

9-24:2

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

115.787 (2) (c) 2. Be involved and <sup>make</sup> progress in the general curriculum in accordance with par.  
(a) and participate in extracurricular and other nonacademic activities.

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

✓

11-2

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

115.787 (2) (h) 1. How the child's progress toward <sup>attaining</sup> the annual goals described in par. (b) will be measured.

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

11-20

Section #. 115.787 (3) (c) of the statutes is amended to read:

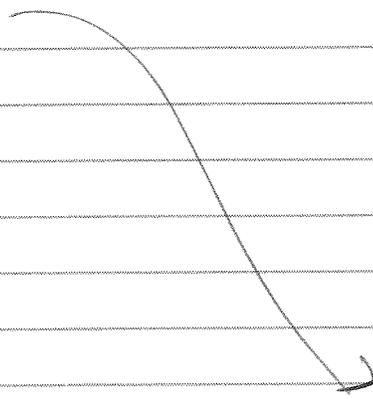
115.787 (3) (c) The regular education teacher of the child, as a participant on the individualized education program team, shall, to the extent appropriate, participate in the development of the individualized education program of the child, including the determination of appropriate positive behavioral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

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

and supports

12-6:1

(nw 9) If a written document is developed, it  
 may amend the <sup>current</sup> individualized education program  
 or replace the current individualized education  
 program. Upon request, <sup>the</sup> local educational agency shall give  
 the child's parent <sup>a</sup> ~~the~~ a  
 copy of the child's <sup>revised</sup> individualized  
 education program.



12-6:2



9

Section #. 115.787 (5) of the statutes is amended to read:

115.787 (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.



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

12-12

X

Section #. 115.787 (7) of the statutes is amended to read:

115.787 (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.

or requires that additional information be included in a child's individualized education program beyond what is explicitly required by this section ✓

14-4:1



Section #. 115.797 (1) (a) of the statutes is amended to read:

115.797 (1) (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.

History: 1997 a. 164.

arises  
that arises before the filing of  
a request for a hearing under  
s. 115.80 or



14-4:2

Section #. 115.797 (6) of the statutes is amended to read:

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

History: 1997 a. 164.

The written <sup>resolution or</sup> agreement shall state that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding.

19-13

Section #. 115.80 (9) (a) of the statutes is amended to read:

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

History: 1997 a. 164, 251; 1999 a. 117.

administrative hearing under this section or  
If it is determined that the hearing request or the cause of action is frivolous, s. 227.483 or 802.05 applies.

19-21:1

✓

Section #. 115.80 (9) (d) 1. a. of the statutes is amended to read:

115.80 (9) (d) 1. a. During the course of the action, the parent or the parent's attorney unreasonably protracted the final resolution of the controversy.

History: 1997 a. 164, 251; 1999 a. 117.



19-21.2

Section #. 115.80 (10) of the statutes is amended to read:

227.48 and ss. 227.485 to

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

History: 1997 a. 164, 251; 1999 a. 117.

DN

¶ This preliminary draft is based on Greg  
Dietz's second draft. Please note the following  
 questions and comments.

¶ 1. Instead of amending s. 115.762 (3) (g),  
 I amended s. 115.76 (3) and (5) (a) (intro.)

because I assumed that your additional  
 language was meant to apply throughout the  
 subchapter wherever "child with a disability" appears,  
 not just in s. 115.762 (3) (g). OK?

¶ 2. I did not incorporate your additional  
 language into s. 115.76 (1) because any item,  
 piece of equipment, or product system already  
 all such items.

¶ 3. I did not incorporate your school  
 additional language relating to nursing  
 services in s. 115.76 (14) because it



implies that ~~that~~ it does not apply to other services specified in the subsection <sup>broader</sup> ~~broader~~ it implies a much broader meaning to "psychological services" for example. I also broadened the last sentence relating to medical devices

because your language could be construed to mean that "medical devices that are <sup>urgically</sup> not implanted are included in "related services"."

¶ 4. Please check the US cite sites in (c)

s. 115.762 (3)(c) and (g) to ensure they're correct.

¶ 5. I did not amend s. 115.77(1m)(a) because of the treatment of s. 115.76 (3) OK?

¶ 6. Please check the USC cite in:

s. 115.77(1m)(b)(g) In that paragraph, show the language be "... where necessary,"

as indicated in 000<sup>L</sup> or "... when necessary,"<sup>^</sup>  
 and as indicated ...<sup>L</sup>? I think there may  
 be a substantive difference between the two  
 constructions. <sup>50</sup>

7. Please review s. 115.77 (4) Cr. There appears  
 to be ~~something missing~~ <sup>a verb missing</sup> from this sentence. <sup>6</sup>

7.8. I did not include some of the  
 additional language in s. 115.77(8) because it  
 seemed redundant.

7.8. In s. 115.78(1m) (intro.), I retained  
 the ~~requirement~~ language requiring the LEA to  
 appoint the IEP team because otherwise it's  
 unclear how the team ~~was~~ comes into existence.

