State of Wisconsin
2005 – 2006 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT ,
TO 2005 SENATE BILL 520 529

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AN ACT ***to repeal*** 115.77 (4) (a) to (k), 115.77 (7), 115.78 (4), 115.782 (2) (e), 115.782 (3) (c), 115.787 (3) (d) and 115.792 (2) (i); ***to renumber*** 115.79 (intro.), 115.791 (3) (intro.), 115.791 (3) (a), 115.791 (3) (c) and 115.791 (3) (d); ***to renumber and amend*** 115.77 (4) (n), 115.782 (2) (d), 115.791 (3) (b) and 115.80 (5); ***to amend*** 115.758, 115.76 (1), 115.76 (3), 115.76 (5) (a) 5., 115.76 (14), 115.76 (17), 115.762 (3) (c), 115.762 (3) (g), 115.762 (3) (j), 115.77 (1m) (intro.), 115.77 (1m) (b), 115.77 (1m) (bg), 115.77 (1m) (e), 115.77 (1m) (f), 115.77 (4) (intro.), 115.77 (8), 115.775, 115.78 (1m) (c), 115.78 (1m) (d), 115.78 (3) (d), 115.782 (1) (a), 115.782 (1) (b), 115.782 (2) (a) (intro.), 115.782 (2) (a) 1., 115.782 (2) (a) 3. a., 115.782 (2) (a) 3. b., 115.782 (2) (b) 1., 115.782 (2) (b) 2. (intro.), a. and b., 115.782 (2) (c), 115.782 (3) (a), 115.782 (3) (b), 115.782 (4) (a) 1. and 2., 115.782 (4) (c), 115.787 (2) (a), 115.787 (2) (b), 115.787 (2) (c) (intro.), 115.787 (2) (c) 1., 115.787 (2) (c) 2., 115.787 (2) (e), 115.787 (2) (g) 3., 115.787 (2) (h) 1.,

115.787 (3) (a), 115.787 (3) (b) 1., 115.787 (3) (b) 4., 115.787 (3) (c), 115.787 (5), 115.787 (6) (b), 115.787 (7), 115.792 (1) (a) 2., 115.792 (2) (d), 115.792 (2) (e), 115.792 (2) (g), 115.792 (3) (b) (intro.), 115.792 (3) (b) 5., 115.792 (3) (b) 11., 115.797 (1) (a), 115.797 (6), 115.80 (1) (a) 1., 115.80 (1) (b), 115.80 (1) (d), 115.80 (2), 115.80 (4), 115.80 (6), 115.81 (title), 115.812 (1), 118.51 (12) (a) and 118.51 (12) (b) 2.; ***to repeal and recreate*** 115.762 (3) (e), 115.762 (3) (h), 115.762 (3) (i), 115.78 (3) (a) to (c), 115.787 (2) (g) 1. and 2., 115.787 (2) (h) 2. and 115.80 (9); and ***to create*** 115.77 (4) (p), 115.77 (4) (q), 115.77 (4) (r), 115.777 (3) (e), 115.78 (5), 115.782 (1) (intro.), 115.782 (1) (c), 115.782 (2) (f), 115.787 (2) (bm), 115.787 (4) (c), 115.79 (2), 115.791 (3) (b) (intro.) and 2., 115.80 (1) (e), 115.80 (1) (f), 115.80 (1) (g), 115.80 (2m) and 115.80 (5) (c) of the statutes; **relating to:** special education programs for children with disabilities.

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

SECTION 1. 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~~ 1482 and is consistent with the purposes specified in 20 USC 1400 (d).

SECTION 2. 115.76 (1) of the statutes is amended to read:

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

SECTION 3. 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, and includes a child who is homeless, a child who is a ward of the state, county, or child welfare agency, and a child who is attending a private school.

SECTION 4. 115.76 (5) (a) 5. of the statutes is amended to read:

115.76 **(5)** (a) 5. Emotional ~~disturbance~~ behavioral disability.

SECTION 5. 115.76 (14) of the statutes is amended to read:

115.76 **(14)** "Related services" means transportation and such developmental, corrective and other supportive services ~~as may be required to assist a child with a disability to benefit from special education,~~ (including speech–language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; school nursing services designed to enable a child with a disability to receive a free appropriate public education as described in the child's individualized education program; counseling services, including rehabilitative counseling; orientation and mobility services; medical services for diagnostic and evaluative purposes only; and the early identification and assessment of disabling conditions in children) as may be required to assist a child with a disability to benefit from special education. "Related services" does not include a medical device that is surgically implanted or the replacement of such a device.

