



2005 SENATE BILL 529

January 27, 2006 - Introduced by Senators OLSEN, ZIEN, HARSDORF, DARLING, GROTHMAN, ROESSLER, BROWN, SCHULTZ, KAPANKE, A. LASEE, STEPP, KEDZIE, PLALE, LEIBHAM and COWLES, cosponsored by Representatives TOWNS, KESTELL, HINES, NEWCOMER, HUNDERTMARK, NISCHKE, PETTIS, OTT, MURSAU, BALLWEG, KERKMAN, LAMB, GRONEMUS, STRACHOTA, LOTHIAN, HAHN, BIES, MUSSER, PETROWSKI, AINSWORTH, FREESE, RHOADES, MOULTON, WOOD, SUDER, LEMAHIEU, HONADEL and MCCORMICK. Referred to Committee on Education.

1 **AN ACT to repeal** 115.77 (4) (a) to (k), 115.77 (7), 115.78 (4), 115.782 (2) (e),
2 115.782 (3) (c), 115.787 (3) (d) and (e), 115.792 (2) (e) and 115.792 (2) (i); **to**
3 **renumber** 115.791 (3) (intro.), 115.791 (3) (a), 115.791 (3) (c) and 115.791 (3) (d);
4 **to renumber and amend** 115.77 (4) (n), 115.78 (2) (a), 115.782 (2) (d), 115.791
5 (3) (b) and 115.80 (5); **to amend** 115.758, 115.76 (1), 115.76 (3), 115.76 (5) (a)
6 5., 115.76 (14), 115.76 (17), 115.762 (3) (c), 115.762 (3) (g), 115.762 (3) (j), 115.77
7 (1m) (intro.), 115.77 (1m) (b), 115.77 (1m) (bg), 115.77 (1m) (e), 115.77 (1m) (f),
8 115.77 (4) (intro.), 115.77 (8), 115.775, 115.78 (1m) (intro.), 115.78 (1m) (c),
9 115.78 (1m) (d), 115.782 (1) (a), 115.782 (1) (b), 115.782 (2) (a) (intro.), 115.782
10 (2) (a) 1., 115.782 (2) (a) 3. a., 115.782 (2) (a) 3. b., 115.782 (2) (b) (intro.), 115.782
11 (2) (b) 1., 115.782 (2) (b) 2. (intro.), a. and b., 115.782 (2) (c), 115.782 (3) (a),
12 115.782 (3) (b), 115.782 (4) (a) (intro.), 115.782 (4) (a) 1. and 2., 115.782 (4) (c),
13 115.787 (2) (a), 115.787 (2) (b), 115.787 (2) (c) (intro.), 115.787 (2) (c) 1., 115.787
14 (2) (c) 2., 115.787 (2) (e), 115.787 (2) (g) 3., 115.787 (2) (h) 1., 115.787 (3) (a),

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1 115.787 (3) (b) 1., 115.787 (3) (b) 4., 115.787 (3) (c), 115.787 (5), 115.787 (7),
2 115.792 (1) (a) 2., 115.792 (2) (d), 115.792 (2) (g), 115.792 (3) (b) (intro.), 115.792
3 (3) (b) 5., 115.792 (3) (b) 11., 115.797 (1) (a), 115.797 (6), 115.80 (1) (a) 1., 115.80
4 (1) (b), 115.80 (1) (d), 115.80 (2), 115.80 (4), 115.80 (6), 115.81 (title) and 115.812
5 (1); **to repeal and recreate** 115.762 (3) (e), 115.762 (3) (h), 115.762 (3) (i),
6 115.78 (3), 115.787 (2) (g) 1. and 2., 115.787 (2) (h) 2. and 115.80 (9); and **to**
7 **create** 115.77 (4) (p), 115.77 (4) (q), 115.77 (4) (r), 115.78 (5), 115.782 (1) (intro.),
8 115.782 (1) (ag), 115.782 (1) (c), 115.782 (2) (f), 115.787 (2) (bm), 115.787 (4) (c),
9 115.791 (3) (b) (intro.) and 2., 115.80 (1) (e), 115.80 (1) (f), 115.80 (1) (g), 115.80
10 (2m) and 115.80 (5) (c) of the statutes; **relating to:** special education programs
11 for children with disabilities.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the laws governing the education of children with disabilities. Many of the changes are the result of changes to the federal Individuals with Disabilities Education Act that were adopted in 2004. The changes include the following:

1. Currently, the individualized education program (IEP) team, consisting of persons with specified qualifications who are appointed by the local educational agency (LEA), usually a school district, is responsible for evaluating a child who is suspected of having a disability, developing an IEP for the child, and determining the special education placement for the child. This bill directs the LEA to appoint a team of qualified individuals who, with the child's parent, are responsible for determining whether a child has a disability. The qualifications are not specified.

2. The bill changes the entity responsible for serving children with disabilities who are enrolled in private schools from the LEA where the child resides to the LEA where the private school is located.

3. The bill specifies that interpreting services must be provided by an LEA if they are required to assist a child with a disability to benefit from special education. The bill also specifies that school nursing services must be provided if they are designed to enable a child with a disability to receive a free appropriate public education.

4. The bill states that an LEA that provides special education and related services to a child with a disability who is participating in an early intervention

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program operated by a county or under contract with a county is not required to provide the child with a free appropriate public education.

