



1997 SENATE BILL 384

December 17, 1997 - Introduced by COMMITTEE ON EDUCATION, by request of the Department of Public Instruction. Referred to Committee on Education.

1 **AN ACT to repeal** 115.28 (19) (a), 118.51 (5) (a) 5. and 121.54 (4) (b); **to renumber**
2 115.28 (19) (b) and 121.54 (4) (a); **to amend** 15.377 (1), 20.255 (1) (d), 20.255 (2)
3 (b) (title), 20.255 (2) (bh), 20.255 (2) (br), 20.866 (2) (zh), 36.25 (19), 46.21 (1) (d),
4 46.23 (2) (a), 46.56 (1) (m), 46.56 (3) (a) 6., 46.56 (3) (d) 1. d., 46.56 (5) (a), 46.56
5 (8) (a), 46.56 (8) (g), 46.56 (15) (d), 48.14 (7), 48.345 (intro.), 48.345 (12) (d),
6 48.428 (3) (e), 48.60 (4), 51.05 (5), 51.06 (2), 51.42 (3) (ar) 7., 51.437 (4m) (g),
7 70.11 (10m), 70.11 (22), 79.03 (3) (b) 4. a., 79.10 (1) (e), chapter 115 (title), 115.28
8 (3), 115.28 (7) (c), 115.28 (11), 115.28 (13), 115.29 (5), 115.362 (4) (a), 115.37,
9 subchapter III of chapter 115 (title) [precedes 115.51], 115.51 (1), 115.52 (1),
10 115.52 (5), 115.52 (7), 115.53 (2), 115.55, 115.74 (1) (a) 3., 116.08 (4), 118.15 (1)
11 (dm), 118.15 (3) (a), 118.15 (3) (b), 118.22 (1) (a), 118.255 (2) (a), 118.255 (2) (b),
12 118.255 (2) (c), 118.255 (3), 118.255 (4), 118.29 (2) (a) (intro.), 118.29 (2) (b),
13 118.29 (3), 118.29 (4), 118.295, 118.31 (1), 118.33 (2) (m), 118.51 (1) (a), 118.51
14 (5) (a) 4., 118.51 (5) (a) 6., 118.51 (12), 118.51 (13m), 118.51 (14) (a) 2., 118.51
15 (17), 118.52 (6) (a), 118.55 (7r) (am), 118.55 (7r) (dm), 119.18 (20), 119.28 (1),
16 119.72 (2) (d), 120.13 (26m), 121.004 (10), 121.05 (1) (a) 1., 121.05 (1) (a) 2.,
17 121.05 (1) (a) 6., 121.135 (title), 121.135 (1), 121.135 (2) (a) 1., 121.135 (2) (a)

1 2., 121.135 (2) (c), 121.135 (3), 121.14 (1), 121.14 (2) (b), 121.14 (3), 121.41 (1),
2 121.54 (3), 121.55 (3), 121.57 (1) (b), 121.58 (3), 121.76 (1) (a), 121.76 (1) (b),
3 121.77 (1) (b), 121.78 (3) (a), 121.83 (1) (a) 3. (intro.) and b., 121.83 (1) (c),
4 121.905 (3) (a), 121.905 (3) (b), 121.91 (4) (a) 3., 253.02 (1) (a), 253.12 (1) (g),
5 254.162 (1) (d), 340.01 (56) (a) 4., 346.475, 448.56 (1), 814.04 (intro.), 904.085
6 (2) (a), 938.34 (7d) (d) and 938.345 (1) (e); **to repeal and recreate** 15.377 (4),
7 subchapter V of chapter 115 [precedes 115.758], 118.15 (4m) and 118.30 (2) (b)
8 1.; and **to create** 115.001 (15) of the statutes; **relating to:** special education
9 programs for children with disabilities and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill reconciles the reauthorization of the federal special education law (the Individuals With Disabilities Education Act amendments of 1997) and Wisconsin's special education law, as embodied in the statutes and the administrative code.

Current law requires each school board to ensure that appropriate special education services and related services are available to children with exceptional educational needs (EEN) who have attained the age of 3, who have not graduated from high school and who reside in the school district or in a state or county residential facility located in the school district. Each school board must ensure that, to the maximum extent appropriate, a child with EEN is educated with children who are not children with EEN and that a continuum of alternative placements is available to meet the needs of children with EEN. In addition, a county board of supervisors may establish a handicapped children's education board to create and administer special education programs in the county.

This bill renames a child with EEN a child with a disability and changes the name of the county handicapped children's education board to the county children with disabilities education board (CWDEB). The bill requires each child with a disability to be provided a "free appropriate public education" (FAPE) by the local educational agency (LEA), which is defined as the school district in which the child with a disability resides, or the department of health and family services or the department of corrections, if the department is responsible for FAPE. In addition, the LEA must do all of the following:

1. Identify, locate and evaluate all children with disabilities who need special education and related services, including children who are not yet 3 years of age.

2. Include children with disabilities in statewide and LEA-wide assessments, or in alternative assessments for those children who cannot participate in statewide or LEA-wide assessments.

3. Ensure that children participating in early intervention programs who will participate in special education, preschool programs, move smoothly into those programs and ensure that, by the time the children reach the age of 3, an individualized education program (IEP) has been developed and implemented for them.

4. Ensure, to the extent consistent with the number and location of children with disabilities residing in the LEA who are enrolled in private schools, that the children receive special education and related services and that the amounts expended for those services are equal to a proportionate amount of federal, special education funds.

5. Make available to the public, upon request, all documents relating to the LEA's eligibility for special education funds and regularly publicize information regarding the special education procedures and services of the LEA.

6. Ensure that children with disabilities who are enrolled in private schools and facilities are provided free special education and related services, in accordance with an IEP, if an LEA places or refers the children to private schools or facilities.

7. Develop a plan, including a program narrative, for the provision of special education and related services.

8. Annually provide a special education performance report to all parents of children enrolled in the LEA.

9. Serve children with disabilities who are attending a charter school under contract with the LEA in the same manner as it serves children with disabilities attending schools of the LEA and provide special education funds to the charter schools in the same manner as it provides those funds to schools of the LEA.

10. Comply with federal law concerning alternative educational placement.

Current law requires the division for learning support, equity and advocacy (the division) in the department of public instruction (DPI) to, among other things, coordinate the development of special education programs in the state, approve special education programs, develop a training program for special education personnel and make available to the public information about special education programs in the state. This bill requires the division to assume the additional responsibility of determining whether significant discrepancies are occurring among LEAs in the rate of long-term suspension and expulsions of children with disabilities compared to rates for nondisabled children.

Current law requires a parent or a physician, nurse or teacher at a state or county residential facility or a psychologist, social worker or administrator of a social agency who has reasonable cause to believe that a child has EEN to report the name of the child and any other information required to the school board for the district, the governing body of the state or county residential facility in which the child resides or to the division. In addition, each school board is responsible for screening each child who resides in the school district and has not graduated from high school to determine if there is reasonable cause to believe that the child is a child with EEN. The school board must appoint a multidisciplinary team (M-team) to evaluate the child. If the M-team reports that the child is a child with EEN and the report is approved by the director of the M-team, the M-team must recommend the child to

the school board for special education. In addition, if a child who is placed in a child caring institution is suspected of being disabled, the M-team must evaluate the child.

Once a child has been recommended to the school board for special education, the school board must appoint staff to develop an IEP for the child. After the IEP has been completed, the director of special education in the school district develops a placement offer for the child that is based upon and designed to carry out the child's IEP. The placement offer must specify the way in which and the level at which special education and related services are to be delivered and the location at which services will be provided. The school board must send a copy of the child's placement offer to the parent within 90 days of the date on which the school board received a referral for an evaluation or initiated a reevaluation for the child. The school board may ask the parent to agree in writing to a specific extension of time beyond the 90-day period or, if the parent refuses, ask the division for an extension if the school board demonstrates that it has acted in good faith and that there is good cause to grant the extension. The director of special education must then place the child in an appropriate placement as near as possible to the place where the child resides.

Under this bill, the LEA must appoint an IEP team that is responsible for evaluating a child with a disability to determine the child's eligibility or continued eligibility for special education and related services, to develop the IEP for the child and to determine the educational placement for the child. The IEP team is also required to evaluate a child in a child caring institution who is suspected of being disabled. If the parents of the child or the LEA determines at any point during the evaluation, development of the IEP or placement of the child that additional time is needed for meaningful parental participation, the LEA must provide it. The bill does not affect the required parental notification of placement within the 90-day period.

This bill also provides that, if the parents of a child with a disability who previously received special education and related services under the authority of a LEA enroll the child in a private elementary or secondary school without the consent of or referral by the LEA, a court or a hearing officer may require the LEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made FAPE available to the child in a timely manner before the enrollment. The cost of this reimbursement, however, may be reduced or denied if any of the following applies: 1) at the most recent IEP meeting that the parents attended before removal of the child from the LEA, the parents did not inform the IEP team of their concerns, their rejection of the placement proposed by the LEA to provide FAPE to their child and their intent to enroll the child in a private school at public expense; 2) at least 10 business days before the removal of the child from the LEA, the parents did not give written notice to the LEA of their concerns, their rejection of the placement and their intent to enroll the child in a private school at public expense; 3) before the parents' removal of the child from the LEA, the LEA notified the parents of its intent to evaluate the child, but the parents did not make the child available for the evaluation; or 4) a court finds that the parents' actions are unreasonable. The reimbursement may not be reduced, however, if the parent is illiterate and cannot write in English, if doing so would likely result in physical or

serious emotional harm to the child, if the LEA prevented the parent from providing notice or if the parents had not received notice of their responsibility to notify the LEA of their intentions.

Under current law, a parent of a child with EEN may file a written request with DPI whenever the school board proposes or refuses to initiate or change the child's M-team evaluation, IEP or educational placement or to contest the payment of an independent evaluation. The school board may also file a written request to override a parent's refusal to or revocation of consent for a M-team evaluation, IEP or educational placement or to contest payment of an independent evaluation. Upon receipt of the written request for a hearing, DPI must appoint an impartial hearing officer to conduct the hearing. Within 45 days after the decision of the hearing officer, either party may appeal the decision to the circuit court for the county in which the child resides.

Under this bill, the parent or an attorney representing the child may file a written request for a hearing with the division. At least five business days before the hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. Within 45 days after the decision of the hearing officer, either party may appeal the decision in the circuit court for the county in which the child resides or in a U.S. district court. With some exceptions, a circuit court may award reasonable attorney fees and actual costs to the parent of a child with a disability who is the prevailing party.

The parties may also request a qualified mediator to resolve a dispute concerning the proposal or refusal to initiate or change the evaluation, IEP, or educational placement of a child with a disability, or the provision of FAPE. Once engaged in mediation, either party may withdraw at any time, and no adverse inference may be drawn from the fact that a party did not consent to mediation, that a party withdrew from mediation or that mediation did not result in settlement of the dispute. If, however, the parties resolve the dispute through mediation, the resolution is legally binding.

