

CHAPTER 115

STATE SUPERINTENDENT; GENERAL CLASSIFICATIONS AND DEFINITIONS;
HANDICAPPED CHILDREN

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SUBCHAPTER I

GENERAL CLASSIFICATIONS AND
DEFINITIONS

115.01 Classifications and definitions. In chs. 115 to 121:

(1) **PUBLIC SCHOOLS.** Public schools are the elementary and high schools supported by public taxation.

(2) **GRADES.** The educational work of the public schools is divided into 12 grades, besides kindergarten, which are numbered from one to 12 beginning with the lowest. The first 8 grades are the elementary grades. Where reference is made to "elementary grades," the reference includes kindergarten, where applicable. The last 4 grades are the high school grades. A junior high school is a school in which only grades 7 to 9 or grades 7 to 10 are taught. A senior high school is a school in which only

grades 10 to 12 are taught. This classification is not a limitation of the character of work or the studies that may be carried on in either the elementary or the high schools.

(3) **SCHOOL DISTRICTS.** The school district is the territorial unit for school administration. School districts are classed as common school districts, union high school districts, unified school districts, city school districts and school systems organized pursuant to ch. 119. A joint school district is a school district whose territory is not wholly in one municipality.

(4) **SCHOOL BOARD.** "School board" means the school board or board of education in charge of the schools of a school district.

(5) **NAME.** Each school district shall be known by the designation "School District of" followed by the name of the municipalities in which any high schools operated by the district lie, except that a school board may by resolution designate a different name for the school district; however, such name shall contain the

words "School District". A school district which does not operate a high school shall be known by number and by the name of the municipalities in which it lies.

(6) SCHOOL YEAR. "School year" means the time commencing with July 1 and ending with the next succeeding June 30.

(7) SCHOOL TERM. "School term" means the time commencing with the first school day and ending with the last school day that the schools of a school district are in operation for attendance of pupils in a school year, other than for the operation of summer classes.

(8) SESSION. "Session" means the time during a school term that the schools of a school district are operated for the attendance of pupils.

(10) SCHOOL DAY. (a) School days are days on which school is actually taught and the following days on which school is not taught:

1. Days on which school is closed by order of the school district administrator because of inclement weather and days on which parent-teacher conferences are held, not to exceed 5 days during the school term.

2. Days on which school is closed by order of a health officer.

(b) Not to exceed 5 Saturdays may be counted as school days in any school year when school is taught thereon with the consent of the school board.

(11) SCHOOL DISTRICT ADMINISTRATOR. "School district administrator" means the school district superintendent, supervising principal or other person who acts as the administrative head of a school district and who holds an administrator's license.

(11m) SCHOOL NURSE. "School nurse" means a registered nurse certified under ch. 441 who is also certified by the department as being qualified to perform professional nursing services in a public school.

(12) DISTANCE. The distance between home and school shall be measured from building to building along the usually traveled route.

(13) ELECTORS. (a) Whenever an action may be taken by a percentage of electors in an area, that percentage shall be based on the number of electors who voted for governor at the last general election in that area.

(b) If the area does not coincide with a municipality or part thereof for which election statistics are kept, the number of electors shall be determined as follows:

1. The area of the school district in square miles shall be divided by the area of the municipality in square miles in which it lies.

2. The vote for governor at the last general election in the municipality within which the

school district lies shall be multiplied by the quotient determined under subd. 1 to determine the required number of electors.

(c) If a school district is in more than one municipality, the method of determination under par. (b) shall be used for each part of the school district which constitutes only a fractional part of any area for which election statistics are kept.

(14) REORGANIZE, REORGANIZATION OR REORGANIZING. "Reorganize," "reorganization" or "reorganizing," as applied to school districts, mean any alteration, dissolution, consolidation or creation of a school district.

(15) REORGANIZED SCHOOL DISTRICT OR PROPOSED REORGANIZED SCHOOL DISTRICT. "Reorganized school district" or "proposed reorganized school district" means:

(a) When an order or proposed order attaches territory to a school district, only the territory in the school district to which the territory is attached or proposed to be attached and the territory attached thereto by such order or proposed order.

(b) When an order or proposed order consolidates the territory of 2 or more school districts, only the territory so consolidated by such order or proposed order.

(c) When an order or proposed order creates a new school district or proposed new school district, only the territory comprising such new school district or proposed new school district.

(d) In no instance, the territory remaining in any school district from which territory is detached by an order or proposed order.

(16) REORGANIZATION AUTHORITY. "Reorganization authority" means any officer, committee, agency, school board, electors, state appeal board or any group or combination thereof which is empowered by law to authorize or make orders of school district reorganization.

(17) SCHOOL DISTRICT AFFECTED. "School district affected" means the entire territory of any school district:

(a) From which any territory is detached.

(b) To which any territory is attached.

(c) Any territory of which is included in a newly created school district.

(d) Any territory of which is included in any consolidation.

(18) CITY, VILLAGE OR TOWN AFFECTED. "City, village or town affected" means any city, village or town which has lying within it all or part of a school district affected.

(19) SCHOOL DISTRICT CLERK. "School district clerk" means the school district clerk of a 3-member school board elected by the electors in a common or union high school district and the school district clerk elected by the school board

in a unified school district, in a city school district and in a common or union high school district having a school board of more than 3 members.

(20) DEPARTMENT. "Department" means the department of public instruction.

(21) "Energy emergency" means a period of disruption of energy supplies which poses a serious risk to the economic well-being, health or welfare of the citizens of this state, as certified by executive order of the governor.

History: 1973 c. 90; 1975 c. 115, 189; 1977 c. 29, 206; 1979 c. 89, 301.

See note to 111.70, citing Bd. of Education v. WERC, 52 W (2d) 625, 191 NW (2d) 242.

SUBCHAPTER II

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

115.28 General duties. The state superintendent shall:

(1) GENERAL SUPERVISION. Ascertain the condition of the public schools, stimulate interest in education and spread as widely as possible a knowledge of the means and methods which may be employed to improve the schools.

(2) SECTARIANISM. Exclude all sectarian books and instruction from the public schools.

(3) SUPERVISION OF SCHOOLS. Supervise and inspect the public schools and day schools for handicapped children, advise the principals and local authorities thereof and give assistance in organizing such schools.

(3m) SUPERVISION OF COOPERATIVE EDUCATIONAL SERVICE AGENCIES. Supervise and audit the receipts and expenditures of the cooperative educational service agencies, conduct program review of the agencies, supervise boundary reorganization where necessary, advise the coordinators of the agencies and provide assistance in organizing the agencies throughout the state.

(4) PUBLIC INFORMATION. By reports, bulletins, circulars, correspondence and public addresses, give the public information upon the different methods of school organization and management and the subject of education generally.

(5) APPEALS. Examine and determine all appeals which by law are made to him and prescribe rules of practice in respect thereto, not inconsistent with law.

(6) ANNUAL CONVENTIONS. Annually, hold conventions of school district administrators, supervisors and agency co-ordinators.

(7) LICENSING AND CERTIFICATION OF TEACHERS, ETC. (a) License or certify all teachers for the public schools of the state, make rules

establishing standards of attainment and procedures for the examination, licensing and certification of teachers within the limits prescribed in ss. 118.19 (2) and (3) and 118.195, prescribe by rule standards and procedures for the approval of teacher preparatory programs leading to certification or licensure, file in his or her office all papers relating to state teachers' licenses and certificates and register each such license or certificate.

(b) Subject to the same rules and laws concerning qualifications of applicants and granting and revocation of licenses or certificates under par. (a), the state superintendent shall grant certificates and licenses to teachers in private schools, except that teaching experience requirements for such certificates and licenses may be fulfilled by teaching experience in either public or private schools. An applicant is not eligible for a license or certificate unless the state superintendent finds that the private school in which the applicant taught offered an adequate educational program during the period of the applicant's teaching therein. Private schools are not obligated to employ only licensed or certified teachers.

(c) License, certify and make rules for the examination, licensing and certification of persons, including teachers, employed by special education programs as defined in s. 115.76 (10).

(d) Annually, establish fees for the certification or licensure of school and public library personnel sufficient to fund certification and licensing administrative costs.

(7m) CERTIFICATION OF SCHOOL NURSES. Certify school nurses, make rules for the examination and certification of school nurses and file in the superintendent's office all papers relating to school nurses certification and register each such certification.

(8) ADMISSIONS TO KINDERGARTEN AND FIRST GRADE. Prescribe procedures, conditions and standards under which admissions to kindergarten and first grade may be made at ages earlier than those specified in s. 118.14 in exceptional cases.

(9) FEDERAL AIDS. Accept federal funds for any function over which the state superintendent has jurisdiction and act as the agent for the receipt and disbursement of such funds.

(10) EDUCATIONAL ASSESSMENT. (a) Develop an educational assessment program to measure objectively the adequacy and efficiency of educational programs offered by public schools in this state. The program shall include, without limitation because of enumeration, methods by which pupil achievement in fundamental course areas, as set forth in s. 118.01

(1), and other areas of instruction commonly offered by public schools, will be objectively measured each year. Assessment shall be undertaken at several grade levels on a uniform, state-wide basis.

(b) By July 1, 1984, develop and make available to school boards at no charge a computerized bank of test items which may be used to evaluate pupil competency in minimum reading, language arts and mathematics skills. By September 1, 1984, the state superintendent shall develop, from the item bank, objective-referenced basic skills tests in reading, language arts and mathematics for grades 3, 7 and 10 and make them available to school boards at no charge. The tests and test items shall be in the English language and, to the extent possible, free of bias. By January 1, 1983, the state superintendent shall report to the legislature and governor on the department's progress in developing the computerized bank of test items, any necessary state appropriations in the 1983-85 biennium to complete the development of the item bank, and anticipated state costs after 1984 to maintain a testing program including any costs for printing and scoring tests for school districts, reviewing and validating tests, and providing technical assistance to school districts. The report shall include recommendations as to whether a categorical payment should be provided to districts for printing and scoring tests or whether the reimbursement should be provided through the general school aids formula.

(11) STATE AID BUDGET CALCULATION. In preparing the biennial budget request of the department, calculate an amount to be distributed as state aid which represents an appropriate percentage of estimated statewide school district costs after estimated federal aids and local receipts, other than property taxes, have been deducted.

(12) EDUCATIONAL PROGRAM REVIEW. Establish a program audit team to review the educational programs and operations of certain school districts, make recommendations as to how those programs and operations may be improved and periodically assess school district implementation of those recommendations. Annually, the state superintendent shall identify a number of districts to be reviewed based on the need for school district program and operational improvements.

(13) UNIFORM FINANCIAL FUND ACCOUNTING. Prescribe a uniform financial fund accounting system which provides for the recording of all financial transactions inherent in the management of schools and the administration of the state's school aid programs.

(14) MINORITY GROUP PUPIL CENSUS. Establish procedures under which school districts report annually the number of minority group pupils, as defined in s. 121.85, residing in the school district and attending public schools in the district so as to be able to classify school districts under s. 121.85 (2).

(15) BILINGUAL-BICULTURAL EDUCATION. (a) Establish, by rule, standards for the approval of the abilities of certified teachers and counselors and their aides participating in bilingual-bicultural education programs under subch. VII to read, write and speak a non-English language and to possess knowledge of the culture of limited-English speaking pupils.

(b) Establish, by rule, minimum standards for basic and optional expanded bilingual-bicultural education programs.