5. Under current law, the Department of Public Instruction (DPI) is responsible for approving an LEA's plan for the provision of special education and related services. The plan must include a number of specified components. This bill eliminates DPI's approval of an LEA's plan; instead, it directs DPI to determine whether an LEA is failing to comply with any of the requirements of its plan. Most of the specified plan components are eliminated; instead, the plan must provide assurances that the LEA meets the conditions required by federal law.

6. Current law requires an LEA annually to provide a special education performance report to all parents of children enrolled in the LEA and to DPI. This bill eliminates this requirement.

7. Current law requires that an evaluation, an IEP, and a placement determination for a child must all be completed within 90 days after referral of the child. This bill requires that the evaluation of the child be completed, in most cases, within 60 days after receiving parental consent for the evaluation. The deadline for the IEP and the placement determination is eliminated.

8. The bill allows members of an IEP team to be excused from all or part of an IEP team meeting under certain circumstances.

9. Current law requires the LEA to notify a child's parents of the qualifications of the individuals who will evaluate their child. This bill eliminates this requirement.

10. The bill requires the LEA to prepare an evaluation report once the team of qualified individuals determines whether the child has a disability.

11. Current law requires that a child be reevaluated if the LEA determines that conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation. This bill limits reevaluations to no more than once a year and specifies that a reevaluation is not required before graduation or before terminating eligibility for special education because the child reached the age of 21.

12. Under current law, an IEP must include benchmarks or short-term objectives. This bill requires benchmarks or short-term objectives only if the child takes an alternate assessment aligned with alternate achievement standards. If an IEP team determines that a child will take an alternate assessment, the IEP must include a statement of why the child cannot participate in the regular assessment.

13. Under current law, beginning when a child is 14, and annually thereafter until the child is no longer eligible for special education, the IEP must include a statement identifying the courses of study needed to prepare the child for a successful transition to his or her postsecondary school goals. This bill eliminates this requirement. Under the bill, beginning when a child is 16, the IEP must include a statement of measurable postsecondary goals relating to training, education, employment, and independent living skills.

14. Current law requires a meeting of the IEP team to make changes to a child's IEP. This bill allows the LEA and parent to agree to changes without convening the IEP team.

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15. Under current law, in certain circumstances an LEA is required to reimburse the parents of a child for the cost of enrolling the child in a private school. Reimbursement may be reduced or denied if the parents did not notify the LEA of their concerns, their rejection of the LEA's placement, and their intent to enroll their child in a private school. This bill allows a court or hearing officer not to reduce or deny reimbursement for failure to provide such notice if compliance with the notice requirement would result in serious harm to the child.

16. Under this bill, when the parents of a child and an LEA use mediation to resolve a dispute, their written agreement must state that all discussions that occurred during mediation are confidential.

17. Current law requires a parent or LEA who wishes to request an administrative hearing in order to resolve a dispute to file the request with DPI. This bill requires the request to be filed with the other party, and a copy of the request to be filed with DPI.

18. This bill provides that a hearing may not occur until the party requesting the hearing files a hearing request that meets the requirements under current law. The bill also requires the party receiving a request to send to the other party a written response addressing the issues raised in the request. A party filing a request may amend its request only if the other party consents or the hearing officer grants permission.

19. The bill provides additional qualifications for hearing officers, including not having a personal or professional interest that conflicts with the person's objectivity.

20. The bill requires the LEA to convene a meeting with the child's parents and members of the IEP team within 15 days of receiving a request for a hearing in order to attempt to resolve the issues. The bill allows 30 days from receipt of the hearing request to resolve the issues without a hearing.

21. The bill prohibits a party who requests a hearing from raising issues at the hearing that were not raised in the request for the hearing.

22. The bill provides that in matters alleging a procedural violation, the hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies impeded the child's right to a free appropriate public education, significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education, or caused a deprivation of educational benefits.

23. Current law requires the hearing officer to issue a decision with 45 days after receipt of the hearing request. This bill requires a decision within 45 days after the conclusion of the 30-day period described in item 20, above.

24. The bill incorporates federal law relating to the reimbursement of reasonable attorney fees and actual costs.

The bill has an effective date of July 1, 2006.

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

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

1 **SECTION 1.** 115.758 of the statutes is amended to read:

2 **115.758 Construction.** To the extent possible, this subchapter shall be
3 construed in a manner that is consistent with 20 USC 1400 to 1487 1482 and is
4 consistent with the purposes specified in 20 USC 1400 (d).

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

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

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

11 115.76 (3) “Child” means any person who is at least 3 years old but not yet 21
12 years old and who has not graduated from high school and, for the duration of a school
13 term, any person who becomes 21 years old during that school term and who has not
14 graduated from high school, and includes a child who is homeless, a child who is a
15 ward of the state, and a child who is attending a private school.

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

17 115.76 (5) (a) 5. Emotional disturbance behavioral disability.

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

19 115.76 (14) “Related services” means transportation and such developmental,
20 corrective and other supportive services ~~as may be required to assist a child with a~~
21 ~~disability to benefit from special education,~~ (including speech-language pathology

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1 and audiology services; interpreting services; psychological services; physical and
2 occupational therapy; recreation, including therapeutic recreation; social work
3 services; school nursing services designed to enable a child with a disability to receive
4 a free appropriate public education as described in the child’s individualized
5 education program; counseling services, including rehabilitative counseling;
6 orientation and mobility services; medical services for diagnostic and evaluative
7 purposes only; and the early identification and assessment of disabling conditions
8 in children) as may be required to assist a child with a disability to benefit from
9 special education. “Related services” does not include a medical device that is
10 surgically implanted or the replacement of such a device.