The bill also requires the LEA to establish and maintain procedures to ensure: 1) that the parents of a child may examine all records relating to the child and may participate in meetings about the identification, evaluation and educational placement of the child, and the provision of FAPE to the child, and may obtain an independent educational evaluation of the child; 2) that the rights of the child are protected by the assignment of an individual, who may not be an employe of DPI, the LEA or any other agency that is involved in the education or care of the child, to act as a surrogate for the parents whenever the parents of the child are not known, the LEA cannot, after reasonable efforts, locate the parents, or the child is a ward of the state; 3) that the parents of the child receive written notice whenever the LEA proposes to initiate or change, or refuses to initiate or change, the identification, evaluation or educational placement of the child, or the provision of FAPE to the child; and 4) that the parents are offered an opportunity to use mediation to resolve disputes concerning the evaluation, IEP or placement of the child.

This bill requires the state superintendent of public instruction to resolve interagency disputes concerning the placement of a child in a nonresidential educational program or in a child caring institution. Finally, the bill provides that a school board, cooperative education service agency (CESA) and a CWDEB may enter into an agreement with a county administrative service agency to allow employes of the school board, CESA or CWDEB to evaluate a child to determine eligibility for early intervention services and to develop a written plan for providing early intervention services to an eligible child and the child's family.

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.** 15.377 (1) of the statutes, as affected by 1997 Wisconsin Act 27, is
2 amended to read:

3 15.377 (1) COUNCIL ON THE EDUCATION OF THE BLIND. There is created in the
4 department of public instruction a council on the education of the blind consisting
5 of 3 members, who shall ~~be visually handicapped~~ have a visual impairment and shall
6 have a recognized interest in and a demonstrated knowledge of the problems of the
7 ~~visually handicapped children who have visual impairments~~, appointed by the state
8 superintendent of public instruction for staggered 6-year terms. "Visually
9 handicapped" "Visual impairment" means having a) a visual acuity equal to or less
10 than 20/70 in the better eye with correcting lenses, or b) a visual acuity greater than
11 20/70 in the better eye with correcting lenses, but accompanied by a limitation in the
12 field of vision such that the widest diameter of the visual field subtends an angle no
13 greater than 20 degrees.

14 **SECTION 2.** 15.377 (4) of the statutes, as affected by 1997 Wisconsin Act 27, is
15 repealed and recreated to read:

16 15.377 (4) COUNCIL ON SPECIAL EDUCATION. There is created in the department
17 of public instruction a council on special education to advise the state superintendent

1 of public instruction about the unmet educational needs of children with disabilities,
2 in developing evaluations and reporting on data to the federal department of
3 education, in developing plans to address findings identified in federal monitoring
4 reports, in developing and implementing policies relating to the coordination of
5 services for children with disabilities and on any other matters upon which the state
6 superintendent wishes the council's opinion; and to comment publicly on any rules
7 proposed by the department of public instruction regarding the education of children
8 with disabilities. The state superintendent of public instruction shall appoint the
9 members of the council for 3-year terms, and shall ensure that a majority of the
10 members are individuals with disabilities or parents of children with disabilities and
11 that the council is representative of the state population, as determined by the state
12 superintendent. The council shall be composed of individuals who are involved in,
13 or concerned with, the education of children with disabilities, including all of the
14 following:

15 (a) Teachers of regular education and teachers of special education.

16 (b) Representatives of institutions of higher education that train special
17 education and related services personnel.

18 (c) State and local education officials.

19 (d) Administrators of programs for children with disabilities.

20 (e) Representatives of agencies other than the department of public instruction
21 involved in the financing or delivery of related services to children with disabilities.

22 (f) Representatives of private schools and charter schools.

23 (g) At least one representative of a vocational, community or business
24 organization that provides transition services for children with disabilities.

25 (h) Representatives from the department of corrections.

1 (i) Parents of children with disabilities.

2 (j) Individuals with disabilities.

3 **SECTION 3.** 20.255 (1) (d) of the statutes is amended to read:

4 20.255 (1) (d) *Principal repayment and interest.* A sum sufficient to reimburse
5 s. 20.866 (1) (u) for the payment of principal and interest costs incurred in financing
6 the acquisition, construction, development, enlargement or improvement of
7 institutional facilities for the individuals with hearing impaired impairments and
8 visually handicapped visual impairments under s. 115.52 and reference and loan
9 library facilities under s. 43.05 (11).

10 **SECTION 4.** 20.255 (2) (b) (title) of the statutes is amended to read:

11 20.255 (2) (b) (title) *Aids for handicapped special education.*

12 **SECTION 5.** 20.255 (2) (bh) of the statutes is amended to read:

13 20.255 (2) (bh) (title) *Aid to county ~~handicapped children's~~ children with*
14 *disabilities education boards.* The amounts in the schedule for aid to county
15 ~~handicapped children's~~ children with disabilities education boards under s. 121.135.

16 **SECTION 6.** 20.255 (2) (br) of the statutes, as affected by 1997 Wisconsin Act 27,
17 is amended to read:

18 20.255 (2) (br) (title) *Aid for handicapped special education transportation.*

19 The amounts in the schedule for the payment of ~~handicapped~~ special education
20 transportation aid under s. 115.88 (2). If the amount appropriated under this
21 paragraph is insufficient to pay the full amount of aid under s. 115.88 (2), the balance
22 shall be paid from the appropriation under par. (b). No moneys may be encumbered
23 from the appropriation under this paragraph after June 30, 1993.

24 **SECTION 7.** 20.866 (2) (zh) of the statutes, as affected by 1997 Wisconsin Act 27,
25 is amended to read:

1 20.866 (2) (zh) *Public instruction; state schools and library facilities.* From the
2 capital improvement fund, a sum sufficient for the department of public instruction
3 to acquire, construct, develop, enlarge or improve institutional facilities for ~~the~~
4 individuals with hearing impaired impairments and ~~the visually handicapped~~
5 individuals with visual impairments and reference and loan library facilities. The
6 state may contract public debt in an amount not to exceed \$7,367,700 for this
7 purpose.

8 **SECTION 8.** 36.25 (19) of the statutes is amended to read:

9 36.25 (19) MODEL SCHOOL SPECIAL EDUCATION PROGRAM. (a) The board may
10 establish at the University of Wisconsin-Madison a model school for children with
11 ~~exceptional educational needs~~ disabilities, as defined in s. 115.76 (3) (5). The school
12 shall utilize practical demonstration techniques to train teachers and other support
13 personnel under s. 115.28 (7) (c).

14 (b) The board may enter into an agreement with the school board of any school
15 district to provide special education and ~~other~~ related services through the model
16 school to children with ~~exceptional educational needs~~ disabilities. The board may
17 charge tuition for children served in the model school. Tuition charges made under
18 such agreements shall be based on the net cost of providing the special education and
19 other related services.

20 **SECTION 9.** 46.21 (1) (d) of the statutes, as affected by 1997 Wisconsin Act 27,
21 is amended to read:

22 46.21 (1) (d) "Human services" means the total range of services to people,
23 including mental illness treatment, developmental disabilities services, physical
24 disabilities services, relief funded by a relief block grant under ch. 49, income
25 maintenance, youth probation and parole services, alcohol and drug abuse services,

1 services to children, youth and families, family counseling, ~~exceptional educational~~
2 early intervention services for children from birth to the age of 3 and manpower
3 services. "Human services" does not include child welfare services under s. 48.48 (17)
4 administered by the department in a county having a population of 500,000 or more.

5 **SECTION 10.** 46.23 (2) (a) of the statutes is amended to read:

6 46.23 (2) (a) "Human services" means the total range of services to people
7 including, but not limited to, health care, mental illness treatment, developmental
8 disabilities services, relief funded by a block grant under ch. 49, income
9 maintenance, probation and parole services, alcohol and drug abuse services,
10 services to children, youth and aging, family counseling, ~~exceptional educational~~
11 special education services and manpower services.

12 **SECTION 11.** 46.56 (1) (m) of the statutes is amended to read:

13 46.56 (1) (m) "Service coordination agency" means a county department,
14 agency, school district, cooperative educational service agency or county
15 ~~handicapped children's~~ children with disabilities education board designated in an
16 interagency agreement by a coordinating committee to provide intake and service
17 coordination for one or more target groups of eligible children with severe disabilities
18 and their families.

19 **SECTION 12.** 46.56 (3) (a) 6. of the statutes is amended to read:

20 46.56 (3) (a) 6. The largest school district in the county and any cooperative
21 educational service agency, if it provides special education in the county, or any
22 county ~~handicapped children's~~ children with disabilities education board in the
23 county, and any other school district in the county that is willing to participate in the
24 program, at the discretion of the administering agency.

25 **SECTION 13.** 46.56 (3) (d) 1. d. of the statutes is amended to read:

1 46.56 (3) (d) 1. d. Review determinations by the service coordination agency
2 regarding eligibility, assessment, appropriate services, or funding of services at the
3 request of any applicant, recipient, parent or participating county department,
4 agency, school district, cooperative educational service agencies or county
5 ~~handicapped children's~~ children with disabilities education boards. The committee
6 shall adopt written procedures for conducting reviews.

7 **SECTION 14.** 46.56 (5) (a) of the statutes is amended to read:

8 46.56 (5) (a) The identity of every county department, agency, school district,
9 cooperative educational service agency or county ~~handicapped children's~~ children
10 with disabilities education board, technical college district or other organization that
11 will participate in the program.

12 **SECTION 15.** 46.56 (8) (a) of the statutes is amended to read:

13 46.56 (8) (a) Referrals to the program may come from any county departments,
14 agencies, school districts, cooperative educational service agencies, county
15 ~~handicapped children's~~ children with disabilities education boards, technical college
16 districts, courts assigned to exercise jurisdiction under chs. 48 and 938 or any other
17 organization or the child with severe disabilities or his or her family may contact the
18 administering agency or service coordination agency to request services.

19 **SECTION 16.** 46.56 (8) (g) of the statutes is amended to read:

20 46.56 (8) (g) The service coordinator shall assemble the results of all prior
21 relevant assessments and evaluations documenting the service needs of the child
22 with severe disabilities and the child's family, including ~~multidisciplinary~~
23 individualized education program team evaluations under s. ~~115.80 (3)~~ 115.782 or
24 independent educational evaluations, court-ordered evaluations under s. 48.295 or
25 938.295, family support program evaluations, community integration program or

1 community options program assessments, and any other available medical,
2 psychiatric, psychological, vocational or developmental evaluations.

3 **SECTION 17.** 46.56 (15) (d) of the statutes is amended to read:

4 46.56 (15) (d) In order to apply for funding, at least one school district,
5 cooperative educational service agency or county ~~handicapped children's~~ children
6 with disabilities education board serving children with severe disabilities in the
7 county must participate in the program.