In addition, <sup>^</sup> if a child has two  
 teachers, does the child's parent choose?

S-1:2

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

¶ ~~9~~ <sup>9</sup> I renumbered s. 115.78 (2) (a) to  
s. 115.782 (1) (a) <sup>m</sup> because <sup>^</sup> as I understand

it, the IEP team may not be the

group that evaluates the child.

¶ ~~10~~ <sup>10</sup> Section 115.78 (1r) (from Greg's draft)

is created as 115.78 (5) <sup>Note that</sup> in s. 115.78 (5) (b),

it's unclear who determines whether the member may

be excused. ~~and~~

insert DN-1

¶ 12. I did not make <sup>all of</sup> the changes suggested  
to s. 115.78 (3). The subsection requires four

conditions to be present in order for

the 60-day period not to apply, and all

are of equal importance.

¶ 13. Note that I amended s. 115.782 (2) (b) (Intro.) to delete the reference to the LEP team (2) (b)

14. Note the changes to s. 115.782 (2) (4) 10

OK?

¶ 15. In s. 115.782 (2) (c), you changed

"evaluation materials" to "evaluation measures," so

I made the same change in s. 115.782 (2) (a) 3. a.

and b. OK?

16. In s. 115.782 (3) (a), I directed the LEA to <sup>directed</sup> appoint the <sup>"team of"</sup> qualified professionals. <sup>(I used "professionals" because s. 115.782 (4) (c) does so)</sup> <sup>the bill should state</sup>

how this group comes into existence. In your draft

suggested, I use "determinant factor" but note that

"determinant" means "an influencing or determining factor" (and this one)

factor. OK? Finally, your draft, use "reading."

"lack of appropriate instruction in reading," but

only "lack of instruction in math." I is that correct?

¶ 17. In s. 115.782(3)(b), I ~~added~~ directed the LEA to ~~develop~~ prepare an evaluation report. Should it be the group (team plus parent) instead? (Someone has to create it in order for it to be given to the child's parents)

~~¶ 18. In s. 115.782(4)(a) 2., I did not include "including improved academic performance" because I don't understand how a child's improved performance can be called an~~

~~18. In s. 115.782(4)(c), is the group~~

¶ 18. Is the "team" mentioned in s. 115.782(4)(c) intended to include the child's parent? ~~The draft~~

~~¶ 19. In s. 115.787(2)(e) 20, I change "IEP team" to "LEA" Is that correct?~~

¶ 19. In s. 115.787(2)(g) 3., why delete when the duty ends? The deletion strongly suggests that the duty does not end.

¶ 20. In s. 115.787 (2) Ch 20, I assumed that the reports are provided to the child's parent, so I inserted language to that effect.

22. I made no changes to s. 115.787(4)(c) because it appears <sup>that</sup> the substance ~~is~~ unchanged of the paragraph remains unchanged.

¶ 21. I did not include s. 115.787 (4)(d) because I don't know what it means. If "consolidated," <sup>simply</sup> does that mean that there are fewer meetings? <sup>would</sup> In other words, the meaning of the paragraph ~~will~~ be the same if it read "The LEA shall encourage as few meetings as feasible." In addition, the paragraph does not specify to whom the LEA must direct its encouragement. And finally, the paragraph implies that reevaluations

As I understand it, <sup>^</sup>  
 are conducted by the IEP team, that may not  
 be true under this draft.  
 ¶ 22. I combined your s. 115.787 (4)(c)  
 with s. 115.787 (4)(c) made  
 changes to s. 115.787 (4)(c) because it appears that  
 the substance of the paragraph ~~remains~~ unchanged.

¶ 23. Did you intend to delete the treatment  
 of s. 115.787 (6)(a) 2.? I wasn't sure so I left it  
 in.

¶ 24. I did not amend s. 115.791 (3)(intro.)  
 as renumbered, because there's no substantive  
 difference in the paragraph between "may not" and  
 "shall not" and did not include.

¶ 25. I'm confused by the addition of s. 115.792 (1)(a) 2. a. and b. Section  
 115.792 (1)(a) 2. does not specify who appoints the surrogate if the child is neither  
 a ward of the state nor homeless. In addition, a homeless child may very well  
 have parents who are known why would the LEA appoint a surrogate for the child?

¶ 26. I don't undertake the change  
 from "and" to "or" in s. 115.792 (3)  
 (b) (intro.) Don't the intent that the LEA



must provide the explanation upon any of the the occurrence of conditions specified?

¶ <sup>27</sup>28. I did not add "availability" to s. 115.792 (3)(b) ¶ because I think it's implicit. If it's added here, wouldn't it also need to be added in subs. 1., 10., 11., and 12?

¶ <sup>28</sup>29. In s. 115.797 (6), I did not include the language relating to enforcement in district court because I don't see how state law can control that. I believe the language relating to "state court of competent jurisdiction" is <sup>outmoded</sup> <sub>outmoded and</sub> unnecessary.

