



1995 ASSEMBLY BILL 857

February 7, 1996 - Introduced by Representatives OLSEN, OTT, SERATTI, GOETSCH, DOBYNS, KELSO, AINSWORTH, PLOMBON, WARD, SCHNEIDERS, ALBERS, LA FAVE and GUNDERSON, cosponsored by Senators JAUCH, WEEDEN, GROBSCHMIDT, SCHULTZ, CLAUSING, BUETTNER and WINEKE. Referred to Committee on Education.

1 **AN ACT to repeal** 115.81 (7); and **to amend** 115.80 (5) (b) 3., 115.81 (1), 115.81
2 (3), 115.81 (4), 115.81 (4m), 115.81 (6), 115.81 (7m) and 115.81 (8) of the statutes;
3 **relating to:** the method of resolving disputes concerning children with
4 exceptional educational needs between school boards and the parents of those
5 children.

Analysis by the Legislative Reference Bureau

Current law provides a two-tier system for resolving disputes concerning a child with exceptional educational needs who is enrolled in the school district between a school board and the parents of the child. The first tier is a hearing conducted by a hearing officer appointed by the school board. The school board is responsible for the cost of the hearing. Either party may appeal the decision of the hearing officer to the department of public instruction (beginning January 1, 1996, the department of education). The department must appoint an impartial reviewing officer to conduct the appeal. Cost of the appeal are paid by the department. Either party may appeal the decision of the reviewing officer to circuit court.

This bill eliminates the initial hearing conducted by a hearing officer appointed by the school board. Instead, the bill provides that the school board or the parent of the child may initiate the process by filing a written request for a hearing with the department. The department must appoint a hearing officer who is not employed by or under contract with a school board (or otherwise employed by the department) to conduct the hearing. The school board must pay the cost of the hearing officer. Either party may appeal the decision of the hearing officer to circuit court.

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

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

1 **SECTION 1.** 115.80 (5) (b) 3. of the statutes is amended to read:

2 115.80 (5) (b) 3. This paragraph does not impair a parent's right to ~~appeal a~~
3 hearing under s. 115.81 (1) (a).

4 **SECTION 2.** 115.81 (1) of the statutes is amended to read:

5 115.81 (1) (title) ~~RIGHT TO APPEAL~~ HEARING. (a) A parent may file a written
6 ~~request a school board~~ with the department for a hearing whenever the school board
7 proposes or refuses to initiate or change his or her child's multidisciplinary team
8 evaluation, individualized education program, educational placement or the
9 provision of an appropriate special education program.

10 (b) A school board may ~~initiate~~ file a written request with the department for
11 a hearing to override a parent's refusal to grant consent or a parent's revocation of
12 his or her consent for a multidisciplinary team evaluation or educational placement
13 or to contest the payment of an independent evaluation.

14 **SECTION 3.** 115.81 (3) of the statutes is amended to read:

15 115.81 (3) (title) ~~STATUS DURING APPEAL~~ HEARING AND COURT PROCEEDING. The
16 school board may not change the educational placement of a child with exceptional
17 educational needs who is the subject of a hearing, ~~appeal~~ or court proceeding
18 conducted under this subchapter during the pendency of the hearing, ~~appeal~~ or court
19 proceeding unless the change is made with the written consent of the child's parent.
20 If the health or safety of the child or of other persons would be endangered by
21 delaying the change in assignment, the change may be made earlier, upon order of

1 the school board, but without prejudice to any rights that the child or parent may
2 have.

3 **SECTION 4.** 115.81 (4) of the statutes is amended to read:

4 115.81 (4) RIGHTS AT HEARING. A parent shall have access to any reports,
5 records, clinical evaluations or other materials upon which a decision relating to his
6 or her child was wholly or partially based or which could reasonably have a bearing
7 on the correctness of the decision. At any hearing held under this section, the parent
8 may determine whether the hearing shall be public or private. The parties to a
9 hearing may examine and cross-examine witnesses, introduce evidence, appear in
10 person and be represented by an advocate. The school board hearing officer shall
11 keep prepare a full record of the hearing, prepared by the hearing officer proceedings.
12 A complete record of the proceedings shall be given to the parent, if requested. The
13 hearing officer shall inform the parents of their right to a complete record of the
14 proceedings.

15 **SECTION 5.** 115.81 (4m) of the statutes is amended to read:

16 115.81 (4m) HEARING OFFICERS. The department shall maintain a listing of
17 qualified hearing officers who are not otherwise employed by or under contract to
18 with a school board to serve as hearing officers in hearings under this section.

19 **SECTION 6.** 115.81 (6) of the statutes is amended to read:

20 115.81 (6) HEARING AND DECISION. Upon receipt of a written request for a
21 hearing under sub. (1) (a) ~~or the initiation of a hearing under sub. (1) (b)~~, a school
22 board, the department shall appoint an impartial hearing officer who is not
23 otherwise employed by the department from the list maintained under sub. (4m).
24 The hearing officer shall conduct the hearing and shall issue a decision within 45
25 days of the receipt of the request for the hearing under sub. (1) (a) ~~or the initiation~~

1 of the hearing under sub. (1) (b). The hearing officer may issue subpoenas, order an
2 independent evaluation at school board expense and grant specific extensions of time
3 for cause at the request of either party. If the hearing officer grants an extension of
4 time, he or she shall include that extension and the reason for the extension in the
5 record of the proceedings. The school board shall pay the cost of the hearing officer.
6 Sections 227.44 to 227.50 do not apply to hearings conducted under this section
7 subsection.

8 **SECTION 7.** 115.81 (7) of the statutes, as affected by 1995 Wisconsin Act 27, is
9 repealed.

10 **SECTION 8.** 115.81 (7m) of the statutes is amended to read:

11 115.81 (7m) (title) ~~APPEAL TO GOVERNING BODY OF~~ RESIDENTS OF STATE OR COUNTY
12 FACILITY. For a child who resides, and is receiving special education, only in a state
13 or county residential facility, ~~the child's parent shall appeal to the governing body of~~
14 ~~the facility in accordance with subs. (1) to (6), so far as applicable. The parent may~~
15 ~~appeal the governing body's decision under sub. (6) to the state superintendent~~
16 ~~under sub. (7) shall be considered a school board for the purposes of this section.~~

17 **SECTION 9.** 115.81 (8) of the statutes, as affected by 1995 Wisconsin Act 27, is
18 amended to read:

19 115.81 (8) **APPEAL TO COURT.** Within 45 days after the decision of the reviewing
20 hearing officer appointed by the secretary department under sub. (7) (6), either party
21 may appeal the decision to the circuit court for the county in which the child resides.

22 **SECTION 10. Initial applicability.**

23 (1) This act first applies to a request for a hearing filed with the department
24 of education on the effective date of this subsection.

25 **SECTION 11. Effective date.**