8 **SECTION 18.** 48.14 (7) of the statutes is amended to read:

9 48.14 (7) Appeals under s. ~~115.81~~ 115.80 (7).

10 **SECTION 19.** 48.345 (intro.) of the statutes is amended to read:

11 **48.345 Disposition of child adjudged in need of protection or services.**
12 (intro.) If the judge finds that the child is in need of protection or services, the judge
13 shall enter an order deciding one or more of the dispositions of the case as provided
14 in this section under a care and treatment plan, except that the order may not place
15 any child not specifically found under chs. 46, 49, 51, 115 and 880 to be
16 developmentally disabled, mentally ill or to have ~~exceptional educational needs~~ a
17 disability specified in s. 115.76 (5) in facilities which exclusively treat those
18 categories of children. The dispositions under this section are as follows:

19 **SECTION 20.** 48.345 (12) (d) of the statutes is amended to read:

20 48.345 (12) (d) This subsection does not apply to a child with ~~exceptional~~
21 ~~educational needs~~ a disability, as defined under s. 115.76 (3) (5).

22 **SECTION 21.** 48.428 (3) (e) of the statutes is amended to read:

23 48.428 (3) (e) The authority to act as the child's parent under ~~ss. 115.80, 115.81~~
24 subch. V of ch. 115 and s. 118.125.

25 **SECTION 22.** 48.60 (4) of the statutes is amended to read:

1 48.60 (4) (a) In this subsection, “child with ~~exceptional educational needs a~~
2 disability” has the meaning given in s. 115.76 (3) (5).

3 (b) Notwithstanding ss. ~~115.85 (2)~~, 121.78 (3) (a) and 121.79 (1) (a), a child
4 welfare agency shall pay for the costs incurred by a school district in providing
5 special education and related services to a child with ~~exceptional educational needs~~
6 a disability who is a resident of the child welfare agency, if the child was placed in
7 the child welfare agency pursuant to the interstate compact on the placement of
8 children under s. 48.988.

9 **SECTION 23.** 51.05 (5) of the statutes, as affected by 1997 Wisconsin Act 27, is
10 amended to read:

11 51.05 (5) SCHOOL ACTIVITIES. If an individual over the age of 2 and under the
12 age of 22 and eligible for schooling special education and related services under ss.
13 ~~115.76 (2) and 115.85 subch. V of ch. 115~~ is committed, admitted or transferred to or
14 is a resident of the Mendota mental health institute or Winnebago mental health
15 institute, the individual shall attend a school program operated by the applicable
16 mental health institute or a school outside the applicable mental health institute
17 which is approved by the department of public instruction. A school program
18 operated by the Mendota mental health institute or Winnebago mental health
19 institute shall be under the supervision of the department of public instruction and
20 shall meet standards prescribed by that agency.

21 **SECTION 24.** 51.06 (2) of the statutes, as affected by 1997 Wisconsin Act 27, is
22 amended to read:

23 51.06 (2) SCHOOL ACTIVITIES. If an individual over the age of 2 years and under
24 the age of 22 years and eligible for schooling special education and related services
25 under ss. ~~115.76 (2) and 115.85 subch. V of ch. 115~~ is admitted to, is placed in or is

1 a resident of a center, the individual shall attend a school program operated by the
2 center or a school outside the center which is approved by the department of public
3 instruction. A school program operated by the center shall be under the supervision
4 of the department of public instruction and shall meet standards prescribed by that
5 agency.

6 **SECTION 25.** 51.42 (3) (ar) 7. of the statutes is amended to read:

7 51.42 (3) (ar) 7. Acknowledge receipt of the notification received under s. ~~115.85~~
8 (4) 115.812 (2).

9 **SECTION 26.** 51.437 (4m) (g) of the statutes is amended to read:

10 51.437 (4m) (g) Acknowledge receipt of the notification received under s. ~~115.85~~
11 (4) 115.812 (2).

12 **SECTION 27.** 70.11 (10m) of the statutes is amended to read:

13 70.11 (10m) (title) ~~LIONS FOUNDATION CAMPS FOR VISUALLY HANDICAPPED CHILDREN~~
14 WITH VISUAL IMPAIRMENTS. Lands not exceeding 40 acres and the buildings thereon
15 owned by the Wisconsin Lions Foundation and used as camps for visually
16 handicapped children with visual impairments, so long as the property is used for
17 such purposes and not for pecuniary profit of any individual.

18 **SECTION 28.** 70.11 (22) of the statutes is amended to read:

19 70.11 (22) (title) ~~CAMPS FOR HANDICAPPED~~ PERSONS WITH DISABILITIES. Lands not
20 exceeding 10 acres and the buildings thereon owned by the Wisconsin Easter Seal
21 Society for Crippled Children and Adults, Incorporated, and known as Camp
22 Wawbeek, used for camps for ~~physically handicapped~~ children and adults with
23 orthopedic impairments and not to exceed 371 acres of wooded and meadowland
24 adjacent thereto used in connection therewith, excluding a caretaker's home and 10

1 acres of land in connection therewith, so long as the property is used solely for such
2 purposes and not for pecuniary profit of any individual.

3 **SECTION 29.** 79.03 (3) (b) 4. a. of the statutes, as affected by 1997 Wisconsin Act
4 27, is amended to read:

5 79.03 (3) (b) 4. a. "Local general purpose taxes" means the portion of tax
6 increments collected for payment to a municipality under s. 66.46 which is
7 attributable to that municipality's own levy, the portion of environmental
8 remediation tax increments collected for payment to a municipality or county under
9 s. 66.462 that is attributable to that municipality's or county's own levy, general
10 property taxes, excluding taxes for a county ~~handicapped children's~~ children with
11 disabilities education board, collected to finance the general purpose government
12 unit, property taxes collected for sewage and sanitary districts, mobile home fees, the
13 proceeds of county sales and use taxes and municipal and county vehicle registration
14 fees under s. 341.35 (1).

15 **SECTION 30.** 79.10 (1) (e) of the statutes is amended to read:

16 79.10 (1) (e) "School tax levies" means property taxes levied in a municipality
17 for elementary and secondary school districts and for ~~handicapped children's~~ county
18 children with disabilities education board programs under s. ~~115.86~~ 115.817, net of
19 municipal surplus funds applied against those levies.

20 **SECTION 31.** Chapter 115 (title) of the statutes, as affected by 1997 Wisconsin
21 Act 27, is amended to read:

22 **CHAPTER 115**

23 **STATE SUPERINTENDENT; GENERAL**
24 **CLASSIFICATIONS AND DEFINITIONS;**

1 **HANDICAPPED CHILDREN WITH**
2 **DISABILITIES**

3 **SECTION 32.** 115.001 (15) of the statutes is created to read:

4 115.001 (15) "State superintendent" means the state superintendent of public
5 instruction.

6 **SECTION 33.** 115.28 (3) of the statutes is amended to read:

7 115.28 (3) SUPERVISION OF SCHOOLS. Supervise and inspect the public schools
8 and day schools for ~~handicapped children~~ with disabilities, advise the principals and
9 local authorities thereof and give assistance in organizing such schools.

10 **SECTION 34.** 115.28 (7) (c) of the statutes is amended to read:

11 115.28 (7) (c) Subject to s. 118.19 (4m), license and make rules for the
12 examination and licensing of persons, including teachers, employed by to provide
13 publicly funded special education programs, as and related services, as those terms
14 are defined in s. 115.76 (10) (14) and (15).

15 **SECTION 35.** 115.28 (11) of the statutes is amended to read:

16 115.28 (11) DRIVER EDUCATION COURSES. Approve driver education courses
17 offered by school districts, county ~~handicapped children's~~ children with disabilities
18 education boards and technical college districts for the purposes of ss. 121.41 (1) and
19 343.16 (1) (c) 1. and establish minimum standards for driver education courses
20 offered in private schools for the purposes of s. 343.16 (1) (c) 3. All driver education
21 courses approved or for which standards are established under this subsection shall
22 acquaint each student with the hazards posed by farm machinery and animals on
23 highways and shall provide instruction in safely dealing with such hazards.

24 **SECTION 36.** 115.28 (13) of the statutes is amended to read:

1 115.28 (13) UNIFORM FINANCIAL FUND ACCOUNTING. Prescribe a uniform financial
2 fund accounting system, applicable to all school districts and county ~~handicapped~~
3 ~~children's~~ children with disabilities education boards, which provides for the
4 recording of all financial transactions inherent in the management of schools and
5 county ~~handicapped children's~~ children with disabilities education board programs
6 and the administration of the state's school aid programs.

7 **SECTION 37.** 115.28 (19) (a) of the statutes is repealed.

8 **SECTION 38.** 115.28 (19) (b) of the statutes is renumbered 115.28 (19).

9 **SECTION 39.** 115.29 (5) of the statutes is amended to read:

10 115.29 (5) TEACHER SUPPLY, INFORMATION AND ANALYSIS. Assist school boards,
11 cooperative educational service agencies and county ~~handicapped children's~~ children
12 with disabilities education boards to locate qualified professional school personnel,
13 assist qualified professional school personnel to locate vacant positions and provide
14 information and analysis of the professional school personnel supply.

15 **SECTION 40.** 115.362 (4) (a) of the statutes, as affected by 1997 Wisconsin Act
16 27, is amended to read:

17 115.362 (4) (a) Each school board receiving a grant under sub. (2) (a) 2. shall
18 ensure that its program meets standards established by the state superintendent by
19 rule. The school board may establish the program individually or on a cooperative
20 basis with one or more school districts, cooperative educational service agencies or
21 county ~~handicapped children's~~ children with disabilities education boards.

22 **SECTION 41.** 115.37 of the statutes, as affected by 1997 Wisconsin Act 27, is
23 amended to read:

24 **115.37 Council on the education of the blind.** The council on the education
25 of the blind shall make recommendations as to procedures and policies affecting any

1 problem of ~~the visually handicapped~~ children with visual impairments before the
2 department. The council shall advise on such services, activities, programs,
3 investigations and researches as in its judgment will contribute to the welfare of
4 ~~visually handicapped persons~~ with visual impairments. The state superintendent
5 shall seek the advice of and consult with the council on problems and policy changes
6 affecting ~~the visually handicapped~~ persons with visual impairments in the
7 department's jurisdiction, and the council may initiate consultations with the
8 department. Notwithstanding any provision to the contrary, the council shall have
9 access to files, records and statistics kept in the department which relate to matters
10 concerning ~~the visually handicapped~~ children with visual impairments.

11 **SECTION 42.** Subchapter III of chapter 115 (title) [precedes 115.51] of the
12 statutes is amended to read:

13 **CHAPTER 115**

14 **SUBCHAPTER III**

15 **STATE SCHOOLS AND SCHOLARSHIPS**

16 **FOR THE HANDICAPPED**

17 **SECTION 43.** 115.51 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
18 is amended to read:

19 115.51 (1) "Blind" includes persons ~~visually handicapped~~ with visual
20 impairments, as determined by competent medical authority with the approval of
21 the state superintendent.