¶ <sup>29</sup>30. In s. 115.80(1)(b), I did not include ~~the need for~~ the additional sentence because The paragraph already states the <sup>only</sup> basis upon which the LEA may request a hearing. To add one basis upon which the LEA

may not request a hearing is at best unnecessary and at worst may imply that there may be other bases upon which the LEA may request a hearing because they are not negated.

¶ <sup>30</sup> (3) In s. 115.80 (1)(e) 20, I referred to a "request" instead of a "notice" because there is no notice under par (a) 20. I

¶ <sup>31</sup> (32) In s. 115.80(1)(f) I don't think the draft can refer to <sup>a party</sup> receiving the due process request because the request is filed with the division.

Do you want to add a provision directing the division to notify the noncomplaining party?

¶ <sup>32</sup> (33) I changed the cross-reference in s. 115.80 (4) from sub (1)(a) 2. to sub. (1)(a). OK?



9 <sup>233</sup> (39). Neither Greg Dietz nor I could determine exactly what federal law requires regarding the ~~has~~ timeline for the hearing, so I deleted the additional material from s. 115.80 (1)(g) and (6) and all of the new

s. 115.80 (1)(h). If the timeline cannot be amend s. 115.80 (6) to <sup>indicate</sup> provide that federal law provides exceptions to the 45-day requirement.

in 20 USC 1415 (c) (2)

(E)(iii) and

(F)(1)(B)(ii) @

specified with a reasonable assurance of accuracy, one way to finesse the issue is to

~~If you have questions or need more information, please let me know.~~

*[Handwritten signature]*

¶ 34  
 ¶ 35. Based on a conversation ~~with~~  
 my colleague, Bob  
 Nelson, who had with Greg Dietz about the  
 awarding of attorney fees and costs and  
 the effect of frivolous causes of action,  
 we ~~had~~ decided to leave most  
 of  
 s. 115.80 (9) ~~should~~ ~~to~~ ~~remain~~ unaffected  
 and to add language making  
 ss. 227.483 and 802.05 applicable to  
 hearings and causes of action under  
 s. 115.80. Please let me know if the  
 result does not achieve your intent.

→ Line space

¶ If you have questions or need more  
 information, please let me know.

PG



DN-1:1

~~SBC. CR 115-78 (S)~~

~~115-78 (S) ALTERNATIVE METHODS OF MEETING~~

~~when conducting~~

¶ 115. I do not include <sup>Greg's</sup> § 5.115-78(5) <sup>↑</sup>  
relating to alternative means of meeting  
participation <sup>↑</sup> because its applicability <sup>is</sup> is  
unclear <sup>⊙</sup>  
~~whom it applies.~~ It says it applies to

"IEP team meetings and placement meetings <sup>⊙</sup>"  
The federal law <sup>on this topic (sec. 614(f))</sup> refers to <sup>said</sup> such meetings

"pursuant to this section" <sup>[614] ↑</sup> section 615(e) <sup>↑</sup> and

section 615(f)(1)(B) <sup>⊙</sup> Section 614 deals with

initial evaluations, reevaluations <sup>↑</sup> determinations of

eligibility for special education <sup>↑</sup> the

development of the IEP <sup>and</sup> <sup>care</sup> (review and

revision of the IEP <sup>⊙</sup> As I understand





**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3831/P2dn  
PG:lmk:rs

December 22, 2005

This preliminary draft is based on Greg Dietz's second draft. Please note the following questions and comments:

1. Instead of amending s. 115.762 (3) (a), I amended s. 115.76 (3) and (5) (a) (intro.) because I assumed that your additional language was meant to apply throughout the subchapter wherever "child with a disability" appears, not just in s. 115.762 (3) (a). OK?
2. I did not incorporate your additional language into s. 115.76 (1) because "any item, piece of equipment, or product system" already includes all such items.
3. I did not incorporate your additional language relating to school nursing services in s. 115.76 (14) because it implies that it does not apply to other services specified in the subsection; i.e., it implies a much broader meaning to "psychological services," for example. I also broadened the last sentence relating to medial devices because your language could be construed to mean that medical devices that are not surgically implanted are included in "related services."
4. Please check the US Code cites in s. 115.762 (3) (c) and (g) to ensure they're correct.
5. I did not amend s. 115.77 (1m) (a) because of the treatment of s. 115.76 (3). OK?
6. Please check the USC cite in s. 115.77 (1m) (bg). In that paragraph, should the language be "...where necessary, as indicated in..." or "...where necessary, and as indicated..."? I think there may be a substantive difference between the two constructions.
7. I did not include some of the additional language in s. 115.77 (8) because it seemed redundant.
8. In s. 115.78 (1m) (intro.), I retained the language requiring the LEA to appoint the IEP team because otherwise it's unclear how the team comes into existence. In addition, if a child has two teachers does the child's parent choose?
9. I renumbered s. 115.78 (2) (a) to s. 115.782 (1) (am) because, as I understand it, the IEP team may not be the group that evaluates the child.
10. Section 115.78 (1r) (from Greg's draft) is created as 115.78 (5). Note that in 115.78 (5) (b), it's unclear who determines whether the member may be excused.

