

State of Wisconsin



1997 Senate Bill 272

Date of enactment: **December 19, 1997**

Date of publication*: **January 8, 1998**

1997 WISCONSIN ACT 59

AN ACT *to amend* 115.81 (2) and 904.085 (2) (a); *to repeal and recreate* 115.76 (6); and *to create* 115.812 of the statutes; **relating to:** mediation of special education program disputes between a parent and a school board.

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

SECTION 1. 115.76 (6) of the statutes is repealed and recreated to read:

115.76 (6) "Parent" means a biological parent; a husband who has consented to the artificial insemination of his wife under s. 891.40; a male who is presumed to be the child's father under s. 891.41; a male who has been adjudicated the child's father under ss. 767.45 to 767.51 or by final order or judgment of a court of competent jurisdiction in another state; an adoptive parent; a guardian, other than the state or a county or child welfare agency; a legal custodian, other than the state or a county or child welfare agency; a person acting as parent, as defined by the department by rule; a person appointed as a sustaining parent under s. 48.428; or a surrogate parent appointed under s. 115.81 (9). "Parent" does not include any person whose parental rights have been terminated.

SECTION 2. 115.81 (2) of the statutes is amended to read:

115.81 (2) NOTICES. A school board shall fully inform the parent of any action it plans to take regarding the parent's child and of all procedural safeguards, including mediation under s. 115.812, available to the parent.

SECTION 3. 115.812 of the statutes is created to read:

115.812 Mediation. (1) DEFINITIONS. In this section:

(a) "Dispute" means any disagreement between parties concerning the proposal or refusal to initiate or change the identification, evaluation or educational placement of a child with exceptional educational needs or the provision of an appropriate special education program to such a child, or any disagreement between parties concerning whether a pupil has exceptional educational needs. "Dispute" includes any such disagreement between parties in which other processes, including a hearing or appeal under s. 115.81 or litigation, have been requested or commenced.

(b) "Mediation" has the meaning given in s. 802.12 (1) (e).

(c) "Party" means a competent adult pupil or the parent of a child or incompetent adult pupil who is the subject of a dispute, and the school board or state or county residential facility that is responsible for providing an appropriate special education to the child or pupil.

(2) REQUEST FOR MEDIATION, CONSENT OF PARTIES. (a) By July 1, 1998, the department shall establish a program for the mediation of disputes between parties. Upon the establishment of the program, a party may request the department to arrange for mediation of a dispute at any time. The request shall be in writing, shall briefly describe the dispute and shall identify the parties. Both parties may jointly request mediation.

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(b) If only one of the parties requests mediation, within 5 business days after receiving the request the department shall notify the other party in writing of the request for mediation. The notice shall include all of the following:

1. An explanation of the mediation process and its advantages.

2. A statement that participation in mediation is voluntary and that agreement or refusal to participate will not affect the resolution of the dispute in any pending or potential adjudicative process, or the timing of that process, unless the parties agree otherwise.

3. A request that the party notify the department within 5 business days after receiving the notice regarding the party's consent or refusal to participate in mediation.

(c) If the department does not receive a timely response under par. (b) 3. or if the other party notifies the department under par. (b) 3. of its refusal to participate in mediation, the department shall so notify the party that requested mediation.

(3) APPOINTMENT OF MEDIATOR. (a) A party that requests mediation may nominate a mediator from the roster under sub. (4). If a party nominates a mediator, the department shall include in the notice under sub. (2) (b) the name of the nominated mediator.

(b) 1. If both parties nominate the same person as mediator, the department shall appoint that person as mediator if he or she is on the roster under sub. (4) and available to mediate.

2. If both parties request mediation but neither party nominates a mediator, the department shall propose a mediator from the roster under sub. (4).

3. If both parties consent to mediation but the party that requests mediation does not nominate a mediator, the nominated mediator is not available or the other party does not consent to the appointment of the nominated mediator, the department shall propose a mediator from the roster under sub. (4).

(c) Whenever the department proposes a mediator under par. (b) 2. or 3., it shall send information about the mediator's training and experience to both parties. Within 3 business days after receiving the information, either party may request the department to propose a different mediator from the roster under sub. (4).

(4) ROSTER OF MEDIATORS. (a) In consultation with the council on exceptional education, the department shall maintain a roster of mediators qualified to resolve disputes. The department may include a person on the roster if all of the following apply:

1. The department determines that the person has the appropriate skills and knowledge to act as a mediator under this section.

2. The person participates in a training program of at least 5 days' duration that has been approved by the department.

3. The person agrees to mediate, at the rate of compensation established by the department, the number of disputes required by the department each year.

4. The person consents to be observed by a department representative at any mediation session if the parties consent.

(b) The department may not maintain a person on the roster unless he or she participates in at least one day of additional training approved by the department each year.

(c) Subject to subch. II of ch. 111, the department may remove from the roster any person whom it believes cannot serve effectively as a mediator.

(5) MEDIATION. (a) Unless both parties agree otherwise, mediation shall commence within 21 days after the mediator is appointed and shall not delay hearings or appeals related to the dispute.

(b) The parents of the child or adult pupil and 2 representatives of the school board or state or county residential facility may participate in mediation. With the consent of both parties, other persons may participate in mediation. With the consent of both parties, a department representative may observe the mediation sessions.

(c) At the commencement of mediation, the mediator shall inform the parties of the information that is required to be reported to the department for the purpose of administering the mediation program. The department may not require a mediator to disclose the substance of any matter discussed or communication made during mediation.

(d) Either party may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator. The mediator may recess a mediation session to consult privately with a party. If the mediator does so, he or she shall disclose the general purpose of the consultation but may not reveal other information about the consultation without the consent of the party consulted.

(e) Unless both parties and the mediator agree otherwise, no person may record a mediation session.

(f) The mediator and either party may withdraw from mediation at any time.

(g) No adverse inference may be drawn by any hearing officer or adjudicative body from the fact that a party did not consent to mediation, that a mediator or party withdrew from mediation or that mediation did not result in settlement of the dispute.

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

(7) MEDIATOR COMPENSATION. (a) The department shall establish a schedule for the compensation of media-

tors and the reimbursement of their expenses. The department shall pay mediators from the appropriation under s. 20.255 (1) (me).

(b) If the parties agree that the amount of compensation paid to a mediator should be greater than the schedule under par. (a) allows, the additional compensation is the responsibility of the parties.

(c) If the parties have agreed to mediation by a mediator who is not on the roster under sub. (4), the mediator's compensation is the responsibility of the parties.

(8) PROGRAM EVALUATION. The department may require that mediators, and may request that parties, participate in the evaluation of the mediation program. The department shall ensure that mediators and parties may participate in evaluating the program without being required to identify themselves or the other mediation participants. The department may not disclose a party's or

mediator's evaluation to any other mediation participant without the party's or mediator's consent.

(9) CONTRACT FOR SERVICES. The department may contract with a private, nonprofit agency to administer the mediation program under this section or for mediator training or other services, including outreach and promotion, related to the administration of the program.

SECTION 4. 904.085 (2) (a) of the statutes is amended to read:

904.085 (2) (a) "Mediation" means mediation under s. 93.50 (3), conciliation under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3. or 111.87, mediation under s. 115.812, negotiation under s. 289.33 (9), mediation under ch. 655 or s. 767.11, or any similar statutory, contractual or court-referred process facilitating the voluntary resolution of disputes. "Mediation" does not include binding arbitration or appraisal.