22 **SECTION 44.** 115.52 (1) of the statutes is amended to read:

23 115.52 (1) The object of the Wisconsin school for the visually handicapped and
24 the Wisconsin school for the deaf is to afford ~~the visually handicapped persons with~~
25 visual impairments and ~~the deaf persons with hearing impairments~~ a practical

1 education and physical rehabilitation which may aid them to make a living,
2 discharge their duties as citizens and secure to them all possible happiness.

3 **SECTION 45.** 115.52 (5) of the statutes, as affected by 1997 Wisconsin Act 27,
4 is amended to read:

5 115.52 (5) The state superintendent may grant approval for the maintenance
6 of a summer school at the school for the deaf whenever it will be to the advantage of
7 deaf persons with hearing impairments and may grant approval for the maintenance
8 of a summer school at the school for the visually handicapped whenever it will be to
9 the advantage of ~~visually handicapped minors~~ children with visual impairments.
10 There shall be a summer school each year at the school for the visually handicapped
11 for ~~visually handicapped adults~~ with visual impairments.

12 **SECTION 46.** 115.52 (7) of the statutes is amended to read:

13 115.52 (7) The Wisconsin school for the deaf may provide instruction for
14 preschool deaf children with hearing impairments and their parents. The Wisconsin
15 school for the visually handicapped may provide instruction for preschool ~~visually~~
16 ~~handicapped~~ children with visual impairments and their parents. Such instruction
17 or treatment shall be subject to the approval of, and shall comply with requirements
18 established by, the department.

19 **SECTION 47.** 115.53 (2) of the statutes is amended to read:

20 115.53 (2) Arrange for vocational, trade or academic training for any pupil in
21 either state school qualified to take such training advantageously, in either a public
22 school or technical college or a private business establishment in Janesville or
23 Delavan. The public school and the technical college shall be paid the regular tuition
24 for full-time attendance and proportionally for part-time attendance by the school

1 district responsible for the pupil's placement in an appropriate program under s.
2 ~~115.85 (1) provision of a free appropriate public education under subch. V.~~

3 **SECTION 48.** 115.55 of the statutes, as affected by 1997 Wisconsin Act 27, is
4 amended to read:

5 **115.55 (title) Library for the blind and visually handicapped persons**
6 **with visual impairments.** Embossed, clear type or large type text books acquired
7 by the school for the visually handicapped shall constitute a circulating collection for
8 ~~the blind and visually handicapped persons with visual impairments.~~ The collection
9 shall be kept at the school and be under the supervision of its superintendent. All
10 ~~blind and visually handicapped~~ school age children with visual impairments of the
11 state may use such books upon compliance with rules made by the superintendent
12 and approved by the state superintendent.

13 **SECTION 49.** 115.74 (1) (a) 3. of the statutes is amended to read:

14 115.74 (1) (a) 3. ~~Placement rates~~ Rates of American Indian children in classes
15 ~~for handicapped pupils receiving special education and related services under subch.~~
16 V of ch. 115 in comparison with statewide and district-wide placement rates.

17 **SECTION 50.** Subchapter V of chapter 115 [precedes 115.758] of the statutes, as
18 affected by 1997 Wisconsin Acts 27 and (Senate Bill 272), is repealed and
19 recreated to read:

20 **CHAPTER 115**

21 **SUBCHAPTER V**

22 **CHILDREN WITH DISABILITIES**

23 **115.758 Construction.** To the extent possible, this subchapter shall be
24 construed in a manner that is consistent with 20 USC 1400 to 1487.

25 **115.76 Definitions.** In this subchapter:

1 **(1)** “Assistive technology device” means any item, piece of equipment or
2 product system that is used to increase, maintain or improve the functional
3 capabilities of a child with a disability.

4 **(2)** “Assistive technology service” means any service that directly assists a child
5 with a disability in the selection, acquisition or use of an assistive technology device,
6 including all of the following:

7 (a) The evaluation of the needs of the child, including a functional evaluation
8 of the child in the child’s customary environment.

9 (b) Purchasing, leasing or otherwise providing for the acquisition of assistive
10 technology devices by the child.

11 (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining,
12 repairing or replacing of assistive technology devices.

13 (d) Coordinating and using other therapies, interventions or services with
14 assistive technology devices, such as those associated with existing education and
15 rehabilitative plans and programs.

16 (e) Training or technical assistance for the child or, where appropriate, the
17 child’s family.

18 (f) Training or technical assistance for professionals, including individuals
19 providing education and rehabilitative services, employers or other individuals who
20 provide services to, employ or are otherwise substantially involved in the major life
21 functions of the child.

22 **(3)** “Child” means any person who is at least 3 years old but not yet 22 years
23 old and who has not graduated from high school.

24 **(4)** “Child caring institution” means a child welfare agency licensed under s.
25 48.60.

1 **(5)** (a) “Child with a disability” means a child who, by reason of any of the
2 following, needs special education and related services:

- 3 1. Cognitive disabilities.
- 4 2. Hearing impairments.
- 5 3. Speech or language impairments.
- 6 4. Visual impairments.
- 7 5. Emotional disturbance.
- 8 6. Orthopedic impairments.
- 9 7. Autism.
- 10 8. Traumatic brain injury.
- 11 9. Other health impairments.
- 12 10. Learning disabilities.

13 (b) “Child with a disability” may, at the discretion of the local educational
14 agency and consistent with department rules, include a child who, by reason of his
15 or her significant developmental delay, needs special education and related services.

16 **(6)** “Division” means the division for learning support, equity and advocacy in
17 the department.

18 **(7)** “Free appropriate public education” means special education and related
19 services that are provided at public expense and under public supervision and
20 direction, meet the standards of the department, include an appropriate preschool,
21 elementary or secondary school education and are provided in conformity with an
22 individualized education program.

23 **(8)** “Hearing officer” means an independent examiner appointed to conduct
24 hearings under s. 115.80.

1 **(9)** “Individualized education program” means a written statement for a child
2 with a disability that is developed, reviewed and revised in accordance with s.
3 115.787.

4 **(10)** “Local educational agency”, except as otherwise provided, means the
5 school district in which the child with a disability resides, or the department of health
6 and family services or the department of corrections if such department is
7 responsible for providing a free appropriate public education to the child.

8 **(11)** “Native language”, when used with reference to an individual of limited
9 English proficiency, means the language normally used by the individual.

10 **(12)** “Parent” means a biological parent; a husband who has consented to the
11 artificial insemination of his wife under s. 891.40; a male who is presumed to be the
12 child’s father under s. 891.41; a male who has been adjudicated the child’s father
13 under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or judgment of
14 an Indian tribal court of competent jurisdiction or by final order or judgment of a
15 court of competent jurisdiction in another state; an adoptive parent; a legal guardian;
16 a person acting as a parent of a child; a person appointed as a sustaining parent
17 under s. 48.428; or a person assigned as a surrogate parent under s. 115.792 (1) (a)
18 2. “Parent” does not include any person whose parental rights have been terminated;
19 the state or a county or a child welfare agency if a child was made a ward of the state
20 or a county or child welfare agency under ch. 880 or if a child has been placed in the
21 legal custody or guardianship of the state or a county or a child welfare agency under
22 ch. 48 or ch. 767; or an American Indian tribal agency if the child was made a ward
23 of the agency or placed in the legal custody or guardianship of the agency.

24 **(13)** “Person acting as a parent of a child” means a relative of the child or a
25 private individual allowed to act as a parent of a child by the child’s biological or

1 adoptive parents or guardian, and includes the child’s grandparent, neighbor, friend
2 or private individual caring for the child with the explicit or tacit approval of the
3 child’s biological or adoptive parents or guardian. “Person acting as a parent of a
4 child” does not include any person that receives public funds to care for the child if
5 such funds exceed the cost of such care.

6 (14) “Related services” means transportation and such developmental,
7 corrective and other supportive services as may be required to assist a child with a
8 disability to benefit from special education, including speech–language pathology
9 and audiology services; psychological services; physical and occupational therapy;
10 recreation, including therapeutic recreation; social work services; counseling
11 services, including rehabilitative counseling; orientation and mobility services;
12 medical services for diagnostic and evaluative purposes only; and the early
13 identification and assessment of disabling conditions in children.

14 (15) “Special education” means specially designed instruction, regardless of
15 where the instruction is conducted, that is provided at no cost to the child or the
16 child’s parents, to meet the unique needs of a child with a disability, including
17 instruction in physical education.

18 (16) “Supplementary aids and services” means aids, services and other
19 supports that are provided in regular education classes or other education–related
20 settings to enable a child with a disability to be educated with nondisabled children
21 to the maximum extent appropriate.

22 (17) “Transition services” has the meaning given in 20 USC 1401 (30).

23 **115.762 Division for learning support, equity and advocacy. (1)**

24 APPOINTMENT OF ADMINISTRATOR. The state superintendent shall appoint the
25 administrator of the division.

1 **(2) STAFF.** Subject to the approval of the state superintendent, the
2 administrator of the division shall appoint qualified staff necessary to perform the
3 duties required of the division.

4 **(3) DIVISION DUTIES.** The division is responsible for all of the following:

5 (a) Ensuring that all children with disabilities, including children who are not
6 yet 3 years of age, who reside in this state and who are in need of special education
7 and related services are identified, located and evaluated.

8 (am) Ensuring that a free appropriate public education is available to all
9 children with disabilities who reside in this state, including such children who are
10 suspended or expelled from school.

11 (b) Developing and implementing a practical method to determine which
12 children with disabilities are receiving special education and related services.

13 (c) Complying with the requirements of this subchapter and applicable federal
14 law, including 20 USC 1415 (k).

15 (d) Coordinating and supervising the provision of all publicly funded special
16 education and related services for children with disabilities in this state and
17 ensuring that such education and services meet the educational standards of the
18 department, including any criteria established by the department relating to
19 enrollment.

20 (e) Pursuant to s. 115.77 (4), approving the plan for the provision of all special
21 education and related services provided by a local educational agency.

22 (g) Monitoring and enforcing local educational agency and child caring
23 institution compliance with this subchapter and applicable federal law, including 20
24 USC 1415 (k).

1 (h) Maintaining current information on all publicly funded special education
2 and related services within this state and making this information public.

3 (i) Coordinating a comprehensive system of personnel development that is
4 designed to ensure an adequate supply of qualified special education, regular
5 education and related services personnel and that meets the requirements of
6 applicable federal law, including participation, as appropriate, by institutions of
7 higher education, state and local agencies and other public and private
8 organizations.

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

18 (4) LIMITATION. Nothing in this subchapter requires that special education and
19 related services be provided to a child with a disability who is at least 18 years old
20 but not yet 22 years old and who, in the child's educational placement before his or
21 her incarceration in a state prison, was not identified as a child with a disability or
22 for whom an individualized education program was not developed.