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

12 115.76 (17) “Transition services” has the meaning given in 20 USC 1401 (30)
13 (34).

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

15 115.762 (3) (c) Complying with the requirements of this subchapter and
16 applicable federal law, including 20 USC 1415 (k) and 42 USC 11431 to 11434a.

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

18 115.762 (3) (e) Determining local educational agency eligibility for assistance,
19 including determining whether a local educational agency is failing to comply with
20 any of the requirements of the plan submitted to the division under s. 115.77 (4).

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

22 115.762 (3) (g) Monitoring and enforcing local educational agency and
23 residential care center for children and youth compliance with this subchapter and
24 applicable federal law, including 20 USC 1415 (k) and 42 USC 11431 to 11434a.

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

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1 115.762 (3) (h) Developing and maintaining a performance plan in compliance
2 with 20 USC 1416 (b).

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

4 115.762 (3) (i) Establishing and maintaining qualifications to ensure that
5 personnel necessary to carry out the requirements of this subchapter are
6 appropriately and adequately prepared and trained, in compliance with 20 USC
7 1412 (a) (14), and requiring that local educational agencies take measurable steps
8 to recruit, hire, train, and retain highly qualified personnel to provide special
9 education and related services to children with disabilities under this subchapter.

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

11 115.762 (3) (j) Examining data, including data disaggregated by race and
12 ethnicity, to determine if significant discrepancies are occurring in the rate of
13 long-term suspensions and expulsions of children with disabilities among local
14 educational agencies or compared to such rates for nondisabled children within such
15 agencies. If such discrepancies are occurring, the division shall review and, if
16 appropriate, revise or require the affected local educational agency to revise its
17 policies, procedures and practices relating to the development and implementation
18 of individualized education programs, the use of positive behavioral interventions
19 and supports and procedural safeguards to ensure that such policies, procedures and
20 practices comply with this subchapter.

21 **SECTION 13.** 115.77 (1m) (intro.) of the statutes is amended to read:

22 115.77 (1m) (intro.) A local educational agency shall demonstrate to ~~the~~
23 ~~satisfaction~~ of the division that it does all of the following:

24 **SECTION 14.** 115.77 (1m) (b) of the statutes is amended to read:

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1 115.77 (1m) (b) Makes available a free appropriate public education to children
2 with disabilities as required by this subchapter and applicable state and federal law,
3 except that a local educational agency that provides special education and related
4 services to a child with a disability who is participating in an early intervention
5 program under s. 51.44 is not required to provide the child with a free appropriate
6 public education.

7 **SECTION 15.** 115.77 (1m) (bg) of the statutes is amended to read:

8 115.77 (1m) (bg) Includes children with disabilities in statewide and local
9 educational agency-wide assessments, including assessments described in 20 USC
10 6311 (b) (3), with appropriate modifications and alternate assessments where
11 necessary, ~~or in alternative assessments for those children who cannot participate~~
12 ~~in statewide or local educational agency-wide assessments~~ and as indicated in their
13 individualized education programs.

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

15 115.77 (1m) (e) To the extent consistent with the number and location of
16 children with disabilities ~~residing in the local educational agency~~ who are enrolled
17 by their parents in private elementary and secondary schools located within the local
18 educational agency, ensures that those children have an opportunity to participate
19 in special education and related services and that the amount spent to provide those
20 services by the local educational agency is equal to a proportionate amount of federal
21 funds made available under this subchapter.

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

23 115.77 (1m) (f) Establishes written policies ~~and~~, procedures, and programs for
24 implementing this subchapter and applicable federal law.

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

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1 115.77 (4) (intro.) A local educational agency shall submit to the division,
2 pursuant to a schedule and instructions established and published by the division,
3 ~~the agency's a plan, including a program narrative, for the provision of special~~
4 ~~education and related services that includes~~ that provides assurances to the division
5 that the local educational agency meets the conditions required by 20 USC 1413 (a),
6 including all of the following:

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

8 **SECTION 20.** 115.77 (4) (n) of the statutes is renumbered 115.77 (4) (s) and
9 amended to read:

10 115.77 (4) (s) Any other information the division requires to permit its review
11 and approval of the plan.

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

13 115.77 (4) (p) The local educational agency, in providing for the children with
14 disabilities within its jurisdiction, has in effect policies, procedures, and programs
15 that are consistent with this subchapter and applicable federal law.

16 **SECTION 22.** 115.77 (4) (q) of the statutes is created to read:

17 115.77 (4) (q) The local educational agency's plan for ensuring that all
18 personnel necessary to carry out the requirements of this subchapter are
19 appropriately and adequately prepared according to applicable state and federal law.

20 **SECTION 23.** 115.77 (4) (r) of the statutes is created to read:

21 115.77 (4) (r) The data regarding children with disabilities and nondisabled
22 children in the local educational agency that the division is required to collect or
23 report to be in compliance with 20 USC 1400 to 1482.

24 **SECTION 24.** 115.77 (7) of the statutes is repealed.