11. I did not include Greg's s. 115.78 (5), relating to alternative means of meeting participation, because its applicability is unclear. It says it applies to "IEP team meetings and placement meetings." The federal law on this topic (sec. 614 (f) refers to said meetings "pursuant to this section [614], section 615 (e), and section 615 (f) (1) (B)." Section 614 deals with initial evaluations, reevaluations, determinations of eligibility for special education, the development of the IEP, and review and revision of the IEP. As I understand Greg's draft, the IEP team may not be involved in all these activities. If it is not involved, does the "alternative means of meeting participation" section still apply? Section 615 (e) relates to mediation. Does the alternative means section apply to mediation meetings? Section 615 (f) 91) (B) relates to the meeting required to be held before the due process hearing. Is it your intent that the alternative means section apply to this meeting too? If it is meant to apply to all of these meetings, some of which do not involve the IEP team, the section should be rewritten or simply omitted.

12. I did not make all of the changes suggested to s. 115.78 (3). The subsection requires four conditions to be present in order for the 60-day period not to apply, and all are of equal importance.

13. Note that I amended s. 115.782 (2) (b) (intro.) to delete the reference to the IEP team.

14 Note the changes to s. 115.782 (2) (b) 1. OK?

15. In s. 115.782 (2) (c), you changed "evaluation materials" to "evaluation measures," so I made the same change in s. 115.782 (2) (a) 3. a. and b. OK?

16. In s. 115.782 (3) (a), I directed the LEA to appoint the "team of qualified professionals." (I used "professionals" because s. 115.782 (4) (c) does so.) The bill should state how this group comes into existence. As your draft suggested, I used "determinant factor," but note that "determinant" means "an influencing or determining factor." OK? Finally, your draft (and this one) use "lack of appropriate instruction in reading," but only "lack of instruction in math." Is that correct?

17. In s. 115.782 (3) (b), I directed the LEA to prepare an evaluation report. Should it be the group (team plus parent) instead? (Someone has to create it in order for it to be given to the child's parents.)

18. Is the "team" mentioned in s. 115.782 (4) (c) intended to include the child's parent?

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20. In s. 115.787 (2) (h) 2., I assumed that the reports are provided to the child's parents, so I inserted language to that effect.

21. I did not include s. 115.787 (4) (d) because I don't know what it means. If meetings are "consolidated," does that simply mean that there are fewer meetings? In other words, would the meaning of the paragraph be the same if it read "The LEA shall encourage as few meetings as feasible?" In addition, the paragraph does not specify

to whom the LEA must direct its encouragement. And finally, the paragraph implies that reevaluations are conducted by the IEP team. As I understand it, that may not be true under this draft.

22. I combined your s. 115.787 (4) (e) with s. 115.787 (4) (c). I made no other changes to s. 115.787 (4) (c) because it appears that the substance of the paragraph is unchanged.

23. Did you intend to delete the treatment of s. 115.787 (6) (a) 2.? I wasn't sure, so I left it in.

24. I did not amend s. 115.791 (3) (a) (intro.), as renumbered, because there's no substantive difference in the paragraph between "may not" and "shall not."

25. I'm confused by, and did not include, the addition of s. 115.792 (1) (a) 2. a. and b. Section 115.792 (1) (a) 2. does not specify who appoints the surrogate if the child is neither a ward of the state nor homeless. In addition, a homeless child may very well have parents who are known; why would the LEA appoint a surrogate for the child?

26. I don't understand the change from "and" to "or" in s. 115.792 (3) (b) (intro.). Isn't the intent that the LEA must provide the explanation upon the occurrence of any of the conditions specified?

27. I did not add "availability" to s. 115.792 (3) (b) 9. because I think it's implicit. If it's added here, wouldn't it also need to be added in subs. 1., 10., 11., and 12.?

28. In s. 115.797 (6), I did not include the language relating to enforcement in district court because I don't see how state law can control that. I believe the language relating to "state court of competent jurisdiction" is outmoded and unnecessary.

29. In s. 115.80 (1) (b), I did not include the additional sentence. The paragraph already states the only bases upon which the LEA may request a hearing. To add one basis upon which the LEA may not request a hearing is at best unnecessary and at worst may imply that there may be other bases upon which the LEA may request a hearing because they are not negated.

30. In s. 115.80 (1) (e) 2., I referred to a "request" instead of a "notice" because there is no notice under par. (a) 2.

31. In s. 115.80 (1) (f), I don't think the draft can refer to a party receiving the due process request because the request is filed with the division. Do you want to add a provision directing the division to notify the noncomplaining party?