SECTION 6. 115.76 (17) of the statutes is amended to read:

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

1 **SECTION 7.** 115.762 (3) (c) of the statutes is amended to read:

2 115.762 **(3)** (c) Complying with the requirements of this subchapter and
3 applicable federal law, including 20 USC 1415 (k) <u>and 42 USC 11431 to 11434a</u>.

4 **SECTION 8.** 115.762 (3) (e) of the statutes is repealed and recreated to read:

5 115.762 **(3)** (e) Determining local educational agency eligibility for assistance,
6 including determining whether a local educational agency is failing to comply with
7 any of the requirements of the plan submitted to the division under s. 115.77 (4).

8 **SECTION 9.** 115.762 (3) (g) of the statutes is amended to read:

9 115.762 **(3)** (g) Monitoring and enforcing local educational agency and
10 residential care center for children and youth compliance with this subchapter and
11 applicable federal law, including 20 USC 1415 (k) <u>and 42 USC 11431 to 11434a</u>.

12 **SECTION 10.** 115.762 (3) (h) of the statutes is repealed and recreated to read:

13 115.762 **(3)** (h) Developing and maintaining a performance plan in compliance
14 with 20 USC 1416 (b).

15 **SECTION 11.** 115.762 (3) (i) of the statutes is repealed and recreated to read:

16 115.762 **(3)** (i) Establishing and maintaining qualifications to ensure that
17 personnel necessary to carry out the requirements of this subchapter are
18 appropriately and adequately prepared and trained, in compliance with 20 USC
19 1412 (a) (14), and requiring that local educational agencies take measurable steps
20 to recruit, hire, train, and retain highly qualified personnel to provide special
21 education and related services to children with disabilities under this subchapter.

22 **SECTION 12.** 115.762 (3) (j) of the statutes is amended to read:

23 115.762 **(3)** (j) Examining data<u>, including data disaggregated by race and</u>
24 <u>ethnicity,</u> to determine if significant discrepancies are occurring in the rate of
25 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.

SECTION 13. 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:

SECTION 14. 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, except that a local educational agency that provides special education and related services to a child with a disability who has not yet attained the age of 3 and who is participating in an early intervention program under s. 51.44 is not required to provide the child with a free appropriate public education.

SECTION 15. 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, including assessments described in 20 USC 6311 (b) (3), with appropriate ~~modifications~~ accommodations and alternate assessments where necessary~~, or in alternative assessments for those children who cannot participate in statewide or local educational agency–wide assessments~~ and as indicated in their individualized education programs.

SECTION 16. 115.77 (1m) (e) of the statutes is amended to read:

115.77 **(1m)** (e) To the extent consistent with the number and location of children with disabilities ~~residing in the local educational agency~~ who are enrolled by their parents in private elementary and secondary schools located within the local educational agency, ensures that those children have an opportunity to participate in special education and related services and that the amount spent to provide those services by the local educational agency is equal to a proportionate amount of federal funds made available under this subchapter.

SECTION 17. 115.77 (1m) (f) of the statutes is amended to read:

115.77 **(1m)** (f) Establishes written policies ~~and~~, procedures, and programs for implementing this subchapter and applicable federal law.

SECTION 18. 115.77 (4) (intro.) of the statutes is amended to read:

115.77 **(4)** (intro.) A local educational agency shall submit to the division, pursuant to a schedule and instructions established and published by the division, ~~the agency's~~ a plan~~, including a program narrative, for the provision of special education and related services that includes~~ that provides assurances to the division that the local educational agency meets the conditions required by 20 USC 1413 (a), including all of the following:

SECTION 19. 115.77 (4) (a) to (k) of the statutes are repealed.

SECTION 20. 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.

SECTION 21. 115.77 (4) (p) of the statutes is created to read:

1 115.77 **(4)** (p) Assurances that the local educational agency, in providing for the
2 children with disabilities within its jurisdiction, has in effect policies, procedures,
3 and programs that are consistent with this subchapter and applicable federal law.
4 **SECTION 22.** 115.77 (4) (q) of the statutes is created to read:
5 115.77 **(4)** (q) The local educational agency's plan for ensuring that all
6 personnel necessary to carry out the requirements of this subchapter are
7 appropriately and adequately prepared according to applicable state and federal law.
8 **SECTION 23.** 115.77 (4) (r) of the statutes is created to read:
9 115.77 **(4)** (r) The data regarding children with disabilities and nondisabled
10 children in the local educational agency that the division is required to collect or
11 report to be in compliance with 20 USC 1400 to 1482.
12 **SECTION 24.** 115.77 (7) of the statutes is repealed.
13 **SECTION 25.** 115.77 (8) of the statutes is amended to read:
14 115.77 **(8)** The local educational agency shall serve children with disabilities
15 who are attending a charter school under contract with the local educational agency
16 under s. 118.40 in the same manner as it serves children with disabilities attending
17 schools of the local educational agency, and shall provide funds under this
18 subchapter to such charter schools ~~in the same manner~~ <u>on the same basis</u> as it
19 provides funds under this subchapter to schools of the local educational agency,
20 <u>including proportional distribution based on enrollment of children with disabilities,</u>
21 <u>and at the same time as it distributes other federal funds to the agency's other</u>
22 <u>schools</u>.
23 **SECTION 26.** 115.775 of the statutes is amended to read:
24 **115.775 Duties of operators of certain charter schools. (1)** Except as
25 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)~~ (19), and shall comply with 20 USC 1400 to ~~1491o~~ 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 ~~1491o~~ 1482 if the board of directors enters into ~~an~~ a written 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.