25 **SECTION 25.** 115.77 (8) of the statutes is amended to read:

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1 115.77 (8) The local educational agency shall serve children with disabilities
2 who are attending a charter school under contract with the local educational agency
3 under s. 118.40 in the same manner as it serves children with disabilities attending
4 schools of the local educational agency, and shall provide funds under this
5 subchapter to such charter schools ~~in the same manner~~ on the same basis as it
6 provides funds under this subchapter to schools of the local educational agency,
7 including proportional distribution based on enrollment of children with disabilities,
8 and at the same time as it distributes other federal funds to the agency's other
9 schools.

10 **SECTION 26.** 115.775 of the statutes is amended to read:

11 **115.775 Duties of operators of certain charter schools.** (1) Except as
12 provided in sub. (2), an operator of a charter school under s. 118.40 (2r) is a local
13 educational agency, as defined in 20 USC 1401 ~~(15)~~ (19), and shall comply with 20
14 USC 1400 to ~~1491e~~ 1482.

15 (2) The board of directors of the school district operating under ch. 119 is a local
16 educational agency under this section and shall comply with 20 USC 1400 to ~~1491e~~
17 1482 if the board of directors enters into ~~an~~ a written agreement with an operator
18 of a charter school under s. 118.40 (2r) under which the board of directors agrees to
19 serve as the local educational agency.

20 **SECTION 27.** 115.78 (1m) (intro.) of the statutes is amended to read:

21 115.78 (1m) APPOINTMENT OF TEAM. (intro.) The local educational agency shall
22 appoint an individualized education program team ~~for each child referred to it under~~
23 ~~s. 115.777.~~ Each team shall consist of all of the following:

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

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

5 **SECTION 29.** 115.78 (1m) (d) of the statutes is amended to read:

6 115.78 **(1m)** (d) A representative of the local educational agency who is
7 qualified to provide, or supervise the provision of, special education, is
8 knowledgeable about the general education curriculum and is knowledgeable about
9 ~~and authorized to commit~~ the available resources of the local educational agency.

10 **SECTION 30.** 115.78 (2) (a) of the statutes is renumbered 115.782 (1) (ar) and
11 amended to read:

12 115.782 **(1)** (ar) Evaluate the child ~~under s. 115.782~~ to determine the child's
13 eligibility or continued eligibility for special education and related services and the
14 educational needs of the child.

15 **SECTION 31.** 115.78 (3) of the statutes is repealed and recreated to read:

16 115.78 **(3)** TIME LINE. (a) The local educational agency shall determine if a child
17 is a child with a disability within 60 days after the local educational agency receives
18 parental consent for the evaluation of the child under s. 115.782 (1) (b).

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

21 1. A child enrolls in a school served by that local educational agency after the
22 60-day period has begun and before a determination by the child's previous local
23 educational agency as to whether the child is a child with a disability, the subsequent
24 local educational agency is making sufficient progress to ensure a prompt completion

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1 of the evaluation, and the child's parent and the subsequent local educational agency
2 agree to a specific time when the evaluation will be completed.

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

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

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

7 115.78 (5) ATTENDANCE AT MEETINGS. (a) A member of an individualized
8 education program team is not required to attend a meeting of the individualized
9 education program team, in whole or in part, if the parent of a child with a disability
10 and the local educational agency agree that the attendance of the member is
11 unnecessary because the member's area of the curriculum or related service is not
12 being modified or discussed at the meeting.

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

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

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

24 115.782 (1) (intro.) The local educational agency shall do all of the following:

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

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

5 **SECTION 36.** 115.782 (1) (ag) of the statutes is created to read:

6 115.782 (1) (ag) Appoint a team of qualified professionals who, with the child's
7 parent, shall determine whether the child is a child with a disability.

8 **SECTION 37.** 115.782 (1) (b) of the statutes is amended to read:

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

16 **SECTION 38.** 115.782 (1) (c) of the statutes is created to read:

17 115.782 (1) (c) Before conducting an initial evaluation of a child who is a ward
18 of the state, obtain informed consent in compliance with 20 USC 1414 (a) (1) (D) (iii).

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

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

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1 **SECTION 40.** 115.782 (2) (a) 1. of the statutes is amended to read:

2 115.782 (2) (a) 1. Use a variety of assessment tools and strategies to gather
3 relevant functional ~~and~~, developmental, and academic information, including
4 information provided by the child's parent, that may assist in determining whether
5 the child is a child with a disability and the content of the child's individualized
6 education program, including information related to enabling the child to be involved
7 in and progress in the general curriculum or, for preschool children, to participate
8 in appropriate activities.

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

10 115.782 (2) (a) 3. a. That tests assessments and other evaluation materials
11 used to assess a child under this section are selected and administered so as not to
12 be racially or culturally discriminatory and are provided and administered in the
13 ~~child's native language or other mode of communication~~ and form most likely to yield
14 accurate information on what the child knows and can do academically,
15 developmentally, and functionally, unless it is clearly not feasible to do so.

16 **SECTION 42.** 115.782 (2) (a) 3. b. of the statutes is amended to read:

17 115.782 (2) (a) 3. b. That ~~any standardized tests that are~~ assessments and other
18 evaluation materials given to the child ~~have been validated for the specific purpose~~
19 ~~for which they are used~~ for the purposes for which they are valid and reliable, are
20 administered by trained and knowledgeable personnel, and are administered in
21 accordance with any instructions provided by the producer of such tests ~~the~~
22 assessments or evaluation materials.