23 **115.77 Local educational agency duties. (1)** In sub. (1m) (a) to (d), except
24 as provided in s. 118.51 (12) (a) and (b) 2., if a child with a disability is attending a

1 public school in a nonresident school district under s. 118.51, “local educational
2 agency” means the school district that the child is attending.

3 **(1m)** A local educational agency shall demonstrate to the satisfaction of the
4 division that it does all of the following:

5 (a) Identifies, locates and evaluates all children with disabilities who are in
6 need of special education and related services, including such children who are not
7 yet 3 years of age. A local educational agency may provide special education and
8 related services to children with disabilities who are not yet 3 years of age under an
9 interagency agreement with a county agency responsible for the early intervention
10 program under s. 51.44.

11 (b) Makes available a free appropriate public education to children with
12 disabilities as required by this subchapter and applicable state and federal law.

13 (bg) Includes children with disabilities in statewide and local educational
14 agency-wide assessments, with appropriate modifications where necessary, or in
15 alternative assessments for those children who cannot participate in statewide or
16 local educational agency-wide assessments.

17 (c) Ensures that children participating in early intervention programs under
18 s. 51.44 who will participate in preschool programs assisted under this subchapter
19 experience a smooth and effective transition to those preschool programs and that,
20 by the 3rd birthday of such a child, an individualized education program has been
21 developed and is being implemented for the child. The local educational agency shall
22 participate in transition planning conferences arranged by the county
23 administrative agency, as defined in s. HFS 90.03 (10), Wis. adm. code.

24 (d) Ensures that children with disabilities who are enrolled in private schools
25 and facilities are provided special education and related services, in accordance with

1 individualized education programs, at no cost to them or to their parents, if such
2 children are placed in, or referred to, such schools or facilities by a local educational
3 agency to satisfy the requirements of this subchapter or applicable federal law.

4 (e) To the extent consistent with the number and location of children with
5 disabilities residing in the local educational agency who are enrolled by their parents
6 in private elementary and secondary schools, ensures that those children have an
7 opportunity to participate in special education and related services and that the
8 amount spent to provide those services by the local educational agency is equal to a
9 proportionate amount of federal funds made available under this subchapter.

10 (f) Establishes written policies and procedures for implementing this
11 subchapter and applicable federal law.

12 (g) Makes available to any person, upon request, all documents relating to the
13 agency's eligibility for funds under this subchapter.

14 (h) Regularly publicizes information regarding its special education
15 procedures and services.

16 (2) The local educational agency shall provide the division with information
17 necessary to enable the division to carry out its duties under this subchapter and
18 applicable federal law.

19 (3) Any state or federal aid that is made available to a local educational agency
20 for special education and related services shall be used by the local educational
21 agency to comply with this subchapter.

22 (4) A local educational agency shall submit to the division, pursuant to a
23 schedule and instructions established and published by the division, the agency's
24 plan, including a program narrative, for the provision of special education and
25 related services that includes all of the following:

1 (a) The extent to which special education and related services is or is not
2 organized around particular disabilities.

3 (b) The licensure and other preparation or experience of special education staff.

4 (c) The age ranges of pupils who are children with disabilities.

5 (d) The range of severity of disability among children with disabilities.

6 (e) The ratio of pupils to full-time equivalent staff, including both the ratio of
7 pupils assigned to special education instructional and related services staff and to
8 total special education instructional, support and administrative staff.

9 (f) The way parents participate in the development and review of the plan.

10 (g) The extent to which children with disabilities receive special education or
11 related services beyond the school term.

12 (h) The way the local educational agency provides for a continuum of
13 alternative placements that addresses the unique needs of children with disabilities
14 and ensures that such children receive their educational programming in the least
15 restrictive environment, including the agency's use of placements out of the agency
16 and out of the state and private placements.

17 (i) The local educational agency's plan for employing qualified special
18 education and related services staff, evaluating its staff's special education
19 in-service needs and the plan for meeting those needs.

20 (j) The local educational agency's plan for evaluating its system for the design
21 and delivery of special education and related services and for addressing any needs
22 that are identified by the evaluation, including all of the following:

23 1. The local educational agency's graduation rate for children with disabilities
24 and how the rate compares to the agency's graduation rate for nondisabled children.

1 2. The local educational agency's rate of suspension and expulsion of children
2 with disabilities and how the rate compares to the agency's rate of suspension and
3 expulsion of nondisabled children.

4 3. The local educational agency's overall incidence rate of children with
5 disabilities and the agency's incidence rates of particular disabilities.

6 4. The rate of participation of the local educational agency's children with
7 disabilities in statewide and local educational agency-wide assessments and the
8 results of those assessments.

9 5. The rate of participation of the local educational agency's children with
10 disabilities in alternative assessments and the results of those assessments.

11 6. The number of referrals under s. 115.777 and the percentage of those
12 referrals resulting in the provision of special education and related services.

13 7. The number of children with disabilities placed in appropriate, interim,
14 alternative educational settings under 20 USC 1415 (k) (1) (A) (ii).

15 8. The satisfaction of parents of children with disabilities and adult pupils who
16 are receiving special education and related services with special education and
17 related services.

18 9. Information about persons who no longer attend high school and who
19 received special education and related services provided by the local educational
20 agency, such as whether they are employed, are living independently and are
21 enrolled in postsecondary education.

22 10. If the local educational agency is a school district, the number of children
23 with disabilities who attend the school district under s. 118.51, the disability of each
24 such child and the special education or related services received by each such child.

1 (k) A roster of all of the agency's special education and related services staff,
2 their function, their social security numbers and their special education licensure.

3 (L) Statements of assurance as required by applicable federal law.

4 (m) Information relating to access of private school pupils to the local
5 educational agency's special education and related services.

6 (n) Any other information the division requires to permit its review and
7 approval of the plan.

8 **(7)** Annually, the local educational agency shall provide a special education
9 performance report to all parents of children enrolled in the local educational agency
10 and to the division that includes the local educational agency's performance with
11 regard to the factors referenced in the agency's evaluation of its plan under sub. (4)
12 (j) as well as the statewide average with regard to factors in sub. (4) (j) 1. to 5.

13 **(8)** The local educational agency shall serve children with disabilities who are
14 attending a charter school under contract with the local educational agency under
15 s. 118.40 in the same manner as it serves children with disabilities attending schools
16 of the local educational agency, and shall provide funds under this subchapter to such
17 charter schools in the same manner as it provides funds under this subchapter to
18 schools of the local educational agency.

19 **(9)** The local educational agency shall exercise its authority in compliance with
20 20 USC 1415 (k).

21 **115.777 Special education referrals.** **(1)** (a) A physician, nurse,
22 psychologist, social worker or administrator of a social agency who reasonably
23 believes that a child brought to him or her for services has a disability shall refer the
24 child to the local educational agency. If the local educational agency to whom the
25 referral is made is the school district in which the child resides but the child is

1 attending a public school in a nonresident school district under s. 118.51, the school
2 board of the school district in which the child resides shall provide the name of the
3 child and related information to the school board of the school district that the child
4 is attending.

5 (b) A person who is required to be licensed under s. 115.28 (7), who is employed
6 by a local educational agency and who reasonably believes a child has a disability,
7 shall refer the child to the local educational agency. If the local educational agency
8 to whom the referral is made is the school district that the child is attending but the
9 child is a nonresident attending a public school in that school district under s. 118.51,
10 the school board of the school district that the child is attending shall provide the
11 name of the child and related information to the school board of the child's school
12 district of residence.

13 (c) Any person other than those specified under par. (a) or (b) who reasonably
14 believes that a child is a child with a disability may refer the child to a local
15 educational agency. If the local educational agency to whom the referral is made is
16 the school district in which the child resides but the child is attending a public school
17 in a nonresident school district under s. 118.51, the school board of the school district
18 in which the child resides shall provide the name of the child and related information
19 to the school board of the school district that the child is attending.

20 **(2)** (a) All referrals shall be in writing and shall include the name of the child
21 and the reasons why the person believes that the child is a child with a disability.

22 (b) Before submitting a referral to a local educational agency under sub. (1) (a)
23 or (b), a person required to make a referral under sub. (1) (a) or (b) shall inform the
24 child's parent that he or she is going to submit the referral.

25 **(3)** A local educational agency shall do all of the following:

- 1 (a) Establish written procedures for accepting and processing referrals.
- 2 (b) Document and date the receipt of each referral.
- 3 (c) Provide information and in-service opportunities to all of its licensed staff
4 to familiarize them with the agency's referral procedures.
- 5 (d) At least annually, inform parents and persons required to make referrals
6 under sub. (1) (a) about the agency's referral and evaluation procedures.

7 **115.78 Individualized education program team; timeline. (1)**

8 DEFINITION. In this section, for a child who is attending a public school in a
9 nonresident school district under s. 118.51, "local educational agency" means the
10 school board of the school district that the child is attending.

11 **(1m) APPOINTMENT OF TEAM.** The local educational agency shall appoint an
12 individualized education program team for each child referred to it under s. 115.777.
13 Each team shall consist of all of the following:

- 14 (a) The parents of the child.
- 15 (b) At least one regular education teacher of the child if the child is, or may be,
16 participating in a regular educational environment.
- 17 (c) At least one special education teacher or, where appropriate, at least one
18 special education provider of the child.
- 19 (d) A representative of the local educational agency who is qualified to provide,
20 or supervise the provision of, special education, is knowledgeable about the general
21 curriculum and is knowledgeable about and authorized to commit the available
22 resources of the local educational agency.
- 23 (e) An individual who can interpret the instructional implications of evaluation
24 results, who may be a team participant under pars. (b) to (d) or (f).

1 (f) At the discretion of the parent or the local educational agency, other
2 individuals who have knowledge or special expertise about the child, including
3 related services personnel as appropriate.

4 (g) Whenever appropriate, the child.

5 **(2) DUTIES OF TEAM.** The individualized education program team shall do all of
6 the following:

7 (a) Evaluate the child under s. 115.782 to determine the child's eligibility or
8 continued eligibility for special education and related services and the educational
9 needs of the child.

10 (b) Develop an individualized education program for the child under s. 115.787.

11 (c) Determine the special education placement for the child under s. 115.79.

12 **(3) TIMELINE.** (a) The local educational agency shall notify the parents of the
13 educational placement of their child within 90 days after the local educational
14 agency receives a special education referral for the child under s. 115.777 or initiates
15 a reevaluation of the child under s. 115.782 (4).

16 (b) Before the expiration of the 90-day period, if a local educational agency
17 needs an extension, it shall inform the child's parent of the need and reasons for an
18 extension and request the child's parent to agree in writing to a specific extension of
19 time beyond the 90-day period.

20 (c) If the parent does not agree to an extension, the local educational agency
21 may request an extension from the division. The local educational agency shall
22 inform the division of the reasons for the request. The division may grant a specific
23 extension of time beyond the 90-day period if the local educational agency shows that
24 it has acted in good faith and that there is good cause to grant the extension. If the

1 division grants an extension, it shall notify the parent of the extension and the
2 reasons for granting it.