SECTION 27. 115.777 (3) (e) of the statutes is created to read:

115.777 **(3)** (e) Within 15 business days of receiving a referral, send to the child's parents a request for consent to evaluate the child under s. 115.782 except that if the local educational agency determines that no additional data are necessary, the agency shall notify the child's parent of that determination within 15 business days of receiving the referral.

SECTION 28. 115.78 (1m) (c) of the statutes is amended to read:

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

SECTION 29. 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 education curriculum and is knowledgeable about and authorized by the local educational agency to commit the available resources of the local educational agency.

1 **SECTION 30.** 115.78 (3) (a) to (c) of the statutes are repealed and recreated to
2 read:

3 115.78 **(3)** (a) The local educational agency shall determine if a child is a child
4 with a disability within 60 days after the local educational agency receives parental
5 consent for the evaluation of the child under s. 115.782 (1) (b) or (4) (b), provides
6 notice under s. 115.777 (3) (e) that no additional data are needed, or provides notice
7 under s. 115.782 (4) (c) that no additional data are needed.

8 (b) The 60–day period under par. (a) does not apply to a local educational agency
9 if any of the following occur:

10 1. A child enrolls in a school served by that local educational agency after the
11 60–day period has begun and before a determination by the child's previous local
12 educational agency as to whether the child is a child with a disability, the subsequent
13 local educational agency is making sufficient progress to ensure a prompt completion
14 of the evaluation, and the child's parent and the subsequent local educational agency
15 agree to a specific time when the evaluation will be completed.

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

18 (c) The local educational agency shall conduct a meeting to develop an
19 individualized education program under s. 115.787 and determine a placement
20 under s. 115.79 within 30 days of a determination that a child is a child with a
21 disability.

22 **SECTION 31.** 115.78 (3) (d) of the statutes is amended to read:

23 115.78 **(3)** (d) Subject to pars. (a) to (c), if the parents of the child or the local
24 educational agency staff determines at any ~~point~~ meeting during the process of the
25 evaluation, development of the individualized education program or placement of

1 the child that additional time is needed to permit meaningful parental participation,
2 the local educational agency shall provide it. Upon request, the local educational
3 agency shall provide a copy of the most recent evaluation report under s. 115.782 (3)
4 (b) to the child's parents at any meeting of the individualized education program
5 team.

6 **SECTION 32.** 115.78 (4) of the statutes is repealed.

7 **SECTION 33.** 115.78 (5) of the statutes is created to read:

8 115.78 **(5)** ATTENDANCE AT MEETINGS. (a) A member of an individualized
9 education program team is not required to attend a meeting of the individualized
10 education program team, in whole or in part, if the parent of a child with a disability
11 and the local educational agency agree that the attendance of the member is
12 unnecessary because the member's area of the curriculum or related service is not
13 being modified or discussed at the meeting.

14 (b) A member of an individualized education program team may be excused
15 from attending a meeting of the individualized education program team, in whole or
16 in part, when the meeting involves a modification to or discussion of the member's
17 area of the curriculum or related services if the child's parent and the local
18 educational agency consent and, before the meeting, the member submits to the
19 child's parent and to the individualized education program team, in writing, the
20 member's input into the development of the child's individualized education
21 program.

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

24 **SECTION 34.** 115.782 (1) (intro.) of the statutes is created to read:

25 115.782 **(1)** (intro.) The local educational agency shall do all of the following:

1 **SECTION 35.** 115.782 (1) (a) of the statutes is amended to read:

2 115.782 **(1)** (a) ~~The local educational agency shall notify~~ Notify the parents of
3 the child, in accordance with s. 115.792, of any evaluation procedures the agency
4 proposes to conduct~~, the qualifications~~ and the names of the individuals who will
5 conduct the evaluation ~~and their names,~~ if known.