23 **SECTION 43.** 115.782 (2) (b) (intro.) of the statutes is amended to read:

24 115.782 (2) (b) (intro.) As part of an initial evaluation of a child and as part of
25 any reevaluation of a child under sub. (4), the ~~individualized education program~~

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1 ~~team and other qualified professionals, as determined by the local educational~~
2 ~~agency, shall do all of the following:~~

3 **SECTION 44.** 115.782 (2) (b) 1. of the statutes is amended to read:

4 115.782 (2) (b) 1. Review existing evaluation data on the child, including
5 evaluations and information provided by the child's parents, ~~previous interventions~~
6 ~~and the effects of those interventions;~~ current classroom-based, local, or state
7 assessments and; classroom-based observations; and observations by teachers and
8 related services providers.

9 **SECTION 45.** 115.782 (2) (b) 2. (intro.), a. and b. of the statutes are amended to
10 read:

11 115.782 (2) (b) 2. (intro.) On the basis of that review and information provided
12 by the child's parents, identify the additional data, if any, that are needed, ~~and the~~
13 ~~qualifications of the evaluators that are needed,~~ to determine all of the following:

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

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

19 **SECTION 46.** 115.782 (2) (c) of the statutes is amended to read:

20 115.782 (2) (c) The local educational agency shall administer such ~~tests~~
21 assessments and other evaluation ~~materials~~ measures as may be needed to produce
22 the data identified under par. (b) 2.

23 **SECTION 47.** 115.782 (2) (d) of the statutes is renumbered 115.78 (1m) (h) and
24 amended to read:

SENATE BILL 529**SECTION 47**

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

7 **SECTION 48.** 115.782 (2) (e) of the statutes is repealed.

8 **SECTION 49.** 115.782 (2) (f) of the statutes is created to read:

9 115.782 (2) (f) The local educational agency shall ensure that the evaluation
10 of a child with a disability who transfers from one school district to another in the
11 same school year is coordinated with the child's prior and subsequent schools as
12 necessary and as expeditiously as possible to ensure prompt completion of the
13 evaluation.

14 **SECTION 50.** 115.782 (3) (a) of the statutes is amended to read:

15 115.782 (3) (a) Upon the completion of the administration of ~~tests~~ assessments
16 and other evaluation ~~materials~~ measures, the ~~individualized education program~~
17 ~~team group appointed under sub. (1) (ag)~~ shall determine whether the child is a child
18 with a disability. ~~The individualized education program team and the educational~~
19 needs of the child. The group may not determine that a child is a child with a
20 disability ~~solely because the child has received insufficient~~ if the determinant factor
21 for the determination is lack of appropriate instruction in reading, including in the
22 essential components of reading instruction, as defined in 20 USC 6368 (3), or lack
23 of instruction in math, or because the child has limited proficiency in English.

24 **SECTION 51.** 115.782 (3) (b) of the statutes is amended to read:

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1 115.782 (3) (b) ~~If the individualized education program team determines that~~
2 ~~a child is a child with a disability, the team~~ The local educational agency shall
3 prepare an evaluation report that includes documentation of determination of
4 eligibility. ~~The local educational agency shall ask each individualized education~~
5 ~~program team participant if he or she wants a copy of the evaluation report or~~
6 ~~additional time before the individualized education program team develops the~~
7 ~~child's individualized education program. If any individualized education program~~
8 ~~team participant requests a copy of the evaluation report at any point in the process~~
9 ~~of developing the child's individualized education program or considering the child's~~
10 ~~educational placement, the local educational agency shall give a copy of the report~~
11 ~~to each individualized education program team participant before continuing with~~
12 ~~the process. If no individualized education program team participant requests a copy~~
13 ~~of the evaluation report, the~~ for special education. The local educational agency shall
14 give a copy of the evaluation report, including the documentation of eligibility, to the
15 child's parents with the notice of placement under s. 115.792 (2).

16 **SECTION 52.** 115.782 (3) (c) of the statutes is repealed.

17 **SECTION 53.** 115.782 (4) (a) (intro.) of the statutes is amended to read:

18 115.782 (4) (a) (intro.) A local educational agency shall ensure ~~that the~~
19 ~~individualized education program team does~~ do all of the following:

20 **SECTION 54.** 115.782 (4) (a) 1. and 2. of the statutes are amended to read:

21 115.782 (4) (a) 1. ~~Evaluates~~ Evaluate a child with a disability in accordance
22 with this section before determining that the child is no longer a child with a
23 disability, except that an evaluation is not required before the termination of a child's
24 eligibility for special education and related services because he or she graduated
25 from secondary school with a regular diploma or because he or she reached the age

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1 of 21. In those circumstances, the local educational agency shall provide the child
2 with a summary of the child's academic achievement and functional performance,
3 including recommendations on how to assist the child in meeting his or her
4 postsecondary goals.

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

13 **SECTION 55.** 115.782 (4) (c) of the statutes is amended to read:

14 115.782 (4) (c) If the ~~individualized education program team and other~~
15 ~~qualified professionals, as determined by the local educational agency, find group~~
16 described under sub. (1) (ag) finds under sub. (2) (b) 2. that no additional data are
17 needed to determine whether the child continues to be a child with a disability or to
18 determine the child's educational needs, the local educational agency shall notify the
19 child's parents of that finding and the reasons for it and the right of the child's
20 parents to request an assessment to determine whether the child continues to be a
21 child with a disability and to determine the child's educational needs. The local
22 educational agency is not required to conduct such an assessment unless the child's
23 parents request it.