3 (d) Subject to pars. (a) to (c), if the parents of the child or the local educational
4 agency staff determines at any point during the process of the evaluation,
5 development of the individualized education program or placement of the child that
6 additional time is needed to permit meaningful parental participation, the local
7 educational agency shall provide it.

8 (4) At the beginning of any meeting to address the evaluation, individualized
9 education program or placement of a child, the local educational agency staff shall
10 inform the child's parents of their right to be provided with additional time under
11 sub. (3) (d) and their right to a copy of the evaluation report under s. 115.782 (3) (b)
12 or (c).

13 **115.782 Evaluations. (1) NOTICE; CONSENT.** (a) The local educational agency
14 shall notify the parents of the child, in accordance with s. 115.792, of any evaluation
15 procedures the agency proposes to conduct, the qualifications of the individuals who
16 will conduct the evaluation and their names, if known.

17 (b) The local educational agency proposing to conduct an initial evaluation
18 shall obtain informed consent from the child's parent before the evaluation is
19 conducted. Parental consent for the evaluation does not constitute consent for
20 placement for receipt of special education and related services. If the child's parents
21 do not consent to the evaluation, the local educational agency may continue to pursue
22 an evaluation by using the procedures under s. 115.797 or 115.80.

23 (2) CONDUCT OF EVALUATION. (a) In conducting the evaluation, the
24 individualized education program team shall not use any single procedure as the sole
25 criterion for determining whether a child is a child with a disability or for

1 determining an appropriate educational program for the child. The individualized
2 education program team shall do all of the following:

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

9 2. Use technically sound instruments that may assess the relative contribution
10 of cognitive and behavioral factors, in addition to physical or developmental factors.

11 3. Ensure all of the following:

12 a. That tests and other evaluation materials used to assess a child under this
13 section are selected and administered so as not to be racially or culturally
14 discriminatory and are provided and administered in the child's native language or
15 other mode of communication, unless it is clearly not feasible to do so.

16 b. That any standardized tests that are given to the child have been validated
17 for the specific purpose for which they are used, are administered by trained and
18 knowledgeable personnel and are administered in accordance with any instructions
19 provided by the producer of such tests.

20 c. That the child is assessed in all areas of suspected disability.

21 d. That assessment tools and strategies that provide relevant information that
22 directly assists persons in determining the educational needs of the child are used.

23 (b) As part of an initial evaluation of a child and as part of any reevaluation of
24 a child under sub. (4), the individualized education program team and other qualified

1 professionals, as determined by the local educational agency, shall do all of the
2 following:

3 1. Review existing evaluation data on the child, including evaluations and
4 information provided by the child's parents, previous interventions and the effects
5 of those interventions, current classroom-based assessments and observations, and
6 observations by teachers and related services providers.

7 2. On the basis of that review and information provided by the child's parents,
8 identify the additional data, if any, that are needed, and the qualifications of the
9 evaluators that are needed, to determine all of the following:

10 a. Whether the child has a particular category of disability or, in case of a
11 reevaluation of a child, whether the child continues to have such a disability.

12 b. The present levels of performance and educational needs of the child.

13 c. Whether the child needs special education and related services, or in the case
14 of a reevaluation of a child, whether the child continues to need special education and
15 related services.

16 d. Whether any additions or modifications to the special education and related
17 services are needed to enable the child to meet the measurable, annual goals
18 specified in the child's individualized education program and to participate, as
19 appropriate, in the general curriculum.

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

22 2.

23 (d) If the child being evaluated is attending a public school in a nonresident
24 school district under s. 118.51, as part of its initial evaluation of the child and as part
25 of any reevaluation of the child under sub. (4), the individualized education program

1 team shall collaborate with appropriate personnel designated by the school board of
2 the child's school district of residence.

3 **(3) DETERMINATION OF ELIGIBILITY FOR SPECIAL EDUCATION.** (a) Upon the
4 completion of the administration of tests and other evaluation materials, the
5 individualized education program team shall determine whether the child is a child
6 with a disability. The individualized education program team may not determine
7 that a child is a child with a disability solely because the child has received
8 insufficient instruction in reading or math or because the child has limited
9 proficiency in English.

10 (b) If the individualized education program team determines that a child is a
11 child with a disability, the team shall prepare an evaluation report that includes
12 documentation of determination of eligibility. If the child's parents request a copy
13 of the evaluation report at any point in the process of developing the child's
14 individualized education program or considering the child's educational placement,
15 the local educational agency shall give a copy of the report to the child's parents
16 before continuing with the process. If the child's parents do not request a copy of the
17 evaluation report, the local educational agency shall give a copy to the child's parents
18 with the notice of placement under s. 115.792 (2).

19 (c) If the individualized education program team determines that a child is not
20 a child with a disability, the team shall prepare an evaluation report. The report shall
21 identify any educational needs of the child and any services offered by the local
22 educational agency from which the child may benefit and shall include information
23 about any programs and services, other than those offered by the local educational
24 agency, that may benefit the child. The local educational agency shall give a copy of
25 the evaluation report to the child's parents with the notice under s. 115.792 (1) (b).

1 **(4) REEVALUATIONS.** (a) A local educational agency shall ensure that the
2 individualized education program team does all of the following:

3 1. Evaluates a child with a disability in accordance with this section before
4 determining that the child is no longer a child with a disability.

5 2. Reevaluates a child with a disability in accordance with this section if the
6 local educational agency determines that conditions warrant a reevaluation or if the
7 child's parent or teacher requests a reevaluation, but at least once every 3 years.

8 (b) The local educational agency shall obtain informed consent from the child's
9 parent before reevaluating a child with a disability, except that such consent need
10 not be obtained if the local educational agency has taken reasonable measures to
11 obtain such consent and the child's parents have failed to respond.

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

20 **115.787 Individualized education programs. (1) REQUIREMENT THAT**
21 **PROGRAM BE IN EFFECT.** At the beginning of each school year, each local educational
22 agency shall have in effect, for each child with a disability, an individualized
23 education program.

24 **(2) REQUIRED COMPONENTS.** An individualized education program shall include
25 all of the following:

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

5 (b) A statement of measurable annual goals for the child, including
6 benchmarks or short-term objectives, related to meeting the child's needs that result
7 from the child's disability to enable the child to be involved in and progress in the
8 general curriculum, and to meeting each of the child's other educational needs that
9 result from the child's disability.

10 (c) A statement of the special education and related services and
11 supplementary aids and services to be provided to the child, or on behalf of the child,
12 and a statement of the program modifications or supports for school personnel that
13 will be provided for the child to do all of the following:

14 1. Advance appropriately toward the annual goals.

15 2. Be involved and progress in the general curriculum in accordance with par.

16 (a) and participate in extracurricular and other nonacademic activities.

17 3. Be educated and participate with other children with disabilities and
18 nondisabled children in the activities described in this subsection.

19 (d) An explanation of the extent to which the child will not participate with
20 nondisabled children in regular classes, in the general curriculum and in
21 extracurricular and other nonacademic activities.

22 (e) 1. A statement of any individual modifications in the administration of any
23 statewide or local educational agency-wide assessment of pupil achievement that
24 are needed for the child to participate in the assessment.

1 2. If the individualized education program team determines that a child will
2 not participate in a particular statewide or local educational agency-wide
3 assessment of pupil achievement, or part of such an assessment, a statement of why
4 that assessment is not appropriate for the child and how the child will be assessed
5 through alternative means.

6 (f) The projected date for the beginning of the services and modifications
7 described in par. (c) and the anticipated frequency, location and duration of those
8 services and modifications.

9 (g) 1. Beginning when the child attains the age of 14, and annually thereafter
10 until the child is no longer eligible for special education and related services, a
11 statement identifying the courses of study needed to prepare the child for a
12 successful transition to his or her goals for life after secondary school, such as
13 participation in advanced placement courses or a vocational education program.

14 2. Beginning when the child attains the age of 16, or earlier if that is
15 determined to be appropriate by the individualized education program team, and
16 annually thereafter until the child is no longer eligible for special education and
17 related services, a statement of the needed transition services of the child, including,
18 when appropriate, a statement of the interagency responsibilities or any cooperative
19 arrangements between and among persons.

20 3. Beginning at least one year before the child attains the age of 18, and
21 annually thereafter until the child is no longer eligible for special education and
22 related services, a statement that the child has been informed of the parental rights
23 that will transfer to the child on reaching the age of 18 under s. 115.807.

24 (h) A statement of all of the following:

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

3 2. How the child's parents will be regularly informed, at least as often as
4 parents are informed of their nondisabled children's progress, of their child's
5 progress toward the annual goals and the extent to which that progress is sufficient
6 to enable the child to achieve the goals by the end of the effective period of the
7 individualized education program.

8 **(3) DEVELOPMENT.** (a) In developing each child's individualized education
9 program, the individualized education program team shall consider the strengths of
10 the child, the concerns of the child's parents for enhancing the education of their child
11 and the results of the initial evaluation or most recent reevaluation of the child.

12 (b) The individualized education program team shall do all of the following:

13 1. In the case of a child whose behavior impedes his or her learning or that of
14 others consider, when appropriate, strategies, including positive behavioral
15 interventions, and supports to address that behavior.

16 2. In the case of a child with limited English proficiency, consider the language
17 needs of the child as such needs relate to the child's individualized education
18 program.

19 3. In the case of a child who is visually impaired, provide for instruction in
20 Braille and the use of Braille unless the individualized education program team
21 determines, after an evaluation of the child's reading and writing skills, needs and
22 appropriate reading and writing media, including an evaluation of the child's future
23 needs for instruction in Braille or the use of Braille, that instruction in Braille or the
24 use of Braille is not appropriate for the child.

1 4. Consider the communicative needs of the child, and, in the case of a child who
2 is hearing impaired, consider the child's language and communicative needs,
3 opportunities for direct communications with peers and professional personnel in
4 the child's language and communicative mode, academic level and full range of
5 needs, including opportunities for direct instruction in the child's language and
6 communicative mode.

7 5. Consider whether the child requires assistive technology devices and
8 services.

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

15 (d) If a child is attending a public school in a nonresident school district under
16 s. 118.51, the individualized education program team for the child shall develop the
17 child's individualized education program in collaboration with appropriate
18 personnel designated by the school board of the school district in which the child
19 resides.

20 (e) The local educational agency shall give a copy of the child's individualized
21 education program to the child's parents with the notice of placement under s.
22 115.792 (2).

23 **(4) REVIEW AND REVISION.** (a) The individualized education program team shall
24 do all of the following:

1 1. Review the child's individualized education program periodically, but at least
2 annually, to determine whether the annual goals for the child are being achieved.

3 2. Revise the individualized education program as appropriate to address all
4 of the following:

5 a. Any lack of expected progress toward the annual goals and in the general
6 curriculum.