(16) ALCOHOL AND OTHER DRUG ABUSE PREVENTION PLAN. Cooperate with the department of health and social services in the preparation of a joint alcohol and other drug abuse prevention, intervention, treatment and rehabilitation plan under s. 140.84.

(17) AMERICAN INDIAN LANGUAGE AND CULTURE EDUCATION. (a) Establish by rule, in coordination with the American Indian language and culture education board, standards for certifying the abilities of teachers participating in American Indian language and culture education programs under subch. IV to read and write or speak an American Indian language and to possess knowledge of American Indian history and culture.

(b) Establish by rule, in coordination with the American Indian language and culture education board, standards for certifying the abilities of home school coordinators, counselors and aides participating in American Indian language and culture education programs under subch. IV to possess knowledge of American Indian history and culture.

(c) Promulgate rules, in coordination with the American Indian language and culture education board, which further define "American Indian" under s. 115.71 (2) (d).

History: 1971 c. 40, 125; 1973 c. 89, 90; 1975 c. 39, 115, 199, 220, 224, 395, 422; 1977 c. 26, 29, 203, 418, 429; 1979 c. 28, 331; 1979 c. 346 ss. 10, 15; 1979 c. 355; 1981 c. 20, 241.

See note to art. I, sec. 18, citing 63 Atty. Gen. 473, concerning school lunch programs in secular schools.

See note to 66.30, citing 68 Atty. Gen. 148.

115.29 General powers. The state superintendent may:

(1) DESIGNATE REPRESENTATIVE. Designate the deputy state superintendent or another employe of the department as his representative on any body on which the state superintendent is required to serve, except the board of regents of the university of Wisconsin system.

(2) **EDUCATIONAL MEETINGS.** Attend such educational meetings and make such investigations as he deems important and as will acquaint him with the different systems of public schools in the United States.

(3) **AUXILIARY INSTRUCTIONAL EMPLOYES.** By order, establish classes of auxiliary instructional employes and authorize their employment in the instructional program of the elementary and high schools for specific purposes and their reimbursement from the instructional budget. Auxiliary instructional employes shall not be covered as teachers as defined in s. 40.02 (55) or under ss. 118.21 to 118.23 or 121.006 (2) but shall be eligible under the public employe trust fund as participating employes as defined in s. 40.02 (46), if it is made applicable, other than through s. 40.21 (3), to the school district employing them.

(4) **HIGH SCHOOL GRADUATION EQUIVALENCY.** Grant declarations of equivalency of high school graduation to persons, if in the state superintendent's judgment they have presented satisfactory evidence of having completed a recognized high school course of study or its equivalent. The state superintendent may establish the standards by which high school graduation equivalency is determined. Such standards may consist of evidence of high school courses completed in high schools recognized by the proper authorities as accredited, results of examinations given by or at the request of the state superintendent, successful completion of correspondence study courses given by acceptable correspondence study schools, a general educational development certificate of high school equivalency issued by an agency of the U.S. government, course credits received in schools meeting the approval of the state superintendent or other standards established by the state superintendent.

History: 1971 c. 100 s. 23; 1971 c. 125, 211; 1977 c. 29; 1979 c. 32, 301; 1981 c. 96.

115.30 Forms and reports. (1) The department shall prepare for the use of school officers suitable forms for making reports, and suitable outlines as aids in conducting school meetings. With the exception of changes due to statute or rule revision, the department shall give school districts a one-year advance notice of any changes to be made to the forms and reports. School district officers and employes shall maintain a uniform recording of accounting as prescribed by the department and make such reports to the department as will enable it to distribute state school fund appropriations and state educational appropriations to the schools

and persons entitled thereto, and to properly discharge the other duties of the department.

(2) The department may require all school boards to report to it, on forms provided, the name of the school and its location, the name and address of the teachers, the number of months of school maintained during the year, the opening and closing dates, the names and ages of all pupils enrolled between the ages of 6 and 18, the names and post-office addresses and places of residence of the parents of such pupils, the number of the school district and the distance such pupils reside from the schoolhouse, the number of days each pupil was present during each month and any other information requested by it.

(3) On or before each October 15, each administrator of a public or private school system shall submit, on forms provided by the department, a statement of the enrollment on the 3rd Friday of September in the elementary and high school grades under his jurisdiction to the department which shall prepare such reports as will enable the public and private schools to make projections regarding school buildings, teacher supply and funds required.

(4) In the biennial report under s. 15.04 (1) (d), the state superintendent also shall report:

(a) The condition of all schools under his supervision.

(b) An abstract of the public school reports made to him.

(c) His visits to educational institutions.

(d) The work done by the department in the performance of its duties.

(e) Plans for improving the schools and advancing education.

(f) A summary of the receipts and disbursements of all schools under his jurisdiction.

(g) Such other matters as he deems appropriate.

(5) The department shall make certified copies, when required, of any papers deposited or filed or records kept in the department, and of any act or decision made by it. The fee therefor shall be 15 cents per page.

History: 1975 c. 224; 1977 c. 196 s. 131; 1977 c. 273; 1981 c. 314.

115.33 Inspection of school buildings.

(1) The state supervisors of schools shall be inspectors of public school buildings under the direction of the state superintendent.

(2) If any school district administrator or elector in the school district complains in writing to the state superintendent that any building used for school purposes in the school district is in such condition as to endanger the lives or health of the pupils, or that the building is otherwise unfit for school purposes, the state

superintendent shall investigate the matter and may hold a hearing in connection therewith.

(3) (a) If conditions warrant, the state superintendent shall order the school board or other officers having control of the school to repair, improve or remodel such building by a stated date so as to render it safe and sanitary. If he deems the building unfit for school purposes and not worth repairing, he shall order the erection or acquisition of an adequate school building by a stated date. Use of the building after the date specified in the order of the state superintendent without complying with the order shall deprive the school district of its right to share in the school fund income until the state superintendent determines that the school district has complied with his order.

(b) The state superintendent shall file the order in his office, and shall transmit copies to the clerk of the school district, the school district administrator and the clerk of the municipality in which the building is located.

(c) Upon the written application of the school board, the state superintendent shall grant a hearing on the order. Pending the hearing, execution of the order shall be stayed until the conclusion of the hearing, and the superintendent may affirm, amend or vacate his original order.

See note to 50.50, citing 65 Atty. Gen. 54.

115.34 School lunch program. (1) The department may contract for the operation and maintenance of school lunch programs and for the distribution, transportation, warehousing, processing and insuring of food products provided by the federal government. The form and specifications of such contracts shall be determined by the department. Amounts remaining unpaid for 60 days or more after they become payable under the terms of such contracts shall be deemed past due and shall be certified to the department of administration on October 1 of each year and included in the next apportionment of state special charges to local units of government as special charges against the school districts and municipalities charged therewith.

(2) The department shall make payments to school districts and to private schools for school lunches served to children in the prior year as determined by the state superintendent from the appropriations under s. 20.255 (1) (fe) and (4) (fe). Payments to school districts and to private schools shall equal the state's matching obligation under 42 USC 1751 et seq. Payments in the current year shall be determined by prorating the state's matching obligation based on the number of school lunches served to children in the prior year. In this subsection, "private

school" means any school defined in s. 121.51 (3) which complies with the requirements of 42 USC 2000d.

History: 1971 c. 125, 215; 1975 c. 39, 224; 1977 c. 29; 1979 c. 221 ss. 584m, 2200 (43).

United States and Wisconsin Constitutions do not prohibit state from disbursing state matching funds under National School Lunch Act to private as well as public schools. 69 Atty. Gen. 109.

115.345 Nutritional improvement for elderly. (1) Any school district approved by the superintendent may establish a system to provide the opportunity for authorized elderly persons to participate in its school lunch program. If a school board desires to establish such a service, it shall develop a plan for the provision of food services for elderly persons and submit the plan to the superintendent. Upon petition of 5% of the voters in the school district who voted in the last school board election, the school board shall formulate a food services plan, provided that hot food service facilities are available to school children in the district.

(2) Each plan shall provide at least one meal per day for each day that school is in regular session. The school board may provide additional service at other times in its discretion, if the number of eligible persons in the district or adjacent districts is of sufficient size, in the opinion of the superintendent, so that unwarranted production expense is not incurred.

(3) Any school board which operates a food services plan for elderly persons under this section shall make facilities available for service to elderly persons at every high school and junior high school in the district which provides hot food service to its students. Upon application, the superintendent may grant exceptions from compliance with this subsection for reasons of safety, convenience or insufficient interest in a given neighborhood. The school board may, in addition, provide service at elementary schools if desired.

(4) Meals may be served at schools where they are served to students or at any site more convenient to the majority of authorized elderly persons interested in the service. Food may be transported to authorized elderly persons who are unable to leave their homes or distributed to nonprofit organizations for such purposes. However, no state funds under this section may be used for food delivery to individual homes. The superintendent may require consolidation of programs between districts and between schools if such a procedure will be convenient and economical.

(5) Authorized elderly persons may be required to contribute toward the expense of food and production at a rate up to \$.65 per meal. The school board may file a claim with the

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department for reimbursement for reasonable expenses incurred in excess of this amount, excluding capital equipment costs, but not to exceed \$.20 per meal. Any cost in excess of \$.85 per meal may also be charged to participants. If the department approves the claim, it shall certify that payment is due and the state treasurer shall pay the claim.

(6) All meals served must meet the approval of the superintendent who shall establish minimum nutritional standards not inconsistent with federal standards and reasonable expenditure limits such that the average cost per meal is not excessive. The superintendent shall give special consideration to dietary problems of elderly persons in formulating a nutritional plan. However, no school board shall be required to provide special foods for individual persons with allergies or medical disorders.

(7) Participants in a program under this section may be required to document their Wisconsin residency in a manner approved by the department. The superintendent may issue identification cards to such persons if necessary.

(8) The superintendent shall adopt reasonable rules necessary to implement this section.

(9) In this section, "authorized elderly person" means any resident of the state who is 60 years of age or more, or the spouse of any such person. A school board may admit nonresident persons who would otherwise qualify into its program except that no state funds under this section may be used to subsidize any portion of the meals served to such persons.

History: 1973 c. 190.

115.35 Health problems education program. (1) A critical health problems education program is established in the department. The program shall be a systematic and integrated program designed to provide appropriate learning experiences based on scientific knowledge of the human organism as it functions within its environment and designed to favorably influence the health, understanding, attitudes and practices of the individual child which will enable him or her to adapt to changing health problems of our society. The program shall be designed to educate youth with regard to critical health problems and shall include, but not be limited to, the following topics as the basis for comprehensive education curricula in all elementary and secondary schools: controlled substances, as defined in s. 161.01 (4); alcohol; tobacco; mental health; sexually transmitted diseases; human growth and development; and related health and safety topics. Participation in the human growth and development topic of the curricula shall be entirely voluntary.

(2) In carrying out this section, the state superintendent may, without limitation because of enumeration:

(a) Establish guidelines to help school districts develop comprehensive health education programs.

(b) Establish special in-service programs to provide professional preparation in health education for teachers throughout the state.

(c) Provide leadership institutions of higher education to develop and extend curricula in health education for professional preparation in both in-service and preservice programs.

(d) Develop cooperative programs between school districts and institutions of higher education whereby the appropriate health personnel of such institutions would be available to guide the continuing professional preparation of teachers and the development of curricula for local programs.

(e) Assist in the development of plans and procedures for the evaluation of health education curricula.

(3) The department may appoint a council consisting of representatives from universities and colleges, law enforcement, the various fields of education, the voluntary health agencies, the department of health and social services, the professional health associations and other groups or agencies it deems appropriate to advise it on the implementation of this section, including teachers, administrators and local school boards.