24 **SECTION 56.** 115.787 (2) (a) of the statutes is amended to read:

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1 115.787 (2) (a) A statement of the child's present level of ~~educational~~ academic
2 achievement and functional performance, including how the child's disability affects
3 the child's involvement and progress in the general curriculum or, for a preschool
4 child, as appropriate, how the disability affects the child's participation in
5 appropriate activities.

6 **SECTION 57.** 115.787 (2) (b) of the statutes is amended to read:

7 115.787 (2) (b) A statement of measurable annual goals for the child, including
8 ~~benchmarks or short-term objectives, related to meeting~~ academic and functional
9 goals, designed to meet the child's needs that result from the child's disability to
10 enable the child to be involved in and make progress in the general curriculum, and
11 ~~to meeting~~ meet each of the child's other educational needs that result from the
12 child's disability.

13 **SECTION 58.** 115.787 (2) (bm) of the statutes is created to read:

14 115.787 (2) (bm) For a child with a disability who takes alternate assessments
15 aligned with alternate achievement standards, a description of benchmarks or
16 short-term objectives.

17 **SECTION 59.** 115.787 (2) (c) (intro.) of the statutes is amended to read:

18 115.787 (2) (c) (intro.) A statement of the special education and related services
19 and supplementary aids and services, based on peer-reviewed research to the extent
20 practicable, to be provided to the child, or on behalf of the child, and a statement of
21 the program modifications or supports for school personnel that will be provided for
22 the child to do all of the following:

23 **SECTION 60.** 115.787 (2) (c) 1. of the statutes is amended to read:

24 115.787 (2) (c) 1. Advance appropriately toward attaining the annual goals.

25 **SECTION 61.** 115.787 (2) (c) 2. of the statutes is amended to read:

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1 115.787 (2) (c) 2. Be involved and make progress in the general curriculum in
2 accordance with par. (a) and participate in extracurricular and other nonacademic
3 activities.

4 **SECTION 62.** 115.787 (2) (e) of the statutes is amended to read:

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

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

17 **SECTION 63.** 115.787 (2) (g) 1. and 2. of the statutes are repealed and recreated
18 to read:

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

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

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

3 **SECTION 64.** 115.787 (2) (g) 3. of the statutes is amended to read:

4 115.787 (2) (g) 3. Beginning at least one year before the child attains the age
5 of 18, and annually thereafter ~~until the child is no longer eligible for special~~
6 ~~education and related services~~, a statement that the child has been informed of the
7 parental child's rights that will transfer to the child on reaching the age of 18 under
8 s. 115.807.

9 **SECTION 65.** 115.787 (2) (h) 1. of the statutes is amended to read:

10 115.787 (2) (h) 1. How the child's progress toward attaining the annual goals
11 described in par. (b) will be measured.

12 **SECTION 66.** 115.787 (2) (h) 2. of the statutes is repealed and recreated to read:

13 115.787 (2) (h) 2. When periodic reports, such as quarterly reports or other
14 periodic reports issued concurrently with report cards, on the child's progress toward
15 attaining the annual goals described in par. (b) will be provided to the child's parents.

16 **SECTION 67.** 115.787 (3) (a) of the statutes is amended to read:

17 115.787 (3) (a) In developing each child's individualized education program,
18 the individualized education program team shall consider the strengths of the child,
19 the concerns of the child's parents for enhancing the education of their child ~~and~~, the
20 results of the initial evaluation or most recent reevaluation of the child, and the
21 academic, developmental, and functional needs of the child.

22 **SECTION 68.** 115.787 (3) (b) 1. of the statutes is amended to read:

23 115.787 (3) (b) 1. In the case of a child whose behavior impedes his or her
24 learning or that of others, ~~consider, when appropriate, strategies, including the use~~

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1 of positive behavioral interventions, and supports and other strategies to address
2 that behavior.

3 **SECTION 69.** 115.787 (3) (b) 4. of the statutes is amended to read:

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

11 **SECTION 70.** 115.787 (3) (c) of the statutes is amended to read:

12 115.787 (3) (c) The regular education teacher of the child, as a participant on
13 the individualized education program team, shall, to the extent appropriate,
14 participate in the development of the individualized education program of the child,
15 including the determination of appropriate positive behavioral interventions and
16 supports and other strategies and the determination of supplementary aids and
17 services, program modifications and support for school personnel.

18 **SECTION 71.** 115.787 (3) (d) and (e) of the statutes are repealed.

19 **SECTION 72.** 115.787 (4) (c) of the statutes is created to read:

20 115.787 (4) (c) After the annual individualized education program meeting for
21 a school year, the entire individualized education program team may make changes
22 to the child's individualized education program, or the child's parent and the local
23 educational agency may agree not to convene an individualized education program
24 team meeting for the purpose of making changes to the child's individualized
25 education program. If the child's parent and the local educational agency agree not

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1 to convene an individualized education program team meeting, they shall instead
2 develop a written document to modify the child's current individualized education
3 program. Upon request, the local educational agency shall give the child's parent a
4 copy of the child's revised individualized education program.

5 **SECTION 73.** 115.787 (5) of the statutes is amended to read:

6 115.787 (5) FAILURE TO MEET TRANSITION OBJECTIVES. If a participating agency,
7 other than the local educational agency, fails to provide transition services in
8 accordance with sub. (2) (g) ~~2~~, the local educational agency shall reconvene the
9 individualized education program team to identify alternative strategies to meet the
10 transition objectives for the child set out in the individualized education program.