7 b. The results of any reevaluation conducted under s. 115.782.

8 c. Information about the child provided to or by the child's parents, as described
9 in s. 115.782.

10 d. The child's anticipated needs.

11 e. Other matters.

12 (b) The regular education teacher of the child, as a participant on the
13 individualized education program team, shall, to the extent appropriate, participate
14 in the review and revision of the individualized education program of the child.

15 **(5) FAILURE TO MEET TRANSITION OBJECTIVES.** If a participating agency, other than
16 the local educational agency, fails to provide transition services in accordance with
17 sub. (2) (g) 2., the local educational agency shall reconvene the individualized
18 education program team to identify alternative strategies to meet the transition
19 objectives for the child set out in the individualized education program.

20 **(6) CHILDREN WITH DISABILITIES IN STATE PRISONS.** (a) 1. The requirements
21 relating to participation of children with disabilities in general assessments under
22 sub. (2) (e) do not apply to a child with a disability who is convicted of a crime under
23 state law and incarcerated in a state prison.

24 2. The requirements relating to transition planning and transition services
25 under sub. (2) (g) 1. and 2. do not apply with respect to a child with a disability who

1 is convicted of a crime under state law and incarcerated in a state prison and whose
2 eligibility under this subchapter will end, because of his or her age, before he or she
3 will be released from prison.

4 (b) If a child with a disability is convicted of a crime and incarcerated in a state
5 prison, the child's individualized education program team may modify the child's
6 individualized education program or placement notwithstanding the requirements
7 of sub. (1) and s. 115.79 (1) if the department of corrections has demonstrated a bona
8 fide security or compelling penological interest that cannot otherwise be
9 accommodated.

10 **(7) CONSTRUCTION.** Nothing in this section requires the individualized
11 education program team to include information under one component of a child's
12 individualized education program that is already contained under another
13 component of the individualized education program.

14 **115.79 Educational placements.** Each local educational agency shall ensure
15 that all of the following occur:

16 **(1)** An evaluation is conducted under s. 115.782 before special education and
17 related services are provided to a child with a disability.

18 **(2)** An educational placement is provided to implement a child's individualized
19 education program. Except as provided in s. 118.51 (12) (a) and (b) 2., if a child with
20 a disability is attending a public school in a nonresident school district under s.
21 118.51, the school board of the school district that the child is attending shall provide
22 an educational placement for the child and shall pay tuition charges instead of the
23 school district in which the child resides if required by the placement.

1 **(3)** To the maximum extent appropriate, a child with a disability, including a
2 child receiving publicly funded special education in a public or private institution or
3 other care facility, is educated with nondisabled children.

4 **(4)** Special classes, separate schooling or other removal of a child with a
5 disability from the regular educational environment occurs only when the nature or
6 severity of the child's disability is such that education in regular classes with the use
7 of supplementary aids and services cannot be achieved satisfactorily.

8 **115.791 Reimbursement for private school placement.** **(1)** If the parents
9 of a child with a disability who previously received special education and related
10 services under the authority of a local educational agency enroll the child in a private
11 elementary or secondary school without the consent of or referral by the local
12 educational agency, a court or a hearing officer may require the local educational
13 agency to reimburse the parents for the cost of that enrollment if the court or hearing
14 officer finds that the local educational agency had not made a free appropriate public
15 education available to the child in a timely manner before that enrollment.

16 **(2)** The cost of reimbursement described in sub. (1) may be reduced or denied
17 if any of the following applies:

18 **(a)** At the most recent individualized education program meeting that the
19 parents attended before removal of the child from the local educational agency, the
20 parents did not inform the individualized education program team of their concerns,
21 their rejection of the placement proposed by the local educational agency to provide
22 a free appropriate public education to their child and their intent to enroll the child
23 in a private school at public expense; or at least 10 business days, including any
24 holidays that occur on a business day, before the removal of the child from the local
25 educational agency, the parents did not give written notice to the local educational

1 agency of their concerns, their rejection of the placement and their intent to enroll
2 the child in a private school at public expense.

3 (b) If, before the parents' removal of the child from the local educational agency,
4 the local educational agency notified the parents under s. 115.792 of its intent to
5 evaluate the child, including a statement of the purpose of the evaluation that was
6 appropriate and reasonable, but the parents did not make the child available for the
7 evaluation.

8 (c) A court finds the parents' actions unreasonable.

9 **(3)** Notwithstanding the notice requirement in sub. (2) (a), the cost of
10 reimbursement may not be reduced or denied for failure to provide such notice if any
11 of the following apply:

12 (a) The parent is illiterate and cannot write in English.

13 (b) Compliance with sub. (2) (a) would likely result in physical or serious
14 emotional harm to the child.

15 (c) The local educational agency prevented the parent from providing such
16 notice.

17 (d) The parents had not received notice, pursuant to s. 115.792, of the notice
18 requirement in sub. (2) (a).

19 **(4)** Subject to s. 115.77 (1m) (d) and (e), this section does not require a local
20 educational agency to pay the cost of education, including special education and
21 related services, of a child with a disability at a private school or facility if the local
22 educational agency made a free appropriate public education available to the child
23 and the child's parents elected to place the child in a private school or facility.

1 **115.792 Procedural safeguards. (1) SAFEGUARDS ENSURED.** (a) The local
2 educational agency shall establish and maintain procedures to ensure all of the
3 following:

4 1. That the parents of a child may examine all records relating to the child and
5 may participate in meetings about the identification, evaluation and educational
6 placement of the child, and the provision of a free appropriate public education to the
7 child, and may obtain an independent educational evaluation of the child.

8 2. That a child’s rights are protected by the assignment of an individual, who
9 shall not be an employe of the department, the local educational agency or any other
10 agency that is involved in the education or care of the child, to act as a surrogate for
11 the child’s parents whenever the child’s parents are not known; the local educational
12 agency cannot, after reasonable efforts, locate the child’s parents; or the child is a
13 ward of the state.

14 3. That a child’s parents are offered an opportunity to use mediation under s.
15 115.797.

16 (b) The local educational agency shall establish and maintain procedures to
17 ensure that a child’s parents are provided prior written notice whenever the local
18 educational agency proposes to initiate or change, or refuses to initiate or change, the
19 identification, evaluation or educational placement of the child, or the provision of
20 a free appropriate public education to the child. In this paragraph, “local educational
21 agency” includes the nonresident school district that a child is attending under s.
22 118.51.

23 **(2) NOTICE.** The notice required under sub. (1) (b) shall be in the native
24 language of the child’s parents unless the local educational agency determines that
25 it clearly is not feasible to do so and shall include all of the following:

1 (a) A description of the action proposed or refused by the local educational
2 agency.

3 (b) An explanation of why the local educational agency proposes or refuses to
4 take the action.

5 (c) A description of any other options that the local educational agency
6 considered and the reasons why it rejected those options.

7 (d) A description of each evaluative procedure, test, record or report that the
8 local educational agency used as a basis for the proposed or refused action.

9 (e) If the notice proposes to evaluate or reevaluate the child, the qualifications
10 of the evaluators and their names, if known.

11 (f) A description of any other factors that are relevant to the local educational
12 agency's proposal or refusal.

13 (g) A statement that the parents of a child with a disability have procedural
14 safeguards under this section and, if this notice is not an initial referral for
15 evaluation, or reevaluation, or a notice of an individualized education program
16 meeting, the way in which the parents may obtain a description of the procedural
17 safeguards under sub. (3).

18 (h) Sources for parents to contact to obtain assistance in understanding this
19 subchapter.

20 (i) The rights specified in s. 115.78 (4).

21 **(3) PROCEDURAL SAFEGUARDS NOTICE.** (a) In this subsection, "local educational
22 agency" includes the nonresident school district that a child is attending under s.
23 118.51.

24 (b) The local educational agency shall give to the parents of a child with a
25 disability, upon the child's initial referral for evaluation, upon each notification of an

1 individualized education program meeting and upon reevaluation of the child, a full
2 explanation written so as to be easily understood by the general public, and in the
3 native language of the child's parents unless it clearly is not feasible to do so, of the
4 procedural safeguards available under this section and under applicable federal law
5 relating to all of the following:

6 1. Independent educational evaluation.

7 2. Prior written notice.

8 3. Parental consent.

9 4. Access to educational records.

10 5. Opportunity to present complaints.

11 6. The child's placement during pendency of due process proceedings.

12 7. Procedures for pupils who are subject to placement in interim alternative
13 educational settings under 20 USC 1415 (k).

14 8. Requirements for the unilateral placement by parents of pupils in private
15 schools at public expense.

16 9. Mediation.

17 10. Hearings under s. 115.80.

18 11. Civil actions.

19 12. Attorney fees.

20 **115.797 Mediation. (1) DEFINITIONS.** In this section:

21 (a) "Dispute" means any disagreement between parties concerning the
22 proposal or refusal to initiate or change the evaluation, individualized education
23 program or educational placement of a child with a disability or the provision of a free
24 appropriate public education to such a child. "Dispute" includes any such

1 disagreement between parties in which other processes, including a hearing under
2 s. 115.80 or litigation, have been requested or commenced.

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

4 (c) "Party" means a competent adult pupil or the parent of a child or
5 incompetent adult pupil who is the subject of a dispute, and the local educational
6 agency.

7 **(2) REQUEST FOR MEDIATION, CONSENT OF PARTIES.** (a) The division shall establish
8 a program for the mediation of disputes between parties. A party may request the
9 division to arrange for mediation of a dispute at any time. The request shall be in
10 writing, shall briefly describe the dispute and shall identify both parties. Both
11 parties may jointly request mediation.

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

15 1. An explanation of mediation and its advantages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **(5) MEDIATION.** (a) Unless both parties agree otherwise, mediation shall
11 commence within 21 days after the mediator is appointed and shall not delay
12 hearings or appeals related to the dispute. All mediation sessions shall be held in
13 a location that is convenient to the parties.

14 (b) The parents of the child or adult pupil and 2 representatives of the local
15 educational agency may participate in mediation. With the consent of both parties,
16 other persons may participate in mediation. With the consent of both parties, a
17 division representative may observe the mediation sessions.

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

23 (d) Either party may recess a mediation session to consult advisors, whether
24 or not present, or to consult privately with the mediator. The mediator may recess
25 a mediation session to consult privately with a party. If the mediator does so, he or

1 she shall disclose the general purpose of the consultation but may not reveal other
2 information about the consultation without the consent of the party consulted.

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

5 (f) Discussions that occur during mediation are confidential and may not be
6 used as evidence in any subsequent hearing or civil proceeding. The mediator may
7 require the parties to sign a confidentiality pledge before the commencement of
8 mediation.

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

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

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

19 **(7) MEDIATOR COMPENSATION.** (a) The division shall establish a schedule for the
20 compensation of mediators and the reimbursement of their expenses. The
21 department shall pay mediators from the appropriation under s. 20.255 (1) (me).