6 **SECTION 36.** 115.782 (1) (b) of the statutes is amended to read:

7 115.782 **(1)** (b) ~~The local educational agency proposing to conduct~~ Except as
8 provided in par. (c), before conducting an initial evaluation ~~shall~~ of a child, obtain
9 informed consent from the child's parent ~~before the evaluation is conducted~~.
10 Parental consent for the evaluation does not constitute consent for placement for
11 receipt of special education and related services. If the child's parents do not consent
12 to the evaluation, the local educational agency may continue to pursue an evaluation
13 by using the procedures under s. 115.797 or 115.80.

14 **SECTION 37.** 115.782 (1) (c) of the statutes is created to read:

15 115.782 **(1)** (c) Before conducting an initial evaluation of a child who is a ward
16 of the state, obtain informed consent in compliance with 20 USC 1414 (a) (1) (D) (iii).

17 **SECTION 38.** 115.782 (2) (a) (intro.) of the statutes is amended to read:

18 115.782 **(2)** (a) (intro.) In conducting the evaluation, the individualized
19 education program team shall not use any single ~~procedure~~ measure or assessment
20 as the sole criterion for determining whether a child is a child with a disability or for
21 determining an appropriate educational program for the child. The individualized
22 education program team shall do all of the following:

23 **SECTION 39.** 115.782 (2) (a) 1. of the statutes is amended to read:

24 115.782 **(2)** (a) 1. Use a variety of assessment tools and strategies to gather
25 relevant functional ~~and~~, developmental, and academic 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.

SECTION 40. 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 used to assess a child under this section are selected and administered so as not to be racially or culturally discriminatory and are provided and administered in the ~~child's native~~ language ~~or other mode of communication~~ and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

SECTION 41. 115.782 (2) (a) 3. b. of the statutes is amended to read:

115.782 **(2)** (a) 3. b. That ~~any standardized tests that are~~ assessments and other evaluation materials given to the child ~~have been validated for the specific purpose for which they~~ are used for the purposes for which they are valid and reliable, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of ~~such tests~~ the assessments or evaluation materials.

SECTION 42. 115.782 (2) (b) 1. of the statutes is amended to read:

115.782 **(2)** (b) 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, local, or state assessments ~~and~~; classroom–based observations~~,~~; and observations by teachers and related services providers.

1 **SECTION 43.** 115.782 (2) (b) 2. (intro.), a. and b. of the statutes are amended to
2 read:

3 115.782 **(2)** (b) 2. (intro.) On the basis of that review and information provided
4 by the child's parents, identify the additional data, if any, that are needed~~, and the~~
5 ~~qualifications of the evaluators that are needed,~~ to determine all of the following:

6 a. Whether the child has a particular category of disability and the educational
7 needs of the child or, in case of a reevaluation of a child, whether the child continues
8 to have such a disability and such educational needs.

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

11 **SECTION 44.** 115.782 (2) (c) of the statutes is amended to read:

12 115.782 **(2)** (c) The local educational agency shall administer such ~~tests~~
13 assessments and other evaluation ~~materials~~ measures as may be needed to produce
14 the data identified under par. (b) 2.

15 **SECTION 45.** 115.782 (2) (d) of the statutes is renumbered 115.78 (1m) (h) and
16 amended to read:

17 115.78 **(1m)** (h) If ~~a~~ the child is attending a public school in a nonresident
18 school district under s. 118.51 or 121.84 (1) (a) or (4), ~~when the individualized~~
19 ~~education program team conducts its initial evaluation of the child or any~~
20 ~~reevaluation of the child under sub. (4), the team shall include~~ at least one person
21 designated by the school board of the child's school district of residence who has
22 knowledge or special expertise about the child.

23 **SECTION 46.** 115.782 (2) (e) of the statutes is repealed.

24 **SECTION 47.** 115.782 (2) (f) of the statutes is created to read:

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

SECTION 48. 115.782 (3) (a) of the statutes is amended to read:

115.782 **(3)** (a) Upon the completion of the administration of ~~tests~~ assessments and other evaluation ~~materials~~ measures, the individualized education program team shall determine whether the child is a child with a disability~~. The individualized education program team~~ and the educational needs of the child. The team 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 49. 115.782 (3) (b) of the statutes is amended to read:

115.782 **(3)** (b) ~~If the~~ 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~~ 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 50. 115.782 (3) (c) of the statutes is repealed.

SECTION 51. 115.782 (4) (a) 1. and 2. of the statutes are amended to read:

115.782 **(4)** (a) 1. Evaluates a child with a disability in accordance with this section before determining that the child is no longer a child with a disability, 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.