32. I changed the cross-reference in s. 115.80 (4) from sub. (1) (a) 2. to sub. (1) (a). OK?

33. Neither Greg Dietz nor I could determine exactly what federal law requires regarding the timeline for the hearing, so I deleted the additional material from s. 115.80 (1) (g) and (6) and all of the new s. 115.80 (1) (h). If the timeline cannot be specified with a reasonable assurance of accuracy, one way to finesse the issue is to amend s. 115.80 (6) to indicate that federal law provides exceptions to the 45-day requirement in 20 USC 1415 (c) (2) (E) (iii) and (f) (1) (B) (ii).

34. Based on a conversation my colleague, Bob Nelson, had with Greg Dietz about the awarding of attorney fees and costs and the effect of frivolous causes of action, we decided to leave most of s. 115.80 (9) unaffected and to add language making ss. 227.483 and 802.05 applicable to hearings and causes of action under s. 115.80. Please let me know if the result does not achieve your intent

If you have questions or need more information, please let me know.

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

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3831/P2dn  
PG:lmk:rs

December 22, 2005

This preliminary draft is based on Greg Dietz's second draft. Please note the following questions and comments:

1. Instead of amending s. 115.762 (3) (a), I amended s. 115.76 (3) and (5) (a) (intro.) because I assumed that your additional language was meant to apply throughout the subchapter wherever "child with a disability" appears, not just in s. 115.762 (3) (a). OK?
2. I did not incorporate your additional language into s. 115.76 (1) because "any item, piece of equipment, or product system" already includes all such items.
3. I did not incorporate your additional language relating to school nursing services in s. 115.76 (14) because it implies that it does not apply to other services specified in the subsection; i.e., it implies a much broader meaning to "psychological services," for example. I also broadened the last sentence relating to medial devices because your language could be construed to mean that medical devices that are not surgically implanted are included in "related services."
4. Please check the US Code cites in s. 115.762 (3) (c) and (g) to ensure they're correct.
5. I did not amend s. 115.77 (1m) (a) because of the treatment of s. 115.76 (3). OK?
6. Please check the USC cite in s. 115.77 (1m) (bg). In that paragraph, should the language be "...where necessary, as indicated in..." or "...where necessary, and as indicated..."? I think there may be a substantive difference between the two constructions.
7. I did not include some of the additional language in s. 115.77 (8) because it seemed redundant.
8. In s. 115.78 (1m) (intro.), I retained the language requiring the LEA to appoint the IEP team because otherwise it's unclear how the team comes into existence. In addition, if a child has two teachers does the child's parent choose?
9. I renumbered s. 115.78 (2) (a) to s. 115.782 (1) (am) because, as I understand it, the IEP team may not be the group that evaluates the child.
10. Section 115.78 (1r) (from Greg's draft) is created as 115.78 (5). Note that in 115.78 (5) (b), it's unclear who determines whether the member may be excused.

- ✓ 11. I did not include Greg's s. 115.78 (5), relating to alternative means of meeting participation, because its applicability is unclear. It says it applies to "IEP team meetings and placement meetings." The federal law on this topic (sec. 614 (f) refers to said meetings "pursuant to this section [614], section 615 (e), and section 615 (f) (1) (B)." Section 614 deals with initial evaluations, reevaluations, determinations of eligibility for special education, the development of the IEP, and review and revision of the IEP. As I understand Greg's draft, the IEP team may not be involved in all these activities. If it is not involved, does the "alternative means of meeting participation" section still apply? Section 615 (e) relates to mediation. Does the alternative means section apply to mediation meetings? Section 615 (f) 91) (B) relates to the meeting required to be held before the due process hearing. Is it your intent that the alternative means section apply to this meeting too? If it is meant to apply to all of these meetings, some of which do not involve the IEP team, the section should be rewritten or simply omitted.
- ✓ 12. I did not make all of the changes suggested to s. 115.78 (3). The subsection requires four conditions to be present in order for the 60-day period not to apply, and all are of equal importance.
- ✓ 13. Note that I amended s. 115.782 (2) (b) (intro.) to delete the reference to the IEP team.
- ✓ 14 Note the changes to s. 115.782 (2) (b) 1. OK?
- ✓ 15. In s. 115.782 (2) (c), you changed "evaluation materials" to "evaluation measures," so I made the same change in s. 115.782 (2) (a) 3. a. and b. OK?
- ✓ 16. In s. 115.782 (3) (a), I directed the LEA to appoint the "team of qualified professionals." (I used "professionals" because s. 115.782 (4) (c) does so.) The bill should state how this group comes into existence. As your draft suggested, I used "determinant factor," but note that "determinant" means "an influencing or determining factor." OK? Finally, your draft (and this one) use "lack of appropriate instruction in reading," but only "lack of instruction in math." Is that correct?
- ✓ 17. In s. 115.782 (3) (b), I directed the LEA to prepare an evaluation report. Should it be the group (team plus parent) instead? (Someone has to create it in order for it to be given to the child's parents.)
- ✓ 18. Is the "team" mentioned in s. 115.782 (4) (c) intended to include the child's parent? *yes*
- ✓ 19. In s. 115.787 (2) (g) 3., why delete when the duty ends? The deletion strongly suggests that the duty does not end.
- ✓ 20. In s. 115.787 (2) (h) 2., I assumed that the reports are provided to the child's parents, so I inserted language to that effect.
- ✓ 21. I did not include s. 115.787 (4) (d) because I don't know what it means. If meetings are "consolidated," does that simply mean that there are fewer meetings? In other words, would the meaning of the paragraph be the same if it read "The LEA shall encourage as few meetings as feasible?" In addition, the paragraph does not specify