(4) The department shall cooperate with agencies of the federal government and receive and use federal funds for the purposes of this section.

(5) In each report under s. 15.04 (1) (d), the state superintendent shall include information:

(a) As to the scope and nature of programs undertaken under this section.

(b) As to the degree and nature of cooperation being maintained with other state and local agencies.

(c) As to his recommendations to improve such programs and cooperation.

History: 1971 c. 219; 1977 c. 196 s. 131; 1977 c. 418; 1981 c. 291.

115.36 Assistance to schools for alcohol and other drug abuse programs. (1) The purpose of this section is to enable and encourage public and private schools to develop comprehensive programs to prevent or ameliorate alcohol and other drug abuse among minors.

(2) The department shall:

(a) Develop and conduct training programs for the professional staff of public and private

schools in alcohol and other drug abuse prevention, intervention and instruction programs.

(b) Provide consultation and technical assistance to public and private schools for the development and implementation of alcohol and other drug abuse prevention, intervention and instruction programs.

(c) Provide fellowship grants to support advanced training or education in comprehensive school health and alcohol and other drug abuse education.

(d) Provide access to informational resources for alcohol and other drug abuse education programs and services including, but not limited to:

1. The screening, revision and evaluation of available information resources.

2. The establishment of a central depository and loan program for high cost informational resources.

3. The systematic dissemination of information concerning available resources to appropriate public and private school staff.

(e) Create a council under s. 15.04 (1) (c) to advise the department concerning the administration of this section.

(3) (a) The department shall, from the appropriation under s. 20.255 (1) (gm), fund demonstration projects operated by public school districts which are designed to assist minors experiencing problems resulting from the use of alcohol or other drugs or to prevent alcohol or other drug abuse by minors. The department shall:

1. Administer grant application and disbursement of funds.

2. Monitor program implementation.

3. Assist in and assure evaluation of demonstration projects.

4. Report on an annual basis to the legislature on program progress and project evaluation.

5. Promulgate necessary rules for the implementation of this subsection.

(b) Grants under this subsection may not be used to replace funding available from other sources.

(c) Grants under this subsection may be made only where there is a matching fund contribution from the local area in which a program is designed to operate of 20% of the amount of the grant obtained under this subsection. Private funds and in-kind contribution may be applied to meet the requirement of this paragraph.

(d) A school district applying for aid under this subsection shall submit a copy of the application to the board established under s. 51.42 for its advisory review. The board established under s. 51.42 may, and the council established under sub. (2) (e) shall, submit an advisory recom-

mendation with respect to the application to the department prior to the approval or denial of the application.

History: 1979 c. 331; 1981 c. 20 s. 2202 (42) (b).

115.37 Council on the education of the blind. The council on the education of the blind shall make recommendations as to procedures and policies affecting any problem of the visually handicapped before the department. The council shall advise on such services, activities, programs, investigations and researches as in its judgment will contribute to the welfare of visually handicapped persons. The state superintendent shall seek the advice of and consult with the council on problems and policy changes affecting the visually handicapped in the department's jurisdiction, and the council may initiate consultations with the department. Notwithstanding any provision to the contrary, the council shall have access to files, records and statistics kept in the department which relate to matters concerning the visually handicapped.

History: 1971 c. 292.

115.46 Interstate agreement on qualification of educational personnel. The interstate agreement on qualification of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

(1) ARTICLE I - PURPOSE, FINDINGS, AND POLICY. (a) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(b) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational person-

nel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

(2) ARTICLE II - DEFINITIONS. As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(a) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(b) "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(c) "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(d) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

(e) "Originating state" means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to sub. (3).

(f) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to sub. (3).

(3) ARTICLE III - INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS. (a) The designated state official of a party state may make one or more contracts on behalf of his state with one or more party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this subsection only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on

a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(b) Any such contract shall provide for:

1. Its duration.

2. The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

3. Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

4. Any other necessary matters.

(c) No contract made pursuant to this agreement shall be for a term longer than 5 years but any such contract may be renewed for like or lesser periods.

(d) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(e) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(f) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

(4) ARTICLE IV - APPROVED AND ACCEPTED PROGRAMS. (a) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(b) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

(5) ARTICLE V - INTERSTATE COOPERATION. The party states agree that:

(a) They will, so far as practicable, prefer the making of multilateral contracts under sub. (3).

(b) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

(6) ARTICLE VI - AGREEMENT EVALUATION. The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes.

(7) ARTICLE VII - OTHER ARRANGEMENTS. Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

(8) ARTICLE VIII - EFFECT AND WITHDRAWAL. (a) This agreement shall become effective when enacted into law by 2 states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(b) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(c) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

(9) ARTICLE IX - CONSTRUCTION AND SEVERABILITY. This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

History: 1981 c. 390.

115.47 Designated state official under agreement. The "designated state official" for this state under s. 115.46 shall be the state superintendent of public instruction.

115.48 Contracts under agreement. True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the department of public instruction and in the office of the secretary of state. The department of public instruction shall publish all such contracts in convenient form.

SUBCHAPTER III

STATE SCHOOLS AND SCHOLARSHIPS FOR THE HANDICAPPED

115.51 Definitions. In this subchapter:

(1) "Blind" includes persons visually handicapped, as determined by competent medical authority with the approval of the state superintendent.

(2) "Deaf" includes persons who because of some pathological or functional cause cannot attain proficiency in speech without special instruction and training.

115.52 Wisconsin schools for the visually handicapped and the deaf. (1) The object of the Wisconsin school for the visually handicapped and the Wisconsin school for the deaf is to afford the visually handicapped and the deaf a practical education and physical rehabilitation which may aid them to make a living, discharge their duties as citizens and secure to them all possible happiness.

(2) The state superintendent shall maintain and govern the school for the visually handicapped and the school for the deaf. He may fix the period of the school year at the schools at not less than 38 weeks, prescribe the school terms and confer diplomas upon meritorious pupils who have completed the prescribed curricula.

(3) All the blind and the deaf residents of this state between the ages of 6 and 21 who are capable of receiving instruction shall be received and taught in the schools free of charge. Like nonresident pupils also may be received upon payment in advance of the fees fixed by the state superintendent at an amount not less than \$75 per month, but no nonresident shall be received to the exclusion of a resident pupil. The state superintendent also may admit pupils over 21 years of age upon the payment of fees fixed by the superintendent and upon the recommendation of the secretary of health and social services, the director of vocational, technical and adult education or the superintendent of the

school to which the pupil will be assigned. All pupils shall equally and freely enjoy the benefits and privileges of the schools and have the use of the library and books of instruction and receive board, lodging and laundry, without discrimination. The schools may provide transportation for resident pupils.

(5) The state superintendent may grant approval for the maintenance of a summer school at the school for the deaf whenever it will be to the advantage of deaf persons. There shall be a summer school each year at the school for the visually handicapped for adult visually handicapped persons. There is no age limitation on summer school admissions.

(6) The state superintendent may make charges for meals, living quarters, laundry and other services furnished to employees of the schools and their families. He also may make charges for services furnished to visitors at the schools and participants in training programs and institutes.

(7) The Wisconsin school for the deaf may provide instruction for preschool deaf children and their parents. The Wisconsin school for the visually handicapped may provide instruction for preschool visually handicapped children and their parents. Such instruction or treatment shall be subject to the approval of, and shall comply with requirements established by, the department.

History: 1971 c. 164; 1973 c. 89; 1977 c. 29

115.53 State superintendent; powers.

The state superintendent may:

(1) Provide for the education of deaf-blind children of suitable capacity to receive instruction in a special class for that purpose established within the state whenever there is a sufficient number of deaf-blind children to warrant the establishment of such class. If an appropriate program is not available within the state, a deaf-blind child may be placed in a special class outside of the state. If a child is placed in a special class outside of the state, the cost of such education and the transportation cost of the child and the child's parents or guardians, when required, shall be charged to the appropriation in s. 20.255 (1) (bc).

(2) Arrange for vocational, trade or academic training for any pupil in either state school qualified to take such training advantageously, in either a public school or vocational school or a private business establishment in Janesville or Delavan. The public school and the vocational school shall be paid the regular tuition for full-time attendance and proportionally for part-time attendance from the appropriation in s. 20.255 (2) (a).

(3) Arrange for otological or ophthalmic examination of any pupil or prospective pupil of the schools. The examination shall be paid for from the appropriation in s. 20.255 (2) (a).

(4) Apply to the board of regents of the university of Wisconsin system for admission to the university of Wisconsin hospital and clinics of any pupil in the state schools.

(a) The application shall be accompanied by the report of a physician appointed by the appropriate school superintendent and shall be in the same form as reports of other physicians for admission of patients to such hospital.

(b) The net cost of such hospital treatment shall be at the rate charged to counties for county patients and shall be chargeable one-half to the appropriation for operating the patient's school and one-half to the state. The state superintendent likewise may authorize payment for the expense of transporting patients to and from the hospital. The state superintendent shall make payments for the treatment to the board of regents for the half chargeable to the operation fund of the school and the other half shall be paid from the appropriation under s. 20.855 (3) (a) as provided in s. 142.08 (2). Funds collected by the state superintendent on account of the hospitalization shall be deposited one-half in the general fund and one-half in the appropriation under s. 20.255 (2) (a) for the school concerned.

(5) Arrange for visits by members of the staff of either school to other public schools or to families of blind or deaf children, whenever it appears to him that such visits will be of advantage to blind or deaf children.

History: 1971 c. 100 s. 23; 1971 c. 125 s. 522 (1); 1973 c. 90; 1973 c. 243 ss. 50, 82; 1977 c. 29; 1977 c. 418 s. 924 (50); 1977 c. 447 s. 206; 1979 c. 34 s. 2102 (43) (a); 1979 c. 110 s. 60 (12); 1981 c. 20.

The state superintendent does not have the authority to determine whether public schools are segregated or the authority to take enforceable action to desegregate public schools. 65 Atty. Gen. 282.

115.54 Compulsory education. If it appears, by affidavit, to any circuit judge that any blind or deaf child between the ages of 6 and 21 is deprived of a suitable education by the failure of the person having the care and custody of the child to provide a suitable education, the judge shall order the person to bring the child before the judge. If the material allegations of the affidavit are denied, the judge shall subpoena witnesses and hear testimony. If the allegations are admitted or established, the judge may order the child sent to the school for the visually handicapped or for the deaf or to some class or other school for instruction, but the order shall not make a direct charge for the class or school against any county.

History: 1977 c. 449.

115.55 Library for the blind and visually handicapped. Embossed, clear type or large type text books acquired by the school for the visually handicapped shall constitute a circulating collection for the blind and visually handicapped. The collection shall be kept at the school and be under the supervision of its superintendent. All blind and visually handicapped school age children of the state may use such books upon compliance with rules made by the superintendent and approved by the state superintendent.

History: 1975 c. 189.

115.58 Park grounds. The state superintendent may permit the city of Janesville to use portions of the grounds of the state school for the visually handicapped at Janesville, which abut on the Rock river, for purposes of operating a city park. Any construction on such grounds is subject to prior approval by the state superintendent. Any agreement pursuant hereto shall be cancelable at the option of either party without liability. Any such grounds so used by the city of Janesville shall be supervised by the city and shall be subject to the ordinances of the city of Janesville applicable to city parks.