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

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

3 (8) PROGRAM EVALUATION. The division may require that mediators, and may
4 request that parties, participate in the evaluation of the mediation program. The
5 division shall ensure that mediators and parties may participate in evaluating the
6 program without being required to identify themselves or the other mediation
7 participants. The division may not disclose a party's or mediator's evaluation to any
8 other mediation participant without the party's or mediator's consent.

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

13 **115.80 Due process hearings.** (1) (a) 1. A parent, or the attorney
14 representing the child, may file a written request with the division for a hearing
15 whenever the local educational agency proposes or refuses to initiate or change his
16 or her child's evaluation, individualized education program, educational placement
17 or the provision of a free appropriate public education. The division shall develop a
18 model form to assist parents in filing a request under this subdivision.

19 2. The parent, or the attorney representing the child, shall include in the
20 request under subd. 1. the name of the child, the address of the residence of the child,
21 the name of the school the child is attending, a description of the nature of the
22 problem of the child relating to the proposed or refused initiation or change,
23 including facts relating to the problem, and a proposed resolution of the problem to
24 the extent known and available to the parents at the time.

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

5 (c) A parent, the attorney representing the child or a local educational agency
6 may file a written request for a hearing as provided in 20 USC 1415 (k).

7 (d) Upon receiving a request for a hearing, the division shall give to the child’s
8 parents a copy of the procedural safeguards available to the parents under s. 115.792
9 and under federal regulations.

10 **(2)** The division shall maintain a list of qualified hearing officers who are not
11 employed by or under contract with the department or the local educational agency,
12 other than being appointed under this subsection, to serve as hearing officers in
13 hearings under this section. Upon receipt of a written request for a hearing under
14 sub. (1), the division shall appoint a hearing officer from the list.

15 **(3)** Any party to a hearing conducted under this section may be accompanied
16 and advised by counsel and by individuals with special knowledge or training with
17 respect to the problems of children with disabilities and may present evidence and
18 confront, cross-examine and compel the attendance of witnesses. A party shall be
19 provided with written or, at the option of the child’s parents, electronic findings of
20 facts and decisions, and, upon request, a written or, at the option of the child’s
21 parents, an electronic, verbatim record of the hearing.

22 **(4)** At least 5 business days before a hearing is conducted under this section,
23 other than an expedited hearing under 20 USC 1415 (k), each party shall disclose to
24 all other parties all evaluations completed by that date and recommendations based
25 on the offering party’s evaluations that the party intends to use at the hearing. The

1 hearing officer may bar any party that fails to comply with this subsection from
2 introducing the relevant evaluation or recommendation at the hearing without the
3 consent of the other party.

4 (5) A hearing officer may administer oaths and affirmations, issue subpoenas
5 and enforce subpoenas under ss. 885.01 (4) and 885.12, regulate the course of the
6 hearing and hold conferences for the settlement or simplification of the issues. The
7 hearing officer is not bound by common law or statutory rules of evidence. The
8 hearing officer shall admit all testimony having reasonable probative value, but
9 shall exclude immaterial, irrelevant or unduly repetitious testimony. The hearing
10 officer shall give effect to the rules of privilege recognized by law. A hearing officer
11 has the authority to issue an order consistent with this subchapter and 20 USC 1415
12 (k) and to order whatever remedy is reasonably necessary to bring the parties into
13 compliance with this subchapter. The hearing officer's decision shall consist of
14 findings of fact and conclusions of law and shall be based upon a preponderance of
15 the evidence. The findings of fact shall be based solely upon the evidence received
16 at the hearing.

17 (6) The hearing officer shall issue a decision within 45 days after the receipt
18 of the request for the hearing under sub. (1). The hearing officer may order an
19 independent educational evaluation of the child at local educational agency expense
20 and grant specific extensions of time for cause at the request of either party. If the
21 hearing officer grants an extension of time, he or she shall include that extension and
22 the reason for the extension in the record of the proceedings. The local educational
23 agency shall pay the cost of the hearing.

24 (7) Any party aggrieved by the decision of the hearing officer may bring a civil
25 action in the circuit court for the county in which the child resides or in a U.S. district

1 court. An action filed in circuit court shall be commenced within 45 days after service
2 of the decision of the hearing officer. In any action brought under this subsection,
3 the court shall receive the records of the administrative proceedings, shall hear
4 additional evidence at the request of a party and, basing its decision on the
5 preponderance of the evidence, shall grant such relief as the court determines is
6 appropriate. Sections 227.52 to 227.58 do not apply to actions under this subsection.

7 (8) Except as provided in 20 USC 1415 (k), during the pendency of any
8 proceedings under this section, the local educational agency may not change the
9 educational placement of a child unless the child’s parents agree to the change. If
10 the child is applying for initial admission to a public school, the child shall, with the
11 consent of the child’s parents, be placed in the public school program until all
12 proceedings under this section have been completed. In this subsection, “local
13 educational agency” includes the nonresident school district that a child is attending
14 under s. 118.51.

15 (9) (a) Subject to par. (b), a circuit court may award reasonable attorney fees
16 and actual costs to the parents of a child with a disability who is the prevailing party
17 in any action or proceeding brought in circuit court under this section.

18 (b) 1. Fees and costs may not be awarded under par. (a) for services performed
19 after a written offer of settlement to a parent if all of the following apply:

20 a. The offer is made within the time prescribed by s. 807.01 for actions in circuit
21 court and at least 11 days before the hearing begins for administrative hearings.

22 b. The offer is not accepted within 10 days.

23 c. The court or hearing officer finds that the relief granted to the parents is not
24 more favorable to the parents than the offer of settlement.

1 2. Fees and costs may not be awarded under par. (a) if they relate to any meeting
2 of the individualized education program team unless the meeting is convened as a
3 result of an administrative hearing or judicial action, or for mediation under s.
4 115.797 that is conducted before filing a request for a hearing under sub. (1).

5 (c) Notwithstanding par. (b), fees and costs may be awarded under par. (a) to
6 a parent who is the prevailing party and whose rejection of a settlement offer was
7 substantially justified.

8 (d) 1. Except as provided in subd. 2., whenever the court finds any of the
9 following it shall reduce the amount of the fees awarded under par. (a):

10 a. During the course of the action, the parent unreasonably protracted the final
11 resolution of the controversy.

12 b. The attorney representing the parent did not provide to the division the
13 information specified in sub. (1) (a) 2.

14 2. A court may not reduce the amount of the fees awarded under par. (a) if it
15 finds that the state or a local educational agency unreasonably protracted the final
16 resolution of the controversy or violated this subchapter.

17 **(10)** Sections 227.44 to 227.50 do not apply to hearings conducted under this
18 section.

19 **115.807 Transfer of parental rights at age of majority.** When a child with
20 a disability, other than a child with a disability who has been determined to be
21 incompetent under ch. 880, reaches the age of 18, all of the following apply:

22 **(1)** The local educational agency shall provide any notice required by this
23 subchapter to both the individual and the individual's parents.

24 **(2)** All other rights accorded to the individual's parents under this subchapter
25 transfer to the individual.

1 **(3)** The local educational agency shall notify the individual and the individual's
2 parents of the transfer of rights.

3 **115.81 Children in child caring institutions. (1) DEFINITIONS.** In this
4 section:

5 (a) "County department" means a county department under s. 46.215, 46.22 or
6 46.23.

7 (b) "Originating local educational agency" means the local educational agency
8 that was responsible for providing a free, appropriate public education to the child
9 before the placement of the child in a child caring institution.

10 **(2) ESTABLISHMENT OF PROGRAM.** Subject to the approval of the division, a child
11 caring institution may establish and maintain special education and related services
12 for children with disabilities.

13 **(3) REFERRAL.** (a) Whenever a county department recommends to a court that
14 a child be placed in a child caring institution or whenever a state agency anticipates
15 placing a child in a child caring institution, the county department or state agency
16 shall notify the originating local educational agency.

17 (b) For each child identified in a notice under par. (a), the originating local
18 educational agency shall do all of the following:

19 1. If the child is a child with a disability, as soon as reasonably possible and after
20 consulting with a county department or a state agency, as appropriate, appoint an
21 individualized education program team to review and revise, if necessary, the child's
22 individualized education program and develop an educational placement offer.

23 2. If the child has not been identified as a child with a disability:

1 a. Appoint staff to review the child's education records and develop a status
2 report for the child and send a copy of the report to the county department or state
3 agency, as appropriate, within 30 days after receiving the notice under par. (a).

4 b. If the originating local educational agency has reasonable cause to believe
5 that the child is a child with a disability, appoint an individualized education
6 program team to conduct an evaluation of the child under s. 115.782. The originating
7 local educational agency may include appropriately licensed staff of the child caring
8 institution in the team if that staff is available. The individualized education
9 program team shall conduct the evaluation. If the individualized education program
10 team determines that the child is a child with a disability, the individualized
11 education program team, in consultation with a county department or a state agency,
12 as appropriate, shall develop an individualized education program and an
13 educational placement offer.

14 **(4) RESPONSIBILITY FOR EDUCATIONAL PLACEMENT.** Whenever the originating local
15 educational agency offers an educational placement in a child caring institution
16 under sub. (3) (b) 1. or 2. b., all of the following apply:

17 (a) The originating local educational agency shall do all of the following:

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

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

21 3. While the child resides at a child caring institution, appoint an
22 individualized education program team to conduct reevaluations of the child in the
23 manner provided under s. 115.782 (4).

24 4. While the child resides at a child caring institution, after consulting with the
25 child caring institution and a county department or a state agency, as appropriate,

1 refer the child to another local educational agency if the originating local educational
2 agency determines that the child's special education needs may be appropriately
3 served in a less restrictive setting in the other local educational agency.

4 5. If the child is leaving the child caring institution, assign staff or an
5 individualized education program team to develop a reintegration plan for the child
6 in cooperation with a county department and staff of the child caring institution.

7 (b) The county department or state agency, as appropriate, shall do all of the
8 following:

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

11 2. In cooperation with the originating local educational agency and staff of the
12 child caring institution, participate in the individualized education program team
13 evaluation of the child and the development of the individualized education program
14 for the child.

15 3. Notify the local educational agency that will be responsible for providing a
16 free, appropriate public education to the child whenever the county department or
17 state agency anticipates removing the child from the child caring institution.

18 4. In cooperation with the originating local educational agency and staff of the
19 child caring institution, develop a reintegration plan for the child if the child is
20 leaving the child caring institution.

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

23 (c) Whenever a local educational agency receives a referral under par. (a) 4., the
24 local educational agency shall assign staff to determine whether the child can
25 appropriately receive special education and related services provided in the local

1 educational agency. If the assigned staff determine that the child can appropriately
2 receive special education and related services in the local educational agency, the
3 local educational agency shall provide such services for the child and is eligible for
4 state tuition payments under s. 121.79 (1) (a). If the assigned staff determine that
5