2. Reevaluates a child with a disability in accordance with this section if the local educational agency determines that ~~conditions~~ the educational or related services needs of the child, including the child's academic performance, warrant a reevaluation or if the child's parent or teacher requests a reevaluation~~, but at least once every 3 years.~~. The individualized education program team shall reevaluate a child no more frequently than once a year unless the child's parent and the local educational agency agree otherwise, and at least once every 3 years unless the child's parent and the local educational agency agree that a reevaluation is unnecessary.

1 **SECTION 52.** 115.782 (4) (c) of the statutes is amended to read:

2 115.782 **(4)** (c) If the individualized education program team and other
3 qualified professionals, as determined by the local educational agency, find under
4 sub. (2) (b) 2. that no additional data are needed to determine whether the child
5 continues to be a child with a disability or to determine the child's educational needs,
6 the local educational agency shall notify the child's parents of that finding and the
7 reasons for it and the right of the child's parents to request an assessment to
8 determine whether the child continues to be a child with a disability and to
9 determine the child's educational needs. The local educational agency is not required
10 to conduct such an assessment unless the child's parents request it.

11 **SECTION 53.** 115.787 (2) (a) of the statutes is amended to read:

12 115.787 **(2)** (a) A statement of the child's present level of ~~educational~~ academic
13 achievement and functional performance, including how the child's disability affects
14 the child's involvement and progress in the general curriculum or, for a preschool
15 child, as appropriate, how the disability affects the child's participation in
16 appropriate activities.

17 **SECTION 54.** 115.787 (2) (b) of the statutes is amended to read:

18 115.787 **(2)** (b) A statement of measurable annual goals for the child, including
19 ~~benchmarks or short-term objectives, related to meeting~~ academic and functional
20 goals, designed to meet the child's needs that result from the child's disability to
21 enable the child to be involved in and make progress in the general curriculum, and
22 ~~to meeting~~ meet each of the child's other educational needs that result from the
23 child's disability.

24 **SECTION 55.** 115.787 (2) (bm) of the statutes is created to read:

115.787 **(2)** (bm) For a child with a disability who takes alternate assessments aligned with alternate achievement standards, a description of benchmarks or short–term objectives.

SECTION 56. 115.787 (2) (c) (intro.) of the statutes is amended to read:

115.787 **(2)** (c) (intro.) A statement of the special education and related services and supplementary aids and services, based on peer–reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to do all of the following:

SECTION 57. 115.787 (2) (c) 1. of the statutes is amended to read:

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

SECTION 58. 115.787 (2) (c) 2. of the statutes is amended to read:

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

SECTION 59. 115.787 (2) (e) of the statutes is amended to read:

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

2. If the individualized education program team determines that a child will ~~not participate in~~ take an alternate assessment on a particular statewide or local educational agency–wide assessment of pupil achievement, ~~or part of such an assessment,~~ a statement of why ~~that assessment is not~~ the child cannot participate

in the regular assessment and why the particular alternate assessment selected is appropriate for the child ~~and how the child will be assessed through alternative means~~.

SECTION 60. 115.787 (2) (g) 1. and 2. of the statutes are repealed and recreated to read:

115.787 **(2)** (g) 1. Beginning not later than in the first individualized education program that will be in effect when the child is 14, and updated annually thereafter, a statement of appropriate, measurable postsecondary goals for the child based on age–appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills.

2. Beginning not later than in the first individualized education program that will be in effect when the child is 14, and updated annually thereafter, a description of the transition services, including courses of study, needed to assist the child in reaching the goals under subd. 1.

SECTION 61. 115.787 (2) (g) 3. of the statutes is amended to read:

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

SECTION 62. 115.787 (2) (h) 1. of the statutes is amended to read:

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

SECTION 63. 115.787 (2) (h) 2. of the statutes is repealed and recreated to read:

115.787 **(2)** (h) 2. When periodic reports, such as quarterly reports or other periodic reports issued concurrently with report cards, on the child's progress toward attaining the annual goals described in par. (b) will be provided to the child's parents.

SECTION 64. 115.787 (3) (a) of the statutes is amended to read:

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

SECTION 65. 115.787 (3) (b) 1. of the statutes is amended to read:

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

SECTION 66. 115.787 (3) (b) 4. of the statutes is amended to read:

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

SECTION 67. 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,

1 participate in the development of the individualized education program of the child,
2 including the determination of appropriate positive behavioral interventions and
3 supports and other strategies and the determination of supplementary aids and
4 services, program modifications and support for school personnel.

5 **SECTION 68.** 115.787 (3) (d) of the statutes is repealed.