SUBCHAPTER IV

AMERICAN INDIAN LANGUAGE AND CULTURE EDUCATION PROGRAM

115.71 Definitions. In this subchapter:

(1) "Alternative school" means any nonsectarian private school or tribally operated school in this state which complies with the requirements of 42 USC 2000d and in which at least 75% of the pupils enrolled are American Indians.

(2) "American Indian" means any person who is:

(a) A member of a tribe, band or other organized group of Indians, including those tribes, bands or groups terminated since 1940, or who is a descendant in the first or 2nd degree of any such member;

(b) Considered by the federal government, on May 22, 1980, to be an Indian for any purpose;

(c) An Eskimo, Aleut or other Alaska native; or

(d) Determined to be an Indian under rules promulgated by the state superintendent in coordination with the board under s. 115.28 (17) (c).

(3) "Board" means the American Indian language and culture education board.

(4) "Home school coordinator" means a person employed by the school district to pro-

mote communication between the school and the American Indian community.

(5) "Tribal education authority" means the educational authority of a tribe, band or other organized group of American Indians, which may be vested in a tribal department or division of education, a tribal school board, a tribal education committee or any similar body.

History: 1979 c. 346; 1981 c. 314 s. 146.

115.72 Establishment of programs. (1) Any school district enrolling American Indian pupils, or alternative school, may establish, on a voluntary basis, an American Indian language and culture education program. The program shall be designed to:

(a) Make the school curriculum more relevant to the needs, interests and cultural heritage of American Indian pupils.

(b) Provide reinforcement of the positive self-image of American Indian pupils.

(c) Develop intercultural awareness among pupils, parents and staff.

(2) The American Indian language and culture education program may include:

(a) Instruction in American Indian language, literature, history and culture.

(b) In-service training and technical assistance for staff in regard to methods of teaching American Indian pupils.

(c) Vocational education and counseling for American Indian pupils.

(d) Modification of curriculum, instructional methods and administrative procedures to meet the needs of American Indian pupils.

(e) Tests of the academic achievement of the American Indian pupils enrolled.

(f) Identification of the educational needs of the American Indian pupils enrolled.

(g) Classification of American Indian pupils enrolled by grade, level of education, age and achievement.

(3) The school board of a district establishing an American Indian language and culture education program may designate the school or schools in which the program shall be offered. The parent or guardian of an American Indian pupil may transfer the pupil to the school in which the program is offered, if it is in the same district, in order for the pupil to participate in the program.

(4) American Indian language and culture education programs established under this subchapter shall be located in school facilities in which regular classes in a variety of subjects are offered on a daily basis.

History: 1979 c. 346.

115.73 Program requirements. (1) Each school district and alternative school, before

establishing a program under this subchapter, shall develop a plan which:

(a) Identifies the activities, methods and programs to be used to meet the identified educational needs of the pupils to be enrolled in the program.

(b) Describes how the program will be organized, staffed, coordinated and evaluated.

(c) Estimates the costs of the program.

(2) Each school district and alternative school operating a program under this subchapter shall maintain records concerning the number of American Indian pupils enrolled in the program and of all sums expended in connection with the program. The school district or alternative school shall make affirmative efforts to encourage participation of American Indian pupils in the program by providing for meetings with parents and guardians of American Indian pupils to explain the nature of the program.

History: 1979 c. 346.

115.735 Parent advisory committee. (1)

Each school district and alternative school which establishes a program under this subchapter shall establish an American Indian parent advisory committee, appointed by the school board, to afford parents and educators of American Indian pupils the opportunity to advise the school board of their views and to ensure that a program is planned, operated and evaluated with their involvement and consultation. If there is a local tribal education authority, the school board shall appoint committee members from recommendations submitted by the authority.

(2) The committee shall be composed of parents or guardians of American Indian pupils enrolled in the program, teachers, aides and counselors involved in the program and representatives of local tribal education authorities, but a majority of the members of each committee shall be parents or guardians of American Indian pupils enrolled in the program.

(3) If an advisory committee exists which meets the requirements of sub. (2), it may serve as the parent advisory committee. If the school board consists solely of parents or guardians of American Indian pupils, it may serve as the parent advisory committee.

History: 1979 c. 346.

115.74 Assessment of needs and evaluation of resources. (1)

On or before July 1, 1982, and on or before July 1 in every 2nd year thereafter, the department, in coordination with the board, shall:

(a) Conduct a statewide assessment of the need for American Indian language and culture education programs. The assessment shall include information on:

1. Numbers, ages, location and tribal affiliation of American Indian pupils.

2. Concentration of American Indian pupils in attendance areas, as defined in s. 121.85 (1) (b), within each school district by tribal affiliation.

3. Placement rates of American Indian children in classes for handicapped pupils in comparison with statewide and district-wide placement rates.

4. Advancement, achievement levels and dropout rates of American Indian pupils in comparison with average advancement and dropout rates.

5. Participant response to the program.

(b) Evaluate the American Indian language and culture education programs established under this subchapter. Alternative school programs shall be evaluated under this paragraph only with the permission of the school.

(2) Annually, on or before July 1, the department, in coordination with the board, shall evaluate all available resources and programs which are or could be directed toward meeting the educational needs of American Indian pupils. The evaluation shall include information on:

(a) Numbers, locations and qualifications of teachers, administrators, counselors and others from American Indian backgrounds who are interested in working in American Indian language and culture education programs.

(b) Programs in this state designed for the preparation of American Indian language and culture education teachers.

(c) The effectiveness of programs for American Indian pupils in this state other than programs established under this subchapter.

(d) The effectiveness of preservice and inservice programs for staffs of American Indian language and culture education programs.

(e) The tests, criteria, procedures and methods used to identify, test, assess and classify American Indian pupils.

(3) The assessment of needs under sub. (1) (a) and the evaluation of resources under sub. (2) shall be performed on Indian reservations and in other Indian communities recognized by the federal government only in conjunction with, or with the permission of, the respective tribal governments.

(4) The department, in coordination with the board, shall make an annual report to the governor and the legislature on or before September 1. The first report shall be made on or before September 1, 1982. The report shall include the results of the most recent assessment of needs and evaluation of programs under sub. (1), the evaluation of resources under sub. (2) and recommendations for legislation in the area of

American Indian language and culture education.

History: 1979 c. 346.

115.75 Aid to alternative schools. (1) (a) Subject to the requirements of par. (b), each alternative school operating an American Indian language and culture education program under this subchapter shall receive state aid, from the appropriation under s. 20.255 (4) (fn), in an amount equal to \$110 for each pupil who has completed the fall semester in the program.

(b) No alternative school may receive state aid under this section unless the state superintendent:

1. Determines that the alternative school has adequate management and accounting capacity and that the school agrees that its accounts related to the program may be audited.

2. Certifies that the alternative school has met the requirements of ss. 115.73 and 115.735 and has submitted a report to the state superintendent which includes a description of all expenditures made in the prior year in connection with the program, a budget for the current year for the program and the number of pupils who have completed the fall semester in the program.

(2) State aid under this section shall be paid in April of each year. In no case may such aid supplant federal aid received by the alternative school and utilized for American Indian language and culture education programs in the prior year.

(3) If the appropriation under s. 20.255 (4) (fn) in any year is insufficient to pay the full amount of aid under this section, state aid payments shall be prorated among the alternative schools entitled to such aid.

History: 1979 c. 346; 1981 c. 20 s. 2202 (42) (c).

SUBCHAPTER V

CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS

115.76 Definitions. In this subchapter:

(1) "Administrator" means the administrator of the division for handicapped children.

(2) "Child" means any person under the age of 21 years, except as otherwise provided.

(3) "Child with exceptional educational needs" means any child who has a mental, physical, emotional or learning disability which, if the full potential of the child is to be attained, requires educational services to the child to supplement or replace regular education. Children with the following conditions, in addition to children with such other conditions as the state superintendent determines, may require educa-

tional services to supplement or replace regular education:

(a) Physical or orthopedic disability.

(b) Mental retardation or other developmental disabilities.

(c) Hearing impairment.

(d) Visual disability.

(e) Speech or language disability.

(f) Emotional disturbance.

(g) Learning disability.

(h) Pregnancy, including up to 4 months after the birth of the child or other termination of the pregnancy, or after the close of the school year.

(i) Any combination of conditions named by the state superintendent or enumerated in pars. (a) to (h).

(4) "Division" means the division for handicapped children.

(5) "Expanded program" means any program which has increased its educational services, facilities or staff in such manner and degree as specified in written standards issued by the state superintendent.

(5m) "Hearing officer" means an independent examiner chosen to conduct hearings under s. 115.81.

(6) "Parent" includes a guardian.

(7) "Part of a program" means that portion of a program in which a child with a particular type of exceptional educational need participates.

(8) "Reduced program" means any program which has decreased its educational services, facilities or staff in the manner and degree specified in written standards issued by the state superintendent.

(9) "Regular education" means the educational program provided by a public or private school for children who do not have exceptional educational needs.

(10) "Special education" means any educational assistance required to provide an appropriate education program for a child with exceptional educational needs and any supportive or related service.

(11) "Institutional resident" means a child with exceptional educational needs who has been admitted to and is domiciled or cared for in or by a special purpose residential care center which specializes in the care and treatment of children described under sub. (3).

(12) "State or county residential facility" means a state residential facility operated by the department of health and social services, or a county residential facility operated by a county board.

History: 1973 c. 89, 333; 1977 c. 29, 83, 418.

115.77 Division for handicapped children. (1) APPOINTMENT OF ADMINISTRATOR. The state superintendent shall appoint the administrator.

(2) DUTIES OF ADMINISTRATOR. Subject to the direction of the state superintendent, the administrator:

(a) Shall appoint qualified personnel necessary to perform the duties required of the division.

(b) Shall audit expenditures incurred for children with exceptional educational needs.

(3) SPECIAL EDUCATION RESPONSIBILITIES. The division shall be responsible for:

(a) Services for children with exceptional educational needs who are under the jurisdiction of the state superintendent and for the Wisconsin school for the deaf and the Wisconsin school for the visually handicapped.

(b) 1. Provision of facilities for diagnosis through orthopedic field clinics and for after-care for children who are orthopedically disabled or who are suffering from conditions which lead to orthopedic disabilities. Such responsibility shall be for those facilities not provided through hospitals, by private physicians or through private organizations. The division shall approve applications and arrange for orthopedic hospital care when state aid is granted for any part of the cost. This paragraph shall be administered in accordance with requirements of the federal social security act.

2. Submission to the proper federal authorities of a state plan, prepared by the medical director of the division in accordance with federal requirements, for services for orthopedically disabled children. The state plan may be revised as conditions require. The division shall make reports, in such form and containing such information as the proper federal authorities require, and shall comply with all requirements made to assure the correctness and verification of such reports.

(c) Services provided to children with exceptional educational needs by special education programs under s. 115.85 (2).

(d) Supervision of the education of all children who have exceptional educational needs and who reside in any facility operated by the state or a county or who attend county residential facilities or community board day care centers. Such supervision shall include:

1. The power to require the submission of reports relating to educational services provided or planned.

2. Advising the superintendent of each state or county facility.

3. Recommending to the state superintendent standards for certification of personnel whom

the state superintendent determines to be involved in the education of children described in this paragraph.

(e) Making or approving arrangements for transportation to and from the child's home to the special education program, or, on school days for board, lodging and transportation to and from the child's boarding home to the special education program, if the child's parents reside outside the school district, cooperative educational service agency or county in which the child receives special education.

(4) DIVISION DUTIES. The division shall:

(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 community board day care center for children who have exceptional educational needs.

