

1993 Assembly Bill 532

Date of enactment: **July 30, 1993**
Date of publication*: **August 13, 1993**

1993 WISCONSIN ACT 14

AN ACT to amend 115.77 (3) (d) (intro.), 115.77 (4) (a) and (b), 115.81 (9) (a) 3, 115.81 (9) (b) and 115.85 (2m); and to create 115.76 (2q), 115.76 (2r) and 115.815 of the statutes, relating to: children with exceptional educational needs who reside in child caring institutions and granting rule-making authority.

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

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

115.76 (2q) "Child caring institution" means a child welfare agency that regularly provides care and maintenance for children residing in the agency's facility.

SECTION 2. 115.76 (2r) of the statutes is created to read:

115.76 (2r) "Child welfare agency" means an agency licensed under s. 48.60.

SECTION 3. 115.77 (3) (d) (intro.) of the statutes is amended to read:

115.77 (3) (d) (intro.) Supervision of the education of all children who have exceptional educational needs and who reside in a child caring institution pursuant to a placement under s. 115.815 (4), who reside in any facility operated by the state or a county or who attend county residential facilities or day care centers of a county department under s. 51.42. Such supervision shall include:

SECTION 4. 115.77 (4) (a) and (b) of the statutes are amended to read:

115.77 (4) (a) Coordinate the development of all special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency, state or county residential facility or day care center of a county department under s. 51.42 for children who have exceptional educational needs, and coordinate the devel-

opment of all special education programs operated by a child caring institution under s. 115.815 (4).

(b) Before the program receives any state funds, approve all special education programs operated by a school board, county handicapped children's education board, board of control of a cooperative educational service agency, state or county residential facility or day care center of a county department under s. 51.42 for children with exceptional educational needs, and approve all special education programs operated by a child caring institution under s. 115.815 (4).

SECTION 5. 115.81 (9) (a) 3. of the statutes is amended to read:

115.81 (9) (a) 3. The child is a ward of or in the legal custody of a public agency, or a child welfare agency ~~licensed under s. 48.60~~, that has the authority to make educational decisions for the child.

SECTION 6. 115.81 (9) (b) of the statutes is amended to read:

115.81 (9) (b) The school board may not appoint as a surrogate parent for a child any employe of a public agency, or a child welfare agency ~~licensed under s. 48.60~~, who is involved in the education or care of the child.

SECTION 7. 115.815 of the statutes is created to read:
115.815 Children in child caring institutions. (1)
DEFINITIONS. In this section:

(a) "County department" means a county department under s. 46.215, 46.22 or 46.23.

(b) "Originating school district" means the school district where the child resided prior to the placement of the child in a child caring institution.

1993 Assembly Bill 532

(2) ESTABLISHMENT OF PROGRAM. Subject to s. 115.77 (4) (b), a child caring institution may establish and maintain a special education program for children with exceptional educational needs.

(3) REFERRAL. (a) Whenever a county department recommends to a court that a child be placed in a child caring institution or whenever a state agency anticipates placing a child in a child caring institution, the county department or state agency shall notify the school board of the originating school district.

(b) For each child identified in a notice under par. (a), the school board of the originating school district or state agency, as specified in rules promulgated by the department, shall do all of the following:

1. If the child is a child with exceptional educational needs, as soon as reasonably possible, the school board, after consulting with a county department or a state agency, as appropriate, shall appoint staff to review and revise, if necessary, the child's individualized education program and the school board shall appoint a group to develop an educational placement offer.

2. If the child has not been identified as a child with exceptional educational needs:

a. The school board or state agency, as specified in rules promulgated by the department, shall appoint staff to review the child's education records and develop a status report for the child. The school board shall send a copy of the report to the county department within 30 days after receiving the notice under par. (a) and the state agency shall send a copy of the report to the school board of the originating school district within 30 days after providing the notice under par. (a).

b. If the school board determines that there is reasonable cause to believe that the child is a child with exceptional educational needs, the school board shall appoint a multidisciplinary team to conduct an evaluation of the child under s. 115.80 (3). The school board may include appropriately licensed staff of the child caring institution in the multidisciplinary team if that staff is available. The multidisciplinary team shall conduct the evaluation. If the multidisciplinary team determines that the child is a child with exceptional educational needs, the school board, after consulting with a county department or a state agency, as appropriate, shall appoint staff to develop an individualized education program and the school board shall appoint a group to develop an educational placement offer.

(4) RESPONSIBILITY FOR EDUCATIONAL PLACEMENT. Whenever the school board of the originating school district offers an educational placement in a child caring institution under sub. (3) (b) 1. or 2. b., all of the following apply:

(a) The school board of the originating school district shall do all of the following:

1. Ensure that the child receives a free appropriate public education.

2. Ensure that the child's treatment and security needs are considered when determining the least restrictive environment for the child.

3. While the child resides at a child caring institution, assign staff to conduct reevaluations of the child in the manner provided under s. 115.80 (5).

4. While the child resides at a child caring institution, after consulting with the child caring institution and a county department or a state agency, as appropriate, refer the child to another school district if the school board of the originating school district determines that the child's exceptional educational needs may be appropriately served in a less restrictive setting in the other school district.

5. If the child is leaving the child caring institution, assign a transition team to develop a transition plan for the child in cooperation with a county department and staff of the child caring institution.

(b) The county department or state agency, as specified in rules promulgated by the department, shall do all of the following:

1. Consider the child's educational needs when selecting a child caring institution for the child.

2. In cooperation with the originating school district and staff of the child caring institution, participate in the multidisciplinary team evaluation of the child and the development of the individualized education program for the child.

3. Notify the school board of the school district in which the child will reside whenever the county department or state agency anticipates removing the child from the child caring institution.

4. In cooperation with the originating school district and staff of the child caring institution, develop a transition plan for the child if the child is leaving the child caring institution.

5. Pay all of the child caring institution related costs of educating the child while the child resides in the child caring institution.

(c) Whenever a school board receives a referral under par. (a) 4., the school board shall assign staff to determine whether the child can appropriately be placed in a special education program operated by the school district. If the assigned staff determines that the child can appropriately be placed in a special education program operated by the school district, the school board shall provide an education program for the child and is eligible for state tuition payments under s. 121.79 (1) (a). If the assigned staff determines that the child cannot appropriately be placed in a special education program operated by the school district, the school board shall keep a written record of the reasons for that determination. If there is a dispute regarding the placement of a child under this paragraph between the school board of the originating school district and the school board receiving the referral, the state

1993 Assembly Bill 532

– 3 –

superintendent shall resolve the dispute under s. 115.85 (2m).

(5) RULES. The state superintendent shall promulgate rules to implement and administer this section.

SECTION 8. 115.85 (2m) of the statutes is amended to read:

115.85 (2m) PLACEMENT DISPUTES. If a dispute arises between the school board and the department of health and social services or a county department under s.

46.215, 46.22 or 46.23, or between school boards under s. 115.815 (4) (c), over the placement of a child in an appropriate program under sub. (2), the state superintendent shall resolve the dispute. This subsection applies only to placements in nonresidential educational programs made under ss. 48.48 (4) and 48.57 (1) (c) and to placements in child caring institutions made under s. 115.815.