to whom the LEA must direct its encouragement. And finally, the paragraph implies that reevaluations are conducted by the IEP team. As I understand it, that may not be true under this draft.

22. I combined your s. 115.787 (4) (e) with s. 115.787 (4) (c). I made no other changes to s. 115.787 (4) (c) because it appears that the substance of the paragraph is unchanged.
23. Did you intend to delete the treatment of s. 115.787 (6) (a) 2.? I wasn't sure, so I left it in.
24. I did not amend s. 115.791 (3) (a) (intro.), as renumbered, because there's no substantive difference in the paragraph between "may not" and "shall not."
25. I'm confused by, and did not include, the addition of s. 115.792 (1) (a) 2. a. and b. Section 115.792 (1) (a) 2. does not specify who appoints the surrogate if the child is neither a ward of the state nor homeless. In addition, a homeless child may very well have parents who are known; why would the LEA appoint a surrogate for the child?
26. I don't understand the change from "and" to "or" in s. 115.792 (3) (b) (intro.). Isn't the intent that the LEA must provide the explanation upon the occurrence of any of the conditions specified?
27. I did not add "availability" to s. 115.792 (3) (b) 9. because I think it's implicit. If it's added here, wouldn't it also need to be added in subs. 1., 10., 11., and 12.?
28. In s. 115.797 (6), I did not include the language relating to enforcement in district court because I don't see how state law can control that. I believe the language relating to "state court of competent jurisdiction" is outmoded and unnecessary.
29. In s. 115.80 (1) (b), I did not include the additional sentence. The paragraph already states the only bases upon which the LEA may request a hearing. To add one basis upon which the LEA may not request a hearing is at best unnecessary and at worst may imply that there may be other bases upon which the LEA may request a hearing because they are not negated.
30. In s. 115.80 (1) (e) 2., I referred to a "request" instead of a "notice" because there is no notice under par. (a) 2.
31. In s. 115.80 (1) (f), I don't think the draft can refer to a party receiving the due process request because the request is filed with the division. Do you want to add a provision directing the division to notify the noncomplaining party?
32. I changed the cross-reference in s. 115.80 (4) from sub. (1) (a) 2. to sub. (1) (a). OK?
33. Neither Greg Dietz nor I could determine exactly what federal law requires regarding the timeline for the hearing, so I deleted the additional material from s. 115.80 (1) (g) and (6) and all of the new s. 115.80 (1) (h). If the timeline cannot be specified with a reasonable assurance of accuracy, one way to finesse the issue is to amend s. 115.80 (6) to indicate that federal law provides exceptions to the 45-day requirement in 20 USC 1415 (c) (2) (E) (iii) and (f) (1) (B) (ii).

34. Based on a conversation my colleague, Bob Nelson, had with Greg Dietz about the awarding of attorney fees and costs and the effect of frivolous causes of action, we decided to leave most of s. 115.80 (9) unaffected and to add language making ss. 227.483 and 802.05 applicable to hearings and causes of action under s. 115.80. Please let me know if the result does not achieve your intent

If you have questions or need more information, please let me know.

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These notes are in response to the second LRB draft of the changes to Chapter 115 (LRB-3831/P2). Only sections that need further change are addressed. All other sections are fine. Where additional language is needed, new sections are indicated at the appropriate location in the bill. All US Code cites in the preliminary draft appear to be correct.

✓ **Section 4.** Delete this section. Upon further consideration and discussion, no change is needed in 115.76 (5) (a) (intro.).

✓ **New Section** following section 4. 115.76 (5) (a) 5. is amended to read:

5. Emotional ~~disturbance~~ behavioral disability.

PI 11.36 was amended effective July 1, 2001 to utilize the term Emotional Behavioral Disability. This change will make the statute and rule consistent.

✓ **Section 5.** The IDEA language actually puts a broader meaning to nursing services than the other related services. The qualifier for nursing services is to enable a child to receive a free appropriate public education, while the general qualifier for other related services is "necessary to benefit from special education". Arguably, "enable to receive a free appropriate public education" is a different, broader standard than "benefit from special education." The phrase "designed to enable a child with a disability to receive a free appropriate public education as described in the child's individualized education program," should be included as a modifier of school nursing services.