(b) Before the program receives any state funds, approve all new or expanded 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 community board day care center for children who have exceptional educational needs.

(c) Before a discontinuance or reduction of program becomes effective, approve all plans to discontinue or reduce 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 community board day care center for children who have exceptional educational needs.

(d) Maintain current information on all public and private special education programs within the state and make this information public.

(e) Whenever an individual's report is made under s. 115.80 (1) (a), inform the person who made the report and the child's parent of the procedure for obtaining an examination of the child by a multidisciplinary team under s. 115.80 (3).

(f) Develop a program for the preparation, recruitment and in-service training of personnel in special education and related fields, including participation, as appropriate, by institutions of higher education, state and local agencies and other public and private organizations. A plan for the development of this program, including statements of duties and responsibilities of personnel to be trained, shall be made within one year after Aug. 9, 1973. The plan shall be implemented no later than July 1, 1976.

(5) RECEIPT OF FEDERAL AID. Any federal aid which is made available for special education programs shall be granted the division for carrying out plans approved by the federal agency having supervision of the aid program.

History: 1973 c. 89; 1977 c. 83 ss. 16, 26; 1977 c. 418.

115.78 State exceptional educational needs plan. The state superintendent shall annually issue and make public a state plan for the education of children with exceptional educational needs. The state plan shall include:

(1) The number and geographic distribution of all children who reside in this state and who have exceptional educational needs.

(2) A listing of all public and private special education programs available in this state, the number of children attending each special education program pursuant to s. 115.85 (2) or supervised under s. 115.77 (3) (d) and the state aid given to each program so attended or supervised.

(3) A statement of the personnel and facilities available through public and private special education programs to provide instruction and other services for children with exceptional educational needs.

(4) An analysis of the present distribution of responsibility for special education between the state, school districts and other governmental units.

(5) Identification of the specific goals of each type of special education program in which children are enrolled pursuant to s. 115.85 (2) or provided by a state or county facility supervised under s. 115.77 (3) (d).

(6) Standards for the screening, identification and educational program for children with exceptional educational needs.

(7) A 5-year projection of the special education needs of children who reside in this state.

(8) Recommendations for changes in the law and administrative procedures to meet the special education needs stated in the plan.

History: 1973 c. 89.

115.781 Reports of service to handicapped children. The state superintendent shall report to the governor, the joint committee on finance and the appropriate standing committees on education of each house of the legislature, as determined by the presiding officer thereof, the state's progress toward achieving full service to handicapped children under the education for all handicapped children act of 1975 (P.L. 94-142).

The state superintendent shall submit reports under this section within 45 days of the collection of data for the submission of the report of handicapped children receiving

special education and related services, or its successor forms, as required under P.L. 94-142.

History: 1977 c. 418.

115.79 Council on exceptional education.

(1) The state superintendent shall consult with the council on exceptional education concerning:

(a) All proposed department or division policies and rules relating to the education of children with exceptional educational needs.

(b) New special education programs, expansions, reductions or terminations of existing special education programs under s. 115.77 (4) (b) and (c).

(c) The state plan required under s. 115.78.

(d) Any other matters upon which the state superintendent wishes the council's opinion.

(2) The council may report biennially to the legislature on the progress made by special education programs and planning in the state and any other information it deems desirable.

(3) The council shall have access to reports and statistics kept by the department relating to matters concerning children with exceptional educational needs.

History: 1973 c. 89; 1977 c. 29.

115.80 Identification of children with exceptional educational needs. (1) INDIVIDUAL'S REPORT.

(a) A parent or a physician, nurse, teacher at a state or county residential facility, psychologist, social worker or administrator of a social agency who has reasonable cause to believe that a child brought to him or her for services has exceptional educational needs shall report the name of the child and any other information required to the school board for the district or governing body of a state or county residential facility in which the child resides or to the division, except as provided in par. (b).

(b) A person who is required to be certified or licensed under s. 115.28 (7), who is employed by the school district in which a child attends public school and who has reasonable cause to believe a child has exceptional educational needs shall report such child and any other information required to the school board.

(c) Before any report is made under this subsection, the person making the report shall inform the child's parent that the report will be made.

(2) SCHOOL DISTRICT SCREENING. Pursuant to any standards adopted by the state superintendent under s. 115.78 (6), each child shall be screened to determine if there is reasonable cause to believe that the child has exceptional educational needs when the child:

(a) First enrolls in the public school in the school district; or

(b) First is placed in a state or county residential facility.

(c) The school district shall provide, upon request, screening opportunities to children who are below school entry age.

(3) MULTIDISCIPLINARY TEAM. (a) A multidisciplinary team shall be appointed by the school board and composed of 2 or more persons who are skilled in assessing exceptional educational needs that a child may have and who are skilled in programming for children with exceptional educational needs. The state superintendent shall determine the method of appointing members to the team and may require that there be additional members. The number and specialties of additional members may depend on the exceptional educational needs which the particular child is believed to have. Before a child is sent from a state or county residential facility to a school district, the state superintendent may require that the team for the school district to which the child may be sent, include or consult with, persons appointed by the governing body of the residential facility. For examination of a child who resides, and is receiving education, only at a state or county residential facility, or who it is determined may have exceptional educational needs under sub. (2) (b), the multidisciplinary team shall be appointed by, and make recommendations under pars. (c), (d) and (e) to the governing body of the residential facility in which the child resides.

(b) The multidisciplinary team shall, upon written parental approval, examine any child who has attained the age of 3 years and who as a result of screening under sub. (2) is believed to have exceptional educational needs, or is referred to it by a parent as a result of an individual's report under sub. (1) (a), by the governing body of a state or county residential facility or by a school board.

(c) The multidisciplinary team shall consult with the child's parent prior to recommending a child for a special education program.

(d) The multidisciplinary team shall recommend a child to the school board for special education if it deems it in the best interests of the child, except that a pregnant girl shall be recommended for special education only if she has not graduated from high school, is under the age of 21 and if she and her parent consent that she be recommended for special education.

(e) If the multidisciplinary team recommends a child for special education, it shall also recommend to the school board an educational program fitted to the individual child's needs. If the educational program recommends instruction at the home, residence or other location of

the child, there shall be a physician's statement in writing that the child is unable to attend school.

(4) TEACHER'S REPORT. Annually, the school district shall require a report, on forms prepared by the department, from the teacher of each child who has attained the age of 3 years and who is receiving special education under s. 115.85 (2). For a child who resides, and is receiving special education, only in a state or county residential facility, the governing body of the state or county residential facility shall require the report. The report shall state the teacher's assessment of the child's progress in the past year and the teacher's recommendation for further education of the child.

(5) REEXAMINATION. (a) Each child who has attained the age of 3 years and who is receiving special education under s. 115.85 (2) or in a state or county residential facility supervised under s. 115.77 (3) (d) shall be reexamined by a multidisciplinary team at least once every 3 years.

(b) 1. Upon reexamination by a multidisciplinary team no child who has attained the age of 3 years and who is receiving special education under s. 115.85 (2) or in a state or county residential facility supervised under s. 115.77 (3) (d) shall continue to receive such special education except upon recommendation of the multidisciplinary team to the school board.

2. If, upon recommendation of the multidisciplinary team under subd. 1, the school board determines that a child is no longer in need of special education services, it shall place such child in an appropriate educational program. The board may delegate this responsibility in such manner and to such persons as it deems appropriate, including the multidisciplinary team.

3. This paragraph does not impair a parent's right to appeal under s. 115.81.

History: 1973 c. 89; 1977 c. 29, 418.

Department has no authority to appoint surrogate parent when child's parent cannot be located or refuses EEN services, and must utilize alternative procedures under 48.13 and 880.15. OAG 9-82.

115.81 Parental appeals. (1) RIGHT TO APPEAL. (a) A child's parent may appeal to the school board a decision relating to special education for the child if:

1. The appeal is filed within 4 months after the school district clerk has mailed the notice of placement under sub. (2) (b).

2. The appeal is filed within 4 months after the school district clerk has mailed the notice of removal under sub. (2) (c).

3. The parent believes the local school board has placed the child in a special education

program which does not satisfactorily serve the child's needs.

4. The child has not been placed in a special education program and the parent believes that such placement would benefit the child.

(b) No more than one appeal under par. (a) 3 and no more than one appeal under par. (a) 4 may be initiated in any school year.

(2) NOTICES. (a) Upon receipt of a recommendation for special education from a multidisciplinary team under s. 115.80 (3) (d), the school district clerk of the district in which the child resides shall immediately mail to the child's parent a notice of the recommendation and a brief statement of the reasons for the recommendation.

(b) When a decision is made under s. 115.85 (2) to place a child in a special education program, the school district clerk of the district in which the child resides shall immediately mail to the child's parent a notice of the decision and a brief statement of the reasons therefor.

(c) Whenever a decision is made by a school board to remove a child with exceptional educational needs from an educational program in which such child is currently enrolled, the school district clerk of the district in which the child resides shall mail to the child's parent a notice of the decision and a brief statement of the reasons therefor.

(d) The notice of placement under par. (b) or program change under par. (c) shall state that a hearing before a hearing officer may be had if requested in accordance with procedures established by the department and set forth in the notice.

(3) CHANGE IN PROGRAM. A change in the program or status of a child with exceptional educational needs shall not be made within the period afforded the parent to request a hearing nor, if such hearing is requested, before the hearing officer issues a decision, unless a program change is made with the written consent of the parent. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be made earlier, upon order of the school board, but without prejudice to any rights that the child or parent may have.

(4) RIGHTS AT HEARING. A parent shall have access to any reports, records, clinical evaluations or other materials upon which a decision relating to the child's educational program was wholly or partially based or which could reasonably have a bearing on the correctness of the decision. At any hearing held under this section, the parent may determine whether the hearing shall be public or private, examine and cross-examine witnesses, introduce evidence, appear

in person and be represented by an advocate. The school board shall keep a full record of the hearing, prepared by the hearing officer. A complete record of the proceedings shall be given to the parent, if requested. The hearing officer shall inform the parents of their right to a complete record of the proceedings.

(4m) HEARING OFFICERS. The department shall maintain a listing of qualified hearing officers who are not otherwise employed by or under contract to a school board to serve as hearing officers in hearings under this section.

(5) INDEPENDENT EXAMINATION. If a child's parent believes the diagnosis or evaluation of the child as shown in the records made available to him under sub. (4) is in error, he may obtain an independent examination and evaluation of the child and have the report thereof presented as evidence in the hearing. If the parent is financially unable to afford an independent examination or evaluation, the school district shall reimburse the parent for the reasonable expenses of the examination or evaluation.

(6) HEARING AND DECISION. The hearing officer shall conduct a hearing and shall issue a decision within 45 days of the receipt of the request for the hearing. The hearing officer may issue subpoenas, order an independent evaluation at public expense as provided under sub. (5) and grant specific extensions of time for cause, not to exceed 30 days, at the request of either party.

(7) APPEAL TO STATE SUPERINTENDENT. Within 30 days after the decision of the hearing officer under sub. (6), either party may appeal the decision to the state superintendent. An appeal under this subsection shall be initiated by filing a written request for review with the state superintendent. The request for review shall contain a brief statement of the grounds on which the review is requested and shall be served on all parties. The state superintendent shall review the record established at the hearing under sub. (6) and shall issue a written decision within 30 days of receipt of appeal.

