg) of the statutes is amended to read:

115.77 (1m) (bg) Includes children with disabilities in statewide and local educational agency-wide assessments, with appropriate modifications, where necessary, ^{and alternate assessments} ~~for in alternative assessments for~~ ^{keep} ~~these children who cannot participate in statewide or local educational agency-wide assessments.~~

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

as indicated in their individualized education programs

including assessments described in 20 USC 6311 (b) (3) A

4-3

✓

Section #. 115.77 (1m) (f) of the statutes is amended to read:

115.77 (1m) (f) Establishes written policies and procedures for implementing this subchapter and applicable federal law. [^] and programs

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

4-20-1

X

Section #. 115.77 (4) (n) of the statutes is renumbered 115.77(4)(s) and amended to read:

115.77 (4) (s) Any other information the division requires to permit its review ~~and approval~~ of the plan.

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



4-25 : 2

SEC. CR. 115.77 (4) (p) ✓

115.77 (4) (p) ^(B) The local educational agency;[^]
in providing for the children with disabilities
within its jurisdiction;[^] has in effect policies;[^]
procedures [^] and programs that are consistent
with this subchapter and applicable federal law

SEC. CR. 115.77 (4) (g)²

115.77 (4) (g) ^(B) The local educational agency's
plan for ensuring that all personnel necessary
to carry out the requirements of this subchapter
are appropriately and adequately prepared
according to applicable state and federal law

SEC. CR. 115.77 (4) (r)

115.77 (4) (r) ^(B) The data regarding



4-25:3

children with disabilities and nondisabled
children in the local educational agency
that the division is required to collect or
report to be in compliance with
25 USC 1400 to 14820

4-21:1



Section #. 115.77 (8) of the statutes is amended to read:

115.77 (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.

on the same basis

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

including proportional distribution based on enrollment of children with disabilities, and at the same time as it distributes other federal funds to the agency's other schools



4-21:2

Section #. 115.775 of the statutes is amended to read:

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 ~~1491e~~. ¹⁴⁸²

(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 ~~1491e~~ ¹⁴⁸² if the board of directors enters into ^{a written} ~~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.

5-7:1

Section #. 115.78 (1m) (d) of the statutes is amended to read:

115.78 (1m) (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.

education

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

~~SEC. RN. 115.78(2)(a), 115.782(1)(a)~~



5-7:2

✓

(am)

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

(am)

115.782 (1) (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.

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

5-22:1

SEC.

CR.

115-78(5)

115-78(5)

Ⓟ

Ⓢ

ATTENDANCE AT MEETINGS. (a) A

member of an individualized education program team is not required to attend a meeting of the individualized education program team, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the ~~member's~~^{of the member} attendance is unnecessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting. Ⓣ

(b)

(b) A member of an individualized

education program team may be excused from attending a meeting of the individualized education

5-22:2

program team, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the child's parent and the local educational agency consent before the meeting, and the member submits to the child's parent and to the individualized education program team, in writing, the member's input into the development of the child's individualized education program.

(c) A parent's agreement under par. (a) and consent under par. (b) shall be in writing.



5-22:3

SEC. CR. 115-782 (1) (intro.)

115-782 (1) (intro.) The local educational

agency shall do all of the following:



G-2:1

Section #. 115.782 (1) (b) of the statutes is amended to read:

Except as provided in par. (c), ^

before conducting

115.782 (1) (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.~~ 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.

of a child ^

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



6-2:2

SEC. ✓ CR, 115.782 (1)(c)

115.782 (1)(c) ^(B) Before conducting an
 initial evaluation of a child who is a
 ward of the state, obtain informed consent
 in compliance with 20 USC 1414 (a) (1) ^(a) (D) (iii) ○

6-8-01

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

115.782 (2) (a) 1. Use a variety of assessment tools and strategies to gather relevant functional and academic ~~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.

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

6-8:2



Section #. 115.782 (2) (a) 3. a. of the statutes is amended to read:

115.782 (2) (a) 3. a. That ~~tests~~ ^{assessments} and other evaluation ~~materials~~ ^{measures} 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~~ ^{in the} or other mode of ~~communication~~ ^{communication}, unless it is clearly not feasible to do so.

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

and ^{in the} form must likely to yield information on what the child knows and can do academically, developmentally, and functionally.



6-8:3

SEC. AM; 115.782(2)(a)3-b.

tered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

ⓑ

115.782(2)(a)3.b. That ~~any standardized tests that are~~ ^{assessments and ^{other} evaluation measures} given to the child ~~have been validated for the specific purpose for which they are used,~~ ^{keep ↓} are administered by trained and knowledgeable personnel, ^{are} and are administered in accordance with any instructions provided by the producer of such tests.

the assessments or evaluation measures

~~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.~~

ⓑ

SEC. AM; 115.782(2)(b)(intro.)

115.782(2)(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~~ ^{intro.} ~~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.

6-24

SEC. A.M. 115.782 (2) (c)

assessments

measures

115.782

(2) (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).

8-16 ~~2~~

✓

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.

9-7:1

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

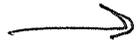
group described under sub. (3)(a) finds

115.782 (4) (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 disabili-
ity. 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.

or to determine the child's
educational needs

and to determine the child's
educational needs



9-7:2

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

academic achievement and

115.787 (2) (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.

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

9-24:1

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

115.787 (2) (c) 1. Advance appropriately toward attaining the annual goals.

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