6 **SECTION 69.** 115.787 (4) (c) of the statutes is created to read:

7 115.787 **(4)** (c) After the annual individualized education program meeting for
8 a school year, the entire individualized education program team may make changes
9 to the child's individualized education program, or the child's parent and the local
10 educational agency may agree not to convene an individualized education program
11 team meeting for the purpose of making changes to the child's individualized
12 education program. If the child's parent and the local educational agency agree not
13 to convene an individualized education program team meeting, they shall instead
14 develop a written document to modify the child's current individualized education
15 program. The local educational agency shall give the child's parent a copy of the
16 child's revised individualized education program.

17 **SECTION 70.** 115.787 (5) of the statutes is amended to read:

18 115.787 **(5)** FAILURE TO MEET TRANSITION OBJECTIVES. If a participating agency,
19 other than the local educational agency, fails to provide transition services in
20 accordance with sub. (2) (g) ~~2.~~, the local educational agency shall reconvene the
21 individualized education program team to identify alternative strategies to meet the
22 transition objectives for the child set out in the individualized education program.

23 **SECTION 71.** 115.787 (6) (b) of the statutes is amended to read:

24 115.787 **(6)** (b) If a child with a disability is convicted of a crime and
25 incarcerated in a state prison, the child's individualized education program team

may modify the child's individualized education program or placement notwithstanding the requirements of sub. (1) and s. 115.79 (1) (a) if the department of corrections has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

SECTION 72. 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 or requires that additional information be included in a child's individualized education program beyond what is explicitly required by this section.

SECTION 73. 115.79 (intro.) of the statutes is renumbered 115.79 (1) (intro.).

SECTION 74. 115.79 (2) of the statutes is created to read:

115.79 **(2)** A local educational agency shall seek to obtain informed consent from the parent of a child with a disability before providing special education and related services to the child. If the parent of a child with a disability denies consent, the local educational agency shall not provide special education and related services to the child. If the parent of a child with a disability denies consent or does not respond to a request for consent, all of the following apply:

(a) The local educational agency is not in violation of the requirement to make available to the child a free appropriate public education.

(b) The local educational agency is not required to convene an individualized education program team meeting or to develop an individualized education program for the child for the special education and related services for which the local educational agency sought consent.

1 **SECTION 75.** 115.791 (3) (intro.) of the statutes is renumbered 115.791 (3) (a)
2 (intro.).

3 **SECTION 76.** 115.791 (3) (a) of the statutes is renumbered 115.791 (3) (b) 1.

4 **SECTION 77.** 115.791 (3) (b) (intro.) and 2. of the statutes are created to read:

5 115.791 **(3)** (b) (intro.) Notwithstanding the notice requirement in sub. (2) (a),
6 a court or hearing officer may determine not to reduce or deny the cost of
7 reimbursement for failure to provide such notice if any of the following apply:

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

10 **SECTION 78.** 115.791 (3) (b) of the statutes is renumbered 115.791 (3) (a) 2. and
11 amended to read:

12 115.791 **(3)** (a) 2. Compliance with sub. (2) (a) would likely result in physical
13 ~~or serious emotional~~ harm to the child.

14 **SECTION 79.** 115.791 (3) (c) of the statutes is renumbered 115.791 (3) (a) 3.

15 **SECTION 80.** 115.791 (3) (d) of the statutes is renumbered 115.791 (3) (a) 4.

16 **SECTION 81.** 115.792 (1) (a) 2. of the statutes is amended to read:

17 115.792 **(1)** (a) 2. That a child's rights are protected by the assignment of an
18 individual, who shall not be an employee of the department, the local educational
19 agency, or any other agency that is involved in the education or care of the child, to
20 act as a surrogate for the child's parents whenever the child's parents are not known;
21 the local educational agency cannot, after reasonable efforts, locate the child's
22 parents; or the child is a ward of the state. <u>For a child who is a ward of the state, a</u>
23 <u>judge overseeing the child's care may appoint a surrogate for the child's parents if the</u>
24 <u>surrogate meets the requirements of this subdivision.</u>

25 **SECTION 82.** 115.792 (2) (d) of the statutes is amended to read:

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

SECTION 83. 115.792 (2) (e) of the statutes is amended to read:

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

SECTION 84. 115.792 (2) (g) of the statutes is amended to read:

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

SECTION 85. 115.792 (2) (i) of the statutes is repealed.

SECTION 86. 115.792 (3) (b) (intro.) of the statutes is amended to read:

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

SECTION 87. 115.792 (3) (b) 5. of the statutes is amended to read:

1 115.792 **(3)** (b) 5. Opportunity to present and resolve complaints, including the
2 period in which the child's parents may request a hearing and the opportunity for the
3 local educational agency to resolve the issues presented by the request.