(7m) APPEAL TO GOVERNING BODY OF FACILITY. For a child who resides, and is receiving special education, only in a state or county residential facility, the child's parent shall appeal to the governing body of the facility in accordance with subs. (1) to (6), so far as applicable. The parent may appeal the governing body's decision under sub. (6) to the state superintendent under sub. (7).

(8) APPEAL TO COURT. Within 30 days after the decision of the state superintendent under sub. (7), either party may appeal the decision to

the circuit court for the county in which the child resides.

History: 1973 c. 89; 1977 c. 29, 354, 418, 449; 1979 c. 221. Enforcement of state and federal special education laws discussed. *M. R. v. Milwaukee Public Schools*, 495 F Supp 864 (1980).

115.82 Compulsory attendance. The provisions of s. 118.15 relating to compulsory school attendance apply during the school term to children with exceptional educational needs and may be satisfied by attendance at 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 private special education service.

History: 1973 c. 89.

115.83 Authorization of special education programs and services. (1) A school board, board of control of a cooperative educational service agency or, upon authorization of the county board, a county handicapped children's education board may:

(a) Subject to approval by the division under s. 115.77 (4) (b) and (c), establish, maintain, expand, reduce or discontinue a special education program, including special physical or occupational therapy services, for children with exceptional educational needs. The board may contract with private or public agencies for physical or occupational therapy services on the basis of demonstrated need.

(b) Employ, for a special education program, either full- or part-time certified teachers, certified coordinators of special education, certified school social workers, certified school psychologists, paraprofessionals, certified consulting teachers to work with any teacher of regular education programs who has a child with exceptional educational needs in a class and any other personnel approved by the department.

(c) Provide in-service training for any teacher who has a child with exceptional educational needs in a class and any other services approved by the department.

(2) A special education program may consist of such special education programs for children as to allow them to attend regular education programs, one or more special schools or preschools, special sections within a school or preschool, special instruction centers, special instruction at the home or residence of the child or at any other location or any other special education program approved by the state superintendent.

(3) A special education program may be supplemented by family guidance or counseling services to train other members of the child's family to assist in the child's education.

(4) A special education program may be for the school term, may include a summer program or may be for the school year.

(5) The courses, qualifications of teachers, coordinators, social workers and school psychologists and plan of organizing and maintaining special education programs and other services shall comply with requirements established by the state superintendent.

History: 1973 c. 89; 1977 c. 418.

Public school board was liable for cost of child's transportation to and from, and tuition at, private school during transition period. *Anderson v. Thompson*, 495 F Supp. 1256 (1980).

115.84 Local report. The school board, board of control or county handicapped children's education board maintaining special education programs or other services shall report annually to the department, and at such other times as it directs, such information as it requires. The report shall include the number of pupils instructed or provided service, their residence and the period of time each was instructed or otherwise served during the school year. Annually, on or before August 15, each board shall submit to the department an itemized statement on oath of all receipts and disbursements on account of such special education programs or other services during the preceding school year.

History: 1973 c. 89; 1975 c. 189, 224.

115.85 School district. (1) RESPONSIBILITY TO MAKE PROGRAMS AVAILABLE. (a) 1. Each school district shall ensure that appropriate special education programs are available to children with exceptional educational needs who have attained the age of 3 years and who reside in the school district, or who reside in a state or county residential facility located in the school district, and receive special education full- or part-time in the school district. Each state or county residential facility shall ensure that the programs are available to such other children who reside in the facility.

2. A school district may make available appropriate special education programs to children with exceptional educational needs who have attained the age of 3 years and are full- or part-time institutional residents of special purpose residential care centers located within the school district. However, institutional residents shall not be considered residents, for the purpose of securing special education services under this subchapter, of the school district in which the special purpose residential care center is located unless the child's parent is a resident of the district.

(b) A school district may provide special education for preschool children under the age

of 3 years and instruction for their parents. Such special education shall be subject to the approval of and shall comply with requirements established by the state superintendent.

(c) The school board shall submit to the division any information it requires concerning special education in state or county facilities supervised by the division under s. 115.77 (3) (d) and shall advise the superintendent of each such facility.

(2) PLACEMENT IN APPROPRIATE PROGRAM. The school board after consultation with the multidisciplinary team and after the parent has consented in writing shall place in an appropriate special education program a child who has been recommended for special education by a multidisciplinary team and who resides in the school district. The board may delegate this responsibility in such manner and to such person as it deems appropriate, including the multidisciplinary team. The governing body of a state or county residential facility shall place in an appropriate special education program a child who resides, and is receiving special education, only in the facility.

(a) If the school district, the county in which the child resides or the cooperative educational service agency for the school district in which the child resides operates an appropriate special education program, the child shall be placed in such program.

(am) If an agency enumerated in par. (a) does not operate a special education program which is appropriate for the child's needs, or if requested by the child's parents and recommended by the multidisciplinary team, the child may be placed in a model school special education program established under s. 36.25 (19). If the local school board utilizes this placement option, the school district of residence shall pay any tuition charges for children with exceptional educational needs.

(b) If an agency enumerated in par. (a) does not operate a special education program which is appropriate for the child's needs, the child shall be placed in a program operated in this state by a public agency as near as possible to the place where the child resides, except as provided under pars. (c) and (d). If the local school board utilizes the placement option under this paragraph, the school district of residence and not the county of residence shall pay tuition charges for exceptional children.

(c) 1. Upon the approval of the state superintendent, the child may be placed in a public special education program located in another state.

2. The state superintendent shall approve a placement in a public special education program located in another state if he or she determines

that it is appropriate to meet the child's exceptional educational needs and that:

a. There is no appropriate program available in this state without the use of a boarding home or residential placement and the proposed placement will enable the child to reside at home and receive daily transportation to and from the placement; or

b. The proposed placement will result in a significant reduction in daily transportation costs or the child's time in transit to the program while the child resides at home.

3. If the local school board utilizes a placement option under this paragraph, the school district of residence and not the county of residence shall pay tuition charges for exceptional children.

(d) To provide a special education program which is appropriate to the child's needs, the school board may, upon approval of the state superintendent and if no equivalent public program is available, contract with a private special education service if the placement is warranted on the basis of a less restrictive environment alternative. Private special education services provided under this subchapter may not include religious or sectarian teachings or instruction. If the local school board utilizes the placement option under this paragraph, the school district of residence and not the county of residence shall pay tuition charges for exceptional children.

(e) The school board may place a child with exceptional educational needs in a special education program at the home, residence or other location of the child only if there is a physician's statement in writing that the child is unable to attend school, as required under s. 115.80 (3) (e).

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

(3) SCHOOL DISTRICT PLAN. Annually, on or before August 15, each school board shall report to the department such information as it requires, including the following:

(a) The total number of children who reside in the district and who have been placed in special education programs under s. 115.85 (2), the exceptional educational needs of each such child and the school attended or special education received by each such child. The report shall also specify the number of children with exceptional educational needs who are known to

the school district and who are under the age of 3 years and the exceptional educational needs of each such child.

(b) A description of the screening process for exceptional educational needs provided under s. 115.80 (2) to each child who enters public school in the district.

(c) A description of the special education programs in which children who reside in the district have been placed under sub. (2), the number of persons attending each pursuant to sub. (2) and the qualifications of the staff of each such special education program.

(d) An evaluation, in terms of the goals identified under s. 115.78 (5), of the progress made by each special education program in which children who reside in the district are placed under sub. (2).

(e) An evaluation of the progress made by each child who resides in a facility operated by the state or a county, who has attained the age of 3 years and whose parent resides in the district and a statement of the expected duration of the child's stay in such facility.

(f) Plans for new, expanded, or reduced public school special education programs or for discontinuation of any such program or part of such program.

History: 1971 c. 125 ss. 449, 522 (1); 1973 c. 89, 90, 333, 336; 1975 c. 39; 1977 c. 29, 418; 1979 c. 34; 1981 c. 251.

Sub. (2) (d), Stats. 1973, is constitutional. See note to art. I, sec. 18, citing State ex rel. Warren v. Nusbaum, 64 W (2d) 314, 219 NW (2d) 577.

Requirement of DPI that the options under (2) are to be considered sequentially and not alternatively, is a rational one. Though the state must provide each child with an equal educational opportunity, it is not necessarily required to do so in the context of a neighborhood or conveniently accessible setting. *Panitch v. State of Wisconsin*, 390 F Supp. 611.

115.86 Handicapped children's education board. (1) **DEFINITIONS.** In this section "board" means the county handicapped children's education board.

(2) **ESTABLISHMENT.** (a) Any county board of supervisors may determine to establish a special education program for children with exceptional educational needs, for school districts in the county.

(b) The program may provide for one or more special schools, classes, treatment or instruction centers or any other service authorized under s. 115.83 for children with one or more types of exceptional educational needs.

(c) A school district shall be included under such county program only to the extent approved by formal action of the school board of the district. Beginning July 1, 1978, each school district which participates in the county program for any of the disability areas under s. 115.76 (3), or subdivisions thereof under s. 115.76 (3) (b) based upon the severity of handicapping condition, must subscribe to all of

the services offered by the board in each of the disability areas or subdivisions thereof under s. 115.76 (3) (b), for which the school board has resolved to participate, however, a school board may arrange with the board for such necessary support or intervention services to primary programs subscribed to. A board created under this section shall be known as the "Handicapped Children's Education Board".

(3) **ORGANIZATION.** (a) The board shall consist of 3 or 5 persons, as determined by the county board of supervisors, elected by the county board or appointed by the chairman of the county board, as the rules of the county board direct. Board members shall be electors selected from that part of the county participating in the program and shall be representative of the area the board serves. The board may include school board members, members of the county board of supervisors and other electors. Board members shall hold office for a term of 3 years, except that the terms of office of members of the first board shall be 3 years, 2 years and one year. Board members shall receive compensation and reimbursement for mileage in an amount fixed by the county board of supervisors, but not more than that of county board members.

(b) The board annually shall select one member as chairman and one as secretary. The county treasurer shall serve as board treasurer but shall not be a member of the board.

(c) The board shall appoint an advisory committee whose membership includes school district administrators representative of the area the board serves.

(4) **APPLICATION.** Upon authorization of the county board, application for the establishment of a program or any part thereof shall be made by the board to the division. The application shall state whether the program or part will be available in the county at large or only to certain school districts.

(5) **BOARD DUTIES.** The board shall have charge of all matters pertaining to the organization, equipment, operation and maintenance of such programs and may do all things necessary to perform its functions, including, without restriction because of enumeration, the authority to erect buildings subject to county board approval and employ teachers and other personnel. The board shall prepare an annual budget which shall be subject to approval of the county board under s. 65.90 and shall include, without limitation because of enumeration, funds for the hiring of staff, the purchase of materials, supplies and equipment and the operation and maintenance of buildings or classrooms.

(6) ASSIGNMENT OF FUNCTIONS. (a) The board may not assign by resolution or by contract the full administrative or instructional services of the board.

(b) The ability of the board to contract with the board of control of a cooperative educational service agency, a board of a school district or other public agency in the county for a portion of administrative or instructional services or for any of the purposes enumerated in s. 115.83 is not prohibited by par. (a). The board shall be responsible for all programs contracted under this paragraph.

(7) WITHDRAWAL AND DISSOLUTION. (a) The school board of any district which is included under the administration of a board may withdraw from participation in any part of the program only with the approval of the state superintendent after conference with the board and a determination by the state superintendent that such withdrawal is in the interest of the program in the county and the school district affected. Such withdrawal shall be effective only if the school board has the approval of the division to establish an equivalent part of a program. Such withdrawal shall be effective either December 31 or June 30 provided that 12 months' notice has been given to the board. The withdrawing school district shall be liable for its proportionate share of all operating costs until its withdrawal becomes effective, shall continue to be liable for its share of debt incurred while it was a participant and shall receive no share in the assets.