*But qualifier for all line 13-14: "necessary to benefit from spec. ed."*

Saying related services does not include any medical device may be too broad. There are things schools have provided for years, without question, that are arguably medical devices, such as individual amplification systems, standers, Hoyer lifts, and others. The narrower IDEA language "'Related services" does not include a medical device that is surgically implanted, or the replacement of such device." is more appropriate terminology.

✓ **Section 15.** The IDEA language would include "and". It should be on line 22 at the beginning of the added language. "...where necessary, and as indicated..."

✓ **Section 33.** In line 24 delete "a" and the letter s from "services".

✓ **Section 40.** The term "evaluation materials" is used in IDEA, not "evaluation measures" in 115.782 (2) (a) 3. a. In the context, "evaluation materials" is also more appropriate. Also, in line 23, delete "child's" and "in the" (before "form"). This is more like IDEA and reads easier. In line 24, insert the word "accurate" before the word "information."

✓ **Section 41.** In 115.782 (2) (a) 3. b. the word "materials" is the correct word to use, instead of "measures".

✓ **Section 49.** The appointment of the evaluation group should come earlier in the statute than completion of assessment, since the group needs to be appointed before the assessment can be done. It should somehow be incorporated into §115.782(1), perhaps as (am).

115.782 (1) (am) The local educational agency shall appoint a team of qualified professionals who, with the child's parent, shall determine whether the child is a child with a disability.

With this change 115.782 (3) (a) now reads:

✓ 115.782 (3) (a) Upon the completion of the administration of tests assessments and other evaluation ~~materials~~ measures, the group appointed under sub. (1) (am) shall determine whether the child is a child with a disability. ~~The individualized education program team and the education needs of the child.~~ The group may not determine that a child is a child with a disability solely because the child has received insufficient if the determinant factor for the determination is lack of appropriate instruction in reading, including in the essential components of reading instruction, as defined in 20 USC 6368 (3), or lack of instruction in math, or because the child has limited proficiency in English.

✓ **Section 55.** The word "functional" needs to be inserted on line 13, before performance.

✓ **Section 71.** On lines 13-14 the addition of "or replace the current individualized education program" appears to go beyond the authority of IDEA to make changes without convening the IEP team. An alternative to combine the two provisions in IDEA is:

115.787 (4) (c) After the annual individualized education program meeting for a school year, changes to the individualized education program may be made by the entire individualized education program team ~~or the child's parent~~ and the local educational agency may agree not to convene an individualized education program team meeting for the purpose of making changes to the child's individualized education program. If the child's parent and the local educational agency agree not to convene an individualized education program team meeting they shall instead develop a written document to amend or modify the child's current individualized education program. Upon request, the local educational agency shall give the child's parent a copy of the child's revised individualized education program.

whole team  
- or -  
parent + LEA

with  
agreed?

✓ **Section 73.** Should be deleted. The current language of 115.787 (6) (a) 2. is consistent with IDEA.

**New Section** following section 80. 115.792 (1) (a) 2. of the statutes is amended to read:

✓ 115.792 (1) (a) 2. That a child's rights are protected by the assignment of an individual, who shall not be an employee of the department, the local educational agency or any other agency that is involved in the education or care of the child, to act as a surrogate for the child's parents whenever the child's parents are not known; the local educational agency cannot, after reasonable efforts, locate the child's parents; or the child is a ward of the state. For a child who is a ward of the state, a surrogate may be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph.

The last sentence provides authority to state judges to appoint a surrogate parent, as provided in IDEA. Homeless children who need a surrogate parent should otherwise fall into one of the listed categories and should not need to be separately dealt with.

✓ **Section 85.** On line 17, changing "and" to "or" makes it clear that any one of the occurrences triggers the requirement to provide the parent rights, not all four which "and" suggests.

**Section 89.** 115.797 (6) of the statutes is amended to read:

"or" - if use  
LEA can choose to  
give the explanation to  
at only one of the  
occurrences.

✓ **115.797 (6) AGREEMENTS.** If the parties resolve the dispute or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is reduced to writing, that it is signed by the parties and that a copy is given to each party. The written agreement shall include a statement that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The resolution or agreement is legally binding upon the parties and is enforceable in the circuit court for the county in which the local educational agency is located.

A suggested change to address the legitimate concerns raised by LRB is in the last sentence of 115.797 (6).

**Note:** IDEA is now more specific than it had been, requiring that a hearing request go to the other party. To deal with that, the words "with the division" are deleted in 115.80 (1) (a) 1., (1) (b), (1) (e) 1., and proposed (2m). This change is reflecting in several of the following sections.

**New section** following section 89. 115.80 (1) (a) 1. is amended to read:

✓ 115.80 (1) (a) 1. A parent, or the attorney representing the child, may file a written request ~~with the division~~ for a hearing within one year after the refusal or proposal of the local educational agency to initiate or change his or her child's evaluation, individualized education program, educational placement or the provision of a free appropriate public education, except that, if the local educational agency has not previously provided the parent or the attorney representing the child with notice of the right to request a hearing under this subdivision, he or she may file a request under this subdivision within one year after the local educational agency provides the notice. The division shall develop a model form to assist parents in filing a request under this subdivision.