4 **SECTION 88.** 115.792 (3) (b) 11. of the statutes is amended to read:

5 115.792 **(3)** (b) 11. Civil actions, including the period in which to file a civil
6 action.

7 **SECTION 89.** 115.797 (1) (a) of the statutes is amended to read:

8 115.797 **(1)** (a) "Dispute" means any disagreement between parties concerning
9 the proposal or refusal to initiate or change the evaluation, individualized education
10 program or educational placement of a child with a disability or the provision of a free
11 appropriate public education to such a child. "Dispute" includes any such
12 disagreement between parties that arises before the filing of a request for a hearing
13 under s. 115.80 or in which other processes, including a hearing under s. 115.80 or
14 litigation, have been requested or commenced.

15 **SECTION 90.** 115.797 (6) of the statutes is amended to read:

16 115.797 **(6)** AGREEMENTS. If the parties resolve the dispute or a portion of the
17 dispute, or agree to use another procedure to resolve the dispute, the mediator shall
18 ensure that the resolution or agreement is reduced to writing, that it is signed by the
19 parties and that a copy is given to each party. The written resolution or agreement
20 shall state that all discussions that occurred during mediation are confidential and
21 may not be used as evidence in any hearing or civil proceeding. The resolution or
22 agreement is legally binding upon the parties and is enforceable in the circuit court
23 for the county in which the local educational agency is located.

24 **SECTION 91.** 115.80 (1) (a) 1. of the statutes is amended to read:

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

11 **SECTION 92.** 115.80 (1) (b) of the statutes is amended to read:

12 115.80 **(1)** (b) A local educational agency may file a written request ~~with the~~
13 ~~division~~ for a hearing only to override a parent's refusal to grant consent for an initial
14 evaluation~~,~~ or a reevaluation ~~or an initial educational placement~~ or to contest the
15 payment of an independent educational evaluation.

16 **SECTION 93.** 115.80 (1) (d) of the statutes is amended to read:

17 115.80 **(1)** (d) A parent or local educational agency, or the attorney representing
18 a parent or local educational agency, shall file a request for a hearing under this
19 subsection by providing the request to the other party and a copy of the request to
20 the division. Upon receiving a request for a hearing, the division shall give to the
21 child's parents a copy of the procedural safeguards available to the parents under s.
22 115.792 and under federal regulations.

23 **SECTION 94.** 115.80 (1) (e) of the statutes is created to read:

24 115.80 **(1)** (e) 1. If the parent of a child with a disability files a written request
25 for a hearing, and the local educational agency has not previously sent a written

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

13 2. A hearing may not occur until the party requesting the hearing, or the
14 attorney representing that party, files a request that meets the requirements of par.
15 (a) 2. The request under par. (a) 2. shall be considered sufficient unless the party
16 receiving the request notifies the hearing officer and the other party in writing
17 within 15 days of receiving the request that the receiving party believes the request
18 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 95.** 115.80 (1) (f) of the statutes is created to read:

22 115.80 **(1)** (f) The party receiving a request for a hearing shall send to the party
23 requesting the hearing a written response that addresses the issues raised in the
24 hearing request within 10 days of receiving the request.

25 **SECTION 96.** 115.80 (1) (g) of the statutes is created to read:

1 115.80 **(1)** (g) A party filing a written request for a hearing under par. (a) may
2 amend its request only if the other party consents in writing and is given the
3 opportunity to resolve the issues presented by the request at a meeting under sub.
4 (2m), or if the hearing officer grants permission at least 5 days before the hearing is
5 scheduled to occur. The applicable timeline for resolution under sub. (2m) and for
6 a hearing under sub. (6) recommences when the party files an amended request for
7 a hearing. Nothing in this paragraph precludes a parent from filing a separate
8 hearing request on an issue separate from the hearing request already filed.

9 **SECTION 97.** 115.80 (2) of the statutes is amended to read:

10 115.80 **(2)** The division shall maintain a list of qualified hearing officers who
11 are not employed by or under contract with the department or the local educational
12 agency, other than being appointed under this subsection, <u>and who do not have a</u>
13 <u>personal or professional interest that conflicts with the person's objectivity in the</u>
14 <u>hearing,</u> to serve as hearing officers in hearings under this section. <u>A hearing officer</u>
15 <u>must possess knowledge of, and the ability to understand, state and federal special</u>
16 <u>education laws, rules, and regulations, and legal interpretations by federal and state</u>
17 <u>courts. A hearing officer also must possess the knowledge and ability to conduct</u>
18 <u>hearings and render and write decisions in accordance with appropriate, standard</u>
19 <u>legal practice.</u> Upon receipt of a written request for a hearing under sub. (1), the
20 division shall appoint a hearing officer from the list.