(b) A program established under this section may be dissolved by action of the county board, but such dissolution shall not take place until the end of the school term in which the action was taken. When a program is dissolved, assets and liabilities shall be distributed under s. 66.03 to all units which participated in the program.

(8) TRANSPORTATION. The board may promulgate a plan for the transportation at county expense of children who are participating in special education programs under this section, special education programs operated at day care centers or special education programs operated by a private organization within whose attendance area the child resides and which is situated not more than 5 miles beyond the boundaries of the area the board serves, as measured along the usually traveled route. The plan, upon approval of the state superintendent, shall govern the transportation of such children. Any such plan for transportation during the school term supercedes ss. 115.88 and 121.54 (3).

(9) AREA TAXED. (a) The tax for the operation and maintenance of each part of a special education program and for the transportation of

children under sub. (8) shall be levied against the area of the county participating in the part of the program.

(b) Beginning July 1, 1981, no board, except a board which has constructed or acquired building facilities, may continue to operate under this section if the area taxed under par. (a) constitutes less than 50% of the full value of taxable property within the county.

(10) STATE AIDS. The board may apply for and receive the state aid under subch. III of ch. 121, ss. 115.88, 121.135 and 121.14 for the transportation, board and lodging, treatment and instruction of children participating in programs under this section. All state aid shall be paid to the county treasurer and credited to the fund of the board.

History: 1973 c. 89; 1977 c. 29.

115.87 Admission, tuition and transportation.

(1) A cooperative educational service agency, county handicapped children's education board or school district which operates a special education program shall admit a nonresident if the program is appropriate for the child's exceptional educational needs. Refusal to admit a child does not relieve the school district in which the child resides of its responsibilities under s. 115.85 (1).

(2) The basis for enrollment of a physically disabled child in an orthopedic school shall be the child's need for orthopedic school services as determined by a multidisciplinary team.

(3) Tuition shall be charged for nonresidents admitted to special education programs in accordance with this section. For each part of a program, the tuition for a nonresident child shall be determined on the basis of costs, aids and children in such part for the preceding year by adding together the total cost of items reported under s. 115.88 (1), the actual cost of operation and maintenance not so reported and amounts expended as principal and interest on long-term indebtedness on those facilities used by such part of a program, by subtracting from such sum federal, state and county aids and then dividing this difference by the number of children in average daily membership.

(5) If a child with exceptional educational needs resides in a school district which does not maintain an appropriate special education program and attends a special education program in another school district or county, the school district of residence shall pay tuition charges for such child as provided in this subsection. Annually on or before August 1, the school district clerk shall file with the clerk of the school district of residence of such nonresident children a sworn statement of claim against the school district of residence. The claim shall set forth

the name, age, date of entrance and number of weeks in attendance during the preceding school year of each such child, the amount of tuition to which the school district lays claim for each such child and the total amount of tuition due the school district of attendance from the school district of residence. After examining the claim and verifying it, the clerk of the school district of residence shall cause reimbursement to be made to the treasurer of the claimant school district as other claims are paid.

(5m) If a child with exceptional educational needs is enrolled in a special education program of a county or cooperative educational service agency and attends a special education program operated by another school district, the school district clerk of the district of attendance shall submit for each child a claim for reimbursement as described in sub. (5) to the treasurer of the county handicapped children's education board or the cooperative educational service agency from which the child is sent. After examining the claim and verifying it, the treasurer shall cause reimbursement to be made to the treasurer of the claimant school district as other claims are paid.

(6) If a child with exceptional educational needs resides in a school district or area served by a county handicapped children's education board which maintains an appropriate special education program for such child and if the child attends a special education program in another school district or area served by another county handicapped children's education board, tuition therefor shall be charged to the school district of residence if the school board of such district has placed the child pursuant to sub. (6m) or to the child's parent unless the state superintendent and the school district administrators or county handicapped children's education boards have approved the transfer. If the state superintendent and school district administrators or county handicapped children's education boards approve the transfer of a child to an equivalent special education program in another school district or area served by another county handicapped children's education board for good reason to serve the best interests of the child, the child may attend such special education program and tuition therefor shall be paid by the school district or county of residence.

(6m) If a school district has territory lying in 2 or more counties which have county handicapped children's education boards which operate comparable programs and if one of the boards operates a program in a facility owned or leased by the school board, the school board may, if it deems it to be in the child's best interest, place a child in the program operated in

the district's facilities and pay tuition to the county handicapped children's education board operating such program if the child resides in the district but does not reside in the county operating the program. Tuition shall be computed under sub. (3).

(7) In addition to the requirements of s. 121.54 (3), when board and lodging are not furnished to nonresident children with exceptional educational needs the school district in which the child resides or, if there is a plan of transportation under s. 115.86 (8), the county handicapped children's education board shall provide transportation.

(8) Upon the advance approval of the state superintendent, the school board of any district may place a child in a special education program outside this state in accordance with s. 115.85 (2) (c) or a special education program operated by a private, nonsectarian special education service either within or outside the state in accordance with s. 115.85 (2) (d). The school district of residence shall pay the tuition and transportation in accordance with the procedure established for the payment of tuition by the school district under sub. (5).

History: 1973 c. 89, 243, 258, 333; 1975 c. 39; 1977 c. 29.

115.88 State aid. (1) PROGRAM AID. If, upon receipt of the report under s. 115.84, the state superintendent is satisfied that the special education program has been maintained during the preceding school year in accordance with law, the superintendent shall certify to the department of administration in favor of each county, cooperative educational service agency and school district maintaining such special education program a sum equal to 68% of the amount expended by the county, agency and school district during the preceding year for salaries of personnel enumerated in s. 115.83 (1), including the salary portion of any authorized contract for physical or occupational therapy services, except as provided in pars. (a) and (b), and other expenses approved by the state superintendent. The department of administration shall pay such amounts to the county, agency and school district from the appropriations under s. 20.255 (1) (bd) and (4) (bd). The amount of aid paid to any county, agency or school district under this subsection shall be reduced by any amounts received by that county, cooperative educational service agency or school district under s. 115.88 (7), 1973 stats., for the same school year.

(a) Salaries of coordinators of special education, school social workers or school psychologists who have not attained the senior level shall not be reimbursable under this subsection.

(b) Salaries of senior level school psychologists and senior level school social workers shall be reimbursed at 55% without regard to whether they are employed in a program for handicapped children. The school district, county handicapped children's education board or cooperative educational service agency shall include in the report under s. 115.84 any information required by the state superintendent relating to use of a school psychologist or school social worker.

(2) **TRANSPORTATION AID.** If upon receipt of the report under s. 115.84 the state superintendent is satisfied that the transportation of children with exceptional educational needs has been maintained during the preceding year in accordance with the law, the state superintendent shall certify to the department of administration in favor of each county, cooperative educational service agency or school district transporting such pupils 68% of the amount expended for such transportation. Pupils for whom aid is paid under this subsection shall not be eligible for aid under s. 121.58 (2) or (4). The department of administration shall pay such amounts to the county, agency or school district from the appropriation under s. 20.255 (1) (bd). This subsection applies to any child with exceptional educational needs who requires special assistance in transportation, including any such child attending regular classes who requires special or additional transportation. This subsection does not apply to any child with exceptional educational needs attending regular or special classes who does not require any special or additional transportation.

(3) **BOARD AND LODGING AID.** There shall be paid the amount expended for board and lodging and transportation between the boarding home and the special education program of nonresident children enrolled under s. 115.85 (2) in the special education program. The department shall certify the full amount to the department of administration which shall pay such amount from the appropriation under s. 20.255 (1) (bd) to the school district, cooperative educational service agency, county handicapped children's education board, state agency of another state or private, nonsectarian special education service which operates the special education program while providing board, lodging and transportation.

(4) **HOSPITALS AND CONVALESCENT HOME AID.** The full cost of special education for children in hospitals and convalescent homes for orthopedically disabled children shall be paid from the appropriation under s. 20.255 (1) (bd). The supervision of such instruction shall be under the department and the school board of

the school district in which the hospital or convalescent home is located. The school board of the district in which the hospital or convalescent home is located shall submit to the department an itemized statement of all receipts and disbursements for the actual cost of such instruction and any other information it requires.

(5) **ORTHOPEDIC SCHOOL AID.** From the appropriation under s. 20.255 (1) (bd) there shall be paid the full cost of salary and travel expenses, in amounts determined in advance by the state superintendent, to school districts, county handicapped children's education boards or cooperative educational service agencies operating an orthopedic school for services by physical therapists performed outside the employing school district.

(6) **AID FOR INSTRUCTION OUTSIDE OF DISTRICT.** From the appropriation under s. 20.255 (1) (bd) there shall be paid the full cost of salary and travel expenses, in amounts determined in advance by the state superintendent, to school districts for providing special education outside the school district of employment.

(7) **FEDERAL RECEIPTS.** Any federal operational receipts expended on costs aided under this section shall be deducted from amounts expended under this section before any calculation of state aids under this section.

(8) **ENROLLMENT OUT OF STATE.** If a child with exceptional educational needs is enrolled in a public special education program under s. 115.85 (2) (c) 2 and the state superintendent is satisfied that the program in which the child is enrolled complies with this subchapter, the state superintendent shall certify to the department of administration in favor of the school district of residence a sum equal to the percentage of the approved costs under subs. (1) and (2) of the amount expended by the school district during the preceding year for the additional costs associated with the child's special education program. The department of administration shall pay the amount to the school district from the appropriation under s. 20.255 (1) (bd).

History: 1973 c. 89, 333; 1975 c. 224; 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 418; 1979 c. 34 ss. 953p, 2102 (43) (a); 1979 c. 221 s. 2200 (43); 1981 c. 20, 251, 317.

115.881 Proration of state aid. If the appropriation under s. 20.255 (1) (bd) in any one year is insufficient to pay the full amount of aid under ss. 115.88 and 118.255 state aid payments shall be prorated among the school districts entitled thereto.

History: 1975 c. 224; 1979 c. 34 s. 2102 (43) (a).

115.89 Noncomplying school district; remedies. (1) If, after a public hearing in the school district, the state superintendent finds

that a school district has not provided programs for children with exceptional educational needs as required by s. 115.85 (1) and (2), he shall make findings to that effect, including a finding that the school district has denied equal educational opportunities to children with exceptional educational needs.

(2) After the state superintendent has found that a school district has denied equal educational opportunities to children with exceptional educational needs he may make recommendations to the school district to remedy the denial and may require the school district to submit a remedial plan incorporating such recommendations.

(3) If, after consultation with the school board, the state superintendent finds that the plan has not incorporated his recommendations, or that its implementation has been inadequate to remedy the denial of equal educational opportunities, he shall request the attorney general to proceed against the school district for injunctive or other appropriate relief.

History: 1973 c. 89.

SUBCHAPTER VII

BILINGUAL-BICULTURAL EDUCATION

115.95 Legislative findings and declaration of policy. (1) The legislature finds that:

(a) There are pupils in this state who enter elementary and secondary school with limited or nonexistent English speaking ability due to the use of another language in their family or in their daily, nonschool environment.

(b) Classes conducted in English do not always provide adequate instruction for children whose English language abilities are limited or nonexistent.

(c) It is beneficial to pupils from bicultural and monocultural backgrounds to participate in bilingual-bicultural programs where such programs are available in order to instill respect for non-English languages and cultures in all pupils.