**Section 90.** 115.80 (1) (b) of the statutes is amended to read:

✓ 115.80 (1) (b) A local educational agency may file a written request ~~with the division~~ only for a hearing to override a parent's refusal to grant consent for an initial evaluation, ~~or a reevaluation or an initial educational placement or to contest the payment of an independent educational evaluation, or as provided in 20 USC 1415 (k)~~

To avoid the implication that there are bases for a local educational agency to request a hearing by negating only one basis, the word "only" is added to make clear the limited bases available.

**New section** following section 90. 115.80 (1) (cm) is created to read:

✓ 115.80 (1) (cm) A parent or local educational agency, or the attorney representing the parent or local educational agency, may file a request for a due process hearing by providing the request to the other party and a copy of the request to the division.

The creation of 115.80 (1) (cm) is to specify how a parent or local educational agency files a hearing request.

no -  
see  
115.80(c)(c)

placed in  
(d)  
instead

**Section 91.** 115.80 (1) (e) of the statutes is created to read:

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

2. A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of sub. (1)(a)2. The due process hearing request notice required under sub. (1)(a)2. shall be deemed to be sufficient unless the noncomplaining party notifies the hearing officer and the other party in writing that the noncomplaining party believes the notice has not met the requirements of sub. (1)(a)2. Within 5 days of receiving a notice under this paragraph, the hearing officer shall determine whether the request meets the requirements under par. (a) 2. and notify the parties.

*note my diff. w/ this w/ lang.*

*see Dis to par. (f) ok?*

For consistency with proposed 115.80 (1) (f), 115.80 (1) (e) 2. is revised to use the term "noncomplaining party" instead of "party receiving the request" or "receiving party."

*J Deed (f) instead.*

**Note:** Amendments to 115.80 (1)(g), (2m), and (6) are in the following three sections to clarify the timeline concern. The intent is that a local educational agency and parent have 30 days to resolve the issue from the time of filing a hearing request or amending a hearing request. The 45 days for a hearing decision begins at the end of the 30 day resolution period.

**Section 93.** 115.80 (1) (g) is created to read:

115.80 (1) (g) A party filing a written request for a hearing under par. (a) ~~1~~ may amend its request only if the other party consents in writing and is given the opportunity to resolve the issues presented by the request at a meeting under sub. (2m), or if the hearing officer grants permission at least 5 days before the hearing is scheduled to occur. The applicable timeline for resolution under sub. (2m) and for a due process hearing under sub. (6) shall recommence at the time the party files an amended due process hearing request. Nothing in this section shall be construed to preclude a parent from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

*amendment in the original?*

**Section 95.** 115.80 (2m) is created to read:

115.80 (2m) (a) Except as provided in par. (c), within 15 days of receiving a request for a hearing under sub. (1) (a) 1. and before the hearing is conducted, the local educational agency shall convene a meeting with the child's parents and the relevant members of the

individualized education program team who have specific knowledge of the facts identified in the hearing request. At the meeting, the child's parents shall discuss the hearing request and the facts that form the basis of the request and the local educational agency may resolve the issues.

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

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

(d) If the child's parents and the local educational agency resolve the subject matter of the hearing request at the meeting under par. (a), they shall execute and sign a legally binding agreement that is enforceable in the circuit court for the county in which the local educational agency is located, except that either the parent or the local educational agency may void the agreement within 3 business days of its execution.

(e) If the local educational agency has not resolved the issues presented by the request to the satisfaction of the parent within 30 days of the receipt of the request, a hearing requested under par. (a) 1. may occur and all the applicable timelines for a due process hearing under this section will commence. *unnecessary*

**New Section** following section 98. 115.80(6) of the statutes is amended to read:

115.80 (6) The hearing officer shall issue a decision within 45 days ~~after the receipt of the request for the hearing of the conclusion of the 30 day period specified in sub. (2m).~~ The hearing officer may order an independent educational evaluation of the child at local educational agency expense and grant specific extensions of time for cause at the request of either party. If the hearing officer grants an extension of time, he or she shall include that extension and the reason for the extension in the record of the proceedings. The local educational agency shall pay the cost of the hearing.

**Section 99.** Section 227.483 is not consistent with the intent of IDEA for fees to a local educational agency. While understanding LRB's concern with creating multiple standards for attorney fees, consistency is needed with IDEA.

Would it be feasible to revise §115.80(9) to something like:

(9) A circuit court may award reasonable attorney fees and actual costs in any action or proceeding brought in circuit court under this section as provided in 20 USC 1415(i)(3)(B)-(G).

If such an approach works, then Section 102 would not be needed and could be deleted.

Gregory S. Dietz  
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5