11 **SECTION 74.** 115.787 (7) of the statutes is amended to read:

12 115.787 (7) CONSTRUCTION. Nothing in this section requires the individualized
13 education program team to include information under one component of a child's
14 individualized education program that is already contained under another
15 component of the individualized education program or requires that additional
16 information be included in a child's individualized educational program beyond what
17 is explicitly required by this section.

18 **SECTION 75.** 115.791 (3) (intro.) of the statutes is renumbered 115.791 (3) (a)
19 (intro.).

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

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

22 115.791 (3) (b) (intro.) Notwithstanding the notice requirement in sub. (2) (a),
23 a court or hearing officer may determine not to reduce or deny the cost of
24 reimbursement for failure to provide such notice if any of the following apply:

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

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

5 115.791 (3) (a) 2. Compliance with sub. (2) (a) would likely result in serious
6 physical or serious-emotional harm to the child.

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

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

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

10 115.792 (1) (a) 2. That a child's rights are protected by the assignment of an
11 individual, who shall not be an employee of the department, the local educational
12 agency, or any other agency that is involved in the education or care of the child, to
13 act as a surrogate for the child's parents whenever the child's parents are not known;
14 the local educational agency cannot, after reasonable efforts, locate the child's
15 parents; or the child is a ward of the state. For a child who is a ward of the state, a
16 judge overseeing the child's care may appoint a surrogate for the child's parents if the
17 surrogate meets the requirements of this subdivision.

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

19 115.792 (2) (d) A description of each ~~evaluative~~ evaluation procedure, ~~test~~
20 assessment, record, or report that the local educational agency used as a basis for the
21 proposed or refused action.

22 **SECTION 83.** 115.792 (2) (e) of the statutes is repealed.

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

24 115.792 (2) (g) A statement that the parents of a child with a disability have
25 procedural safeguards under this section and, if this notice is not an initial referral

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1 for evaluation, ~~or reevaluation, or a notice of an individualized education program~~
2 ~~meeting~~, the way in which the parents may obtain a description of the procedural
3 safeguards under sub. (3).

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

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

6 115.792 (3) (b) (intro.) The local educational agency shall give to the parents
7 of a child with a disability, once a year but also upon the child's initial referral or
8 parental request for evaluation, upon ~~each notification of an individualized~~
9 ~~education program meeting and upon reevaluation of the child~~ the first occurrence
10 of the filing of a request for a hearing under s. 115.80, and upon request by the child's
11 parent, a full explanation written so as to be in an easily understood by the general
12 public understandable manner, and in the native language of the child's parents
13 unless it clearly is not feasible to do so, of the procedural safeguards available under
14 this section and under applicable federal law relating to all of the following:

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

16 115.792 (3) (b) 5. Opportunity to present and resolve complaints, including the
17 period in which the child's parents may request a hearing and the opportunity for the
18 local educational agency to resolve the issues presented by the request.

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

20 115.792 (3) (b) 11. Civil actions, including the period in which to file a civil
21 action.

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

23 115.797 (1) (a) "Dispute" means any disagreement between parties concerning
24 the proposal or refusal to initiate or change the evaluation, individualized education
25 program or educational placement of a child with a disability or the provision of a free

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1 appropriate public education to such a child. "Dispute" includes any such
2 disagreement between parties that arises before the filing of a request for a hearing
3 under s. 115.80 or in which other processes, including a hearing under s. 115.80 or
4 litigation, have been requested or commenced.

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

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

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

15 115.80 (1) (a) 1. A parent, or the attorney representing the child, may file a
16 written request ~~with the division~~ for a hearing within one year after the refusal or
17 proposal of the local educational agency to initiate or change his or her child's
18 evaluation, individualized education program, educational placement, or the
19 provision of a free appropriate public education, except that, if the local educational
20 agency has not previously provided the parent or the attorney representing the child
21 with notice of the right to request a hearing under this subdivision, he or she may
22 file a request under this subdivision within one year after the local educational
23 agency provides the notice. The division shall develop a model form to assist parents
24 in filing a request under this subdivision.

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

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

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

6 115.80 (1) (d) A parent or local educational agency, or the attorney representing
7 a parent or local educational agency, shall file a request for a hearing under this
8 subsection by providing the request to the other party and a copy of the request to
9 the division. Upon receiving a request for a hearing, the division shall give to the
10 child's parents a copy of the procedural safeguards available to the parents under s.
11 115.792 and under federal regulations.

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

13 115.80 (1) (e) 1. If the parent of a child with a disability files a written request
14 for a hearing, and the local educational agency has not previously sent a written
15 notice to the parent under s. 115.792 (1) (b) regarding the subject matter of the
16 hearing request, the local educational agency shall, within 10 days of receiving the
17 hearing request, send to the child's parent a written explanation of why the local
18 educational agency proposed or refused to take the action raised in the hearing
19 request, a description of other options that the individualized education program
20 team considered and the reason why those options were rejected, a description of
21 each evaluation procedure, assessment, record, or report that the local educational
22 agency used as the basis for the proposed or refused action, and a description of the
23 factors that are relevant to the local educational agency's proposal or refusal. A
24 response by a local educational agency under this subdivision does not preclude the

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1 agency from asserting that the parent’s request for a hearing is insufficient under
2 subd. 2.