(2) It is the policy of this state to provide equal educational opportunities by ensuring that necessary programs are available for limited-English speaking pupils while allowing each school district maximum flexibility in establishing programs suited to its particular needs. To this end, this subchapter creates a required minimal program and an optional expanded program for pupils in school districts with specified concentrations of limited-English speaking pupils in the attendance areas of particular schools.

(3) It is the policy of this state to reimburse school districts, in substantial part, for the

added costs of providing the basic or optional expanded programs established under this subchapter.

(4) It is the policy of this state that a limited-English speaking pupil participate in a bilingual-bicultural education program only until such time as the pupil is able to perform ordinary classwork in English.

(5) It is the policy of this state that fundamental courses may be taught in the pupil's non-English language to support the understanding of concepts, while the ultimate objective shall be to provide a proficiency in those courses in the English language in order that the pupil will be able to participate fully in a society whose language is English.

(6) Furthermore, it is the policy of this state to encourage reform, innovation and improvement in graduate education, in the structure of the academic profession and in the recruitment and retention of higher education and graduate school faculties, as related to bilingual-bicultural education, and to give special recognition to persons who possess a reading ability and speaking fluency in a non-English language and an understanding of another culture.

History: 1975 c. 395.

115.955 Definitions. In this subchapter:

(1) "Limited-English speaking pupil" means a pupil whose ability to use the English language is limited because of the use of a non-English language in his or her family or in his or her daily, nonschool surroundings, and who has difficulty, as defined by rule by the state superintendent, in performing ordinary classwork in English as a result of such limited English language ability.

(2) "Bilingual teacher" means a certified teacher approved by the state superintendent under s. 115.28 (15) (a).

(3) "Bilingual counselor" means a certified school counselor approved by the state superintendent under s. 115.28 (15) (a).

(4) "Bilingual teacher's aide" means a person who is employed to assist a teacher and who is approved by the state superintendent under s. 115.28 (15) (a).

(5) "Bilingual counselor's aide" means a person who is employed to assist a counselor and who is approved by the state superintendent under s. 115.28 (15) (a).

(6) "Bilingual-bicultural education program" means a basic program or an optional expanded program, as defined by the state superintendent by rule under s. 115.28 (15) (b), designed to improve the comprehension and the speaking, reading and writing ability of a limited-English speaking pupil in the English lan-

guage, so that the pupil will be able to perform ordinary classwork in English.

(7) "Basic program" means a program which provides the following:

(a) Instruction in reading, writing and speaking the English language; and

(b) In grades K-8 through the use of the native language of the limited-English speaking pupil, instruction in the subjects necessary to permit the pupil to progress effectively through the educational system.

(8) "Optional expanded program" means a program which provides the following:

(a) Instruction in reading, writing and speaking the English language; and

(b) Instruction at all grade levels, through the use of the native language of the limited-English speaking pupil, in the subjects necessary to permit the pupil to progress effectively through the educational system.

History: 1975 c. 395; 1977 c. 203 s. 106.

115.96 Establishment of programs. (1)

COUNT OF LIMITED-ENGLISH SPEAKING PUPILS. Annually, on or before March 1, each school board shall conduct a count of the limited-English speaking pupils in the public schools of the district, assess the language proficiency of such pupils and classify such pupils by language group, grade level, age and English language proficiency.

(2) **NOTIFICATION.** Annually, on or before April 1, a school board which may be required to offer a bilingual-bicultural education program shall send to the parent, legal custodian or guardian of every limited-English speaking pupil identified under sub. (1) who is eligible for participation in such a program, a notice which states that a bilingual-bicultural education program may be instituted, contains information on the procedures for registering a pupil in such a program, and provides notice of the consent required under sub. (3). The notice shall be in English and in the non-English language of the limited-English speaking pupil.

(3) **PARENTAL CONSENT.** On or before May 1, any parent or legal custodian desiring that their child be placed in a bilingual-bicultural education program shall give written consent to such child's placement.

(4) **PROGRAM ESTABLISHED.** Annually, on or before July 1, the school board shall establish a bilingual-bicultural education program, if required under s. 115.97.

(5) **PLACEMENT; APPEAL.** (a) By the commencement of the school term, the school board shall place, with the parent's or legal custodian's written consent, each limited-English speaking pupil in the appropriate bilingual-bicultural ed-

ucation program established under this subchapter. If a limited-English speaking pupil is identified after March 1 or the parent or legal custodian of such child gives consent after May 1, the school board shall place the pupil, with the written consent of the pupil's parent or legal custodian, in an appropriate program where feasible.

(b) A parent or legal custodian may appeal the school board's failure to place the pupil in the bilingual-bicultural education program established for the pupil in the pupil's language group by filing a notice of appeal with the clerk of the school district within 10 days after the commencement of the school term. The school board shall provide for a hearing on the question of placement within 20 days after receipt of the notice of appeal and shall take a written record of the proceedings. The cost of taking the record shall be the responsibility of the school board. The parent or legal custodian may request a public or private hearing. Within 10 days after the hearing, the school board shall make a decision on the question of placement. If the parent or legal custodian is not satisfied with the decision of the school board, the parent or legal custodian may, within 10 days after the school board's decision, file a notice of appeal with the state superintendent. If the parent or legal custodian appeals, the parent or legal custodian shall assume the cost of transcribing the record. Within 10 days after receipt of the notice of appeal from the determination of the school board, the state superintendent shall issue a decision based on the hearing record. If the parent or legal custodian prevails, the school board shall reimburse the parent or legal custodian for the cost of transcribing the record.

History: 1975 c. 395; 1979 c. 301.

115.97 Bilingual-bicultural education programs required. (1)

If a school board is required to establish a bilingual-bicultural education program under sub. (2), (3) or (4), the school board may adopt either a basic or expanded program. A school board may combine pupils in attendance at separate schools in its bilingual-bicultural education program. The school board shall be eligible for state aids under s. 115.995 if the number of limited-English speaking pupils served from the combined schools meets the requirements under sub. (2), (3) or (4). A pupil shall be eligible for bilingual-bicultural education program only until he or she is able to perform ordinary classwork in English. The bilingual-bicultural education program shall be designed to provide intensive instruction to meet this objective. Nothing in this subchapter shall be construed to authorize isolation of children of limited-English speaking

ability or ethnic background for a substantial portion of the school day. Pupils who are not limited-English speaking pupils may participate in a bilingual-bicultural education program, except that a school board shall give preference to limited-English speaking pupils in admitting pupils to such a program.

(2) If, in a language group under s. 115.96 (1), there are 10 or more limited-English speaking pupils in kindergarten to grade 3 in attendance at a particular elementary school and whose parents or legal custodians give written consent to such pupils' placement under s. 115.96 (3), the school board shall establish a bilingual-bicultural education program for such pupils during the school term. Such program shall be taught by a bilingual teacher.

(3) If, in a language group under s. 115.96 (1), there are 20 or more limited-English speaking pupils in grades 4 to 8 in attendance at a particular elementary, middle or junior high school and whose parents or legal custodians give written consent to such pupils' placement under s. 115.96 (3), the school board shall establish a bilingual-bicultural education program for such pupils during the school term. Such program shall be taught by a bilingual teacher.

(4) If, in a language group under s. 115.96 (1), there are 20 or more limited-English speaking pupils in grades 9 to 12 in attendance at a particular high school and whose parents or legal custodians give written consent to the pupils' placement under s. 115.96 (3), the school board shall establish a bilingual-bicultural education program. The program shall be taught by a bilingual teacher. Bilingual counselors shall be made available.

History: 1975 c. 395.

115.977 Contracting; continued eligibility.

(2) A school district may establish bilingual-bicultural education programs by contracting with other school districts or with a cooperative educational service agency. If 10 or more pupils in kindergarten to grade 3, 20 or more in grades 4 to 8 or 20 or more in a high school program are enrolled in a program under a contract pursuant to this subsection, the school district offering the program is eligible for reimbursement under s. 115.995.

(3) The school board shall give any limited-English speaking pupil who has begun a bilingual-bicultural education program in the 3rd grade the opportunity to continue his or her bilingual-bicultural education program in the 4th grade regardless of the number of limited-English speaking pupils in grades 4 to 8. However, if there are not a sufficient number of limited-English speaking pupils in grades 4 to 8

to require a bilingual-bicultural education program under sub. (2), the school board may offer such pupil the opportunity to continue a bilingual-bicultural education program with a program established for limited-English speaking pupils in kindergarten to grade 3. A 4th grade pupil so enrolled may be counted for purposes of determining if there are a sufficient number of pupils for a kindergarten to grade 3 bilingual-bicultural education program.

History: 1975 c. 395.

115.98 Bilingual-bicultural advisory committee.

In each school district which establishes a bilingual-bicultural education program under this subchapter, the school board may appoint a bilingual-bicultural advisory committee to afford parents and educators of limited-English speaking pupils the opportunity to advise the school board of their views and to ensure that a program is planned, operated and evaluated with their involvement and consultation. The committee shall assist the school board in informing educators, parents and legal custodians of limited-English speaking pupils that a program exists. The committee shall be composed of parents of limited-English speaking pupils enrolled in the bilingual-bicultural education program, bilingual and other teachers, bilingual teacher's aides, bilingual and other counselors and bilingual counselor's aides in the district, at least one representative from the community and a representative of the school district administration.

History: 1975 c. 395.

115.99 Preschool and summer school programs.

A school board may establish a full-time or part-time preschool or summer bilingual-bicultural education program according to rules established by the state superintendent.

History: 1975 c. 395.

115.991 Training programs. The school board may institute preservice or in-service programs designed to improve the skills of bilingual teachers, bilingual teacher's aides, bilingual counselors, bilingual counselor's aides or other personnel participating in, or preparing to participate in, a bilingual-bicultural education program.

History: 1975 c. 395.

115.993 Report on bilingual-bicultural education.

Annually, on or before August 15, the school board of a district operating a bilingual-bicultural education program under this subchapter shall report to the state superintendent the number of pupils, including both limited-English speaking pupils and other pupils, in-

structed the previous school year in bilingual-bicultural education programs, an itemized statement on oath of all disbursements on account of the bilingual-bicultural education program operated during the previous school year and a copy of the estimated budget for that program for the current school year.

History: 1975 c. 395.

115.995 State aids. (1) Any school district operating a bilingual-bicultural education program during the school year under this subchapter is eligible to receive state aid equal to 70% of the amount expended on limited-English speaking pupils by the district during the preceding year for salaries of personnel participating in and attributable to bilingual-bicultural education programs under this subchapter, special books and equipment used in the bilingual-bicultural programs and other expenses approved by the state superintendent.

(2) If, upon receipt of the report under s. 115.993, the state superintendent is satisfied that the bilingual-bicultural education program for the previous school year was maintained in

accordance with this subchapter, the state superintendent shall certify to the department of administration in favor of the school district a sum equal to the state aids for which the school district is eligible under sub. (1).

History: 1975 c. 395.

115.996 Report to the legislature. Annually, on or before December 31, the state superintendent shall report to the legislature on the status of bilingual-bicultural education programs established under this subchapter. The report shall include the number of pupils served in basic and optional expanded programs for each language group in each school district in which such programs are offered and the cost of the program per pupil for each school district, language group and program type. The department shall also provide the number of pupils in each school district and language group who as a result of bilingual-bicultural education program improved their English language ability to such an extent that the program is no longer necessary for such pupils.

History: 1975 c. 395.