21 **SECTION 98.** 115.80 (2m) of the statutes is created to read:

22 115.80 **(2m)** (a) Except as provided in par. (c), within 15 days of receiving a
23 request for a hearing under sub. (1) (a) 1. and before the hearing is conducted, the
24 local educational agency shall convene a meeting with the child's parents and the
25 relevant members of the individualized education program team who have specific

1 knowledge of the facts identified in the hearing request. At the meeting, the child's
2 parents shall discuss the hearing request and the facts that form the basis of the
3 request and the local educational agency may resolve the issues.

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

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

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

16 (e) If the local educational agency does not resolve the issues presented by the
17 hearing request to the satisfaction of the child's parents within 30 days of receipt of
18 the request, the hearing requested under sub. (1) (a) 1. may occur.

19 **SECTION 99.** 115.80 (4) of the statutes is amended to read:

20 115.80 **(4)** At least 5 business days before a hearing is conducted under this
21 section, other than an expedited hearing under 20 USC 1415 (k), each party shall
22 disclose to all other parties all evaluations completed by that date and
23 recommendations based on the offering party's evaluations that the party intends to
24 use at the hearing. The hearing officer may bar any party that fails to comply with
25 this subsection from introducing the relevant evaluation or recommendation at the

1 hearing without the consent of the other party. The party requesting the hearing
2 may not raise issues at the hearing that were not raised in the notice filed under sub.
3 (1) (a) unless the other party agrees.

4 **SECTION 100.** 115.80 (5) of the statutes is renumbered 115.80 (5) (a) and
5 amended to read:

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

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

21 **SECTION 101.** 115.80 (5) (c) of the statutes is created to read:

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

decision–making process regarding the provision of a free appropriate public education to the child, or caused a deprivation of educational benefits. Nothing in this paragraph precludes a hearing officer from ordering a local educational agency to comply with procedural requirements.

SECTION 102. 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 under sub. (1)~~ the conclusion of the 30–day period specified in sub. (2m) (e). 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 103. 115.80 (9) of the statutes is repealed and recreated to read:

115.80 **(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) to (G).

SECTION 104. 115.81 (title) of the statutes is amended to read:

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

SECTION 105. 115.812 (1) of the statutes is amended to read:

115.812 **(1)** PLACEMENT DISPUTES. If a dispute arises between a local educational agency and the department of health and family services, the department of corrections or a county department under s. 46.215, 46.22 or 46.23, or between local educational agencies under s. 115.81 (4) (c), over the placement of a child, the state

superintendent shall resolve the dispute. This subsection applies only to placements in nonresidential educational programs made under s. 48.57 (1) (c) and to placements in ~~child caring institutions~~ residential care centers made under s. 115.81.

SECTION 106. 118.51 (12) (a) of the statutes is amended to read:

118.51 **(12)** (a) *Unavailable after enrollment.* If the individualized education program for a pupil, developed or revised under s. 115.787 after a child begins attending public school in a nonresident school district under this section, requires special education or related services that are not available in the nonresident school district or if there is no space available to provide the special education or related services identified in the child's individualized education program, including any class size limits, pupil–teacher ratios or enrollment projections established by the nonresident school board, the nonresident school board may notify the child's parent and the child's resident school board that the special education or related service is not available in the nonresident school district. If such notice is provided, the child shall be transferred to his or her resident school district, which shall provide an educational placement for the child under s. 115.79 ~~(2)~~ (1) (b).

SECTION 107. 118.51 (12) (b) 2. of the statutes is amended to read:

118.51 **(12)** (b) 2. If the costs of the special education or related services required in an individualized education program for a pupil, developed or revised under s. 115.787 after a child begins attending public school in a nonresident school district under this section, as implemented or proposed to be implemented by the nonresident school district, would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, its ability to pay tuition costs for the pupil and the per pupil special education or related services

costs for children with disabilities continuing to be served by the resident school district, the child's resident school board may notify the pupil's parent and the nonresident school board that the costs of the special education or related services impose such an undue financial burden on the resident school district. If such notice is provided, the child shall be transferred to his or her resident school district, which shall provide an educational placement for the child under s. 115.79 ~~(2)~~ (1) (b).

SECTION 108. Initial applicability.

(1) The treatment of sections 115.80 (1) (a) 1., (b), (d), (e), (f), and (g), (2), (2m), (4), (5), and (9) of the statutes first applies to requests for hearings filed on the effective date of this subsection.

SECTION 109. Effective date.

(1) This act takes effect on July 1, 2006.

(END)