3 2. A hearing may not occur until the party requesting the hearing, or the
4 attorney representing that party, files a request that meets the requirements of par.
5 (a) 2. The request under par. (a) 2. shall be considered sufficient unless the party
6 receiving the request notifies the hearing officer and the other party in writing that
7 the receiving party believes the request does not meet the requirements of par. (a)
8 2. Within 5 days of receiving a notice under this subdivision, the hearing officer shall
9 determine whether the request meets the requirements under par. (a) 2. and notify
10 the parties.

11 **SECTION 95.** 115.80 (1) (f) of the statutes is created to read:

12 115.80 (1) (f) The party receiving a request for a hearing shall send to the party
13 requesting the hearing a written response that addresses the issues raised in the
14 hearing request within 10 days of receiving the request, except that the party
15 receiving the request has 15 days in which to respond if the party notifies the hearing
16 officer under par. (e) 2. that the request is insufficient.

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

18 115.80 (1) (g) A party filing a written request for a hearing under par. (a) may
19 amend its request only if the other party consents in writing and is given the
20 opportunity to resolve the issues presented by the request at a meeting under sub.
21 (2m), or if the hearing officer grants permission at least 5 days before the hearing is
22 scheduled to occur. The applicable timeline for resolution under sub. (2m) and for
23 a hearing under sub. (6) recommences when the party files an amended request for
24 a hearing. Nothing in this paragraph precludes a parent from filing a separate
25 hearing request on an issue separate from the hearing request already filed.

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

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

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

14 115.80 (2m) (a) Except as provided in par. (c), within 15 days of receiving a
15 request for a hearing under sub. (1) (a) 1. and before the hearing is conducted, the
16 local educational agency shall convene a meeting with the child's parents and the
17 relevant members of the individualized education program team who have specific
18 knowledge of the facts identified in the hearing request. At the meeting, the child's
19 parents shall discuss the hearing request and the facts that form the basis of the
20 request and the local educational agency may resolve the issues.

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

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

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

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

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

13 115.80 (4) At least 5 business days before a hearing is conducted under this
14 section, other than an expedited hearing under 20 USC 1415 (k), each party shall
15 disclose to all other parties all evaluations completed by that date and
16 recommendations based on the offering party's evaluations that the party intends to
17 use at the hearing. The hearing officer may bar any party that fails to comply with
18 this subsection from introducing the relevant evaluation or recommendation at the
19 hearing without the consent of the other party. The party requesting the hearing
20 may not raise issues at the hearing that were not raised in the notice filed under sub.
21 (1) (a) unless the other party agrees.

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

24 115.80 (5) (a) A hearing officer may administer oaths and affirmations, issue
25 subpoenas and enforce subpoenas under ss. 885.01 (4) and 885.12, regulate the

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1 course of the hearing and hold conferences for the settlement or simplification of the
2 issues. The hearing officer is not bound by common law or statutory rules of evidence.
3 The hearing officer shall admit all testimony having reasonable probative value, but
4 shall exclude immaterial, irrelevant or unduly repetitious testimony. The hearing
5 officer shall give effect to the rules of privilege recognized by law. A hearing officer
6 has the authority to issue an order consistent with this subchapter and 20 USC 1415
7 (k) and to order whatever remedy is reasonably necessary to bring the parties into
8 compliance with this subchapter.

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

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

15 115.80 (5) (c) In matters alleging a procedural violation, a hearing officer may
16 find that a child did not receive a free appropriate public education only if the
17 procedural inadequacies impeded the child's right to a free appropriate public
18 education, significantly impeded the parents' opportunity to participate in the
19 decision making process regarding the provision of a free appropriate public
20 education to the child, or caused a deprivation of educational benefits. Nothing in
21 this paragraph precludes a hearing officer from ordering a local educational agency
22 to comply with procedural requirements.

23 **SECTION 102.** 115.80 (6) of the statutes is amended to read:

24 115.80 (6) The hearing officer shall issue a decision within 45 days after the
25 receipt of the request for the hearing under sub. (1) the conclusion of the 30-day

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1 period specified in sub. (2m) (e). The hearing officer may order an independent
2 educational evaluation of the child at local educational agency expense and grant
3 specific extensions of time for cause at the request of either party. If the hearing
4 officer grants an extension of time, he or she shall include that extension and the
5 reason for the extension in the record of the proceedings. The local educational
6 agency shall pay the cost of the hearing.

7 **SECTION 103.** 115.80 (9) of the statutes is repealed and recreated to read:

8 115.80 (9) A circuit court may award reasonable attorney fees and actual costs
9 in any action or proceeding brought in circuit court under this section as provided in
10 20 USC 1415 (i) (3) (B) to (G).

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

12 **115.81 (title) Children in child-caring institutions residential care**
13 **centers.**

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

15 115.812 (1) PLACEMENT DISPUTES. If a dispute arises between a local educational
16 agency and the department of health and family services, the department of
17 corrections or a county department under s. 46.215, 46.22 or 46.23, or between local
18 educational agencies under s. 115.81 (4) (c), over the placement of a child, the state
19 superintendent shall resolve the dispute. This subsection applies only to placements
20 in nonresidential educational programs made under s. 48.57 (1) (c) and to placements
21 in ~~child-caring institutions~~ residential care centers made under s. 115.81.

22 **SECTION 106. Initial applicability.**

23 (1) The treatment of sections 115.80 (1) (a) 1., (b), (d), (e), (f), and (g), (2), (2m),
24 (4), (5), and (9) of the statutes first applies to requests for hearings filed on the
25 effective date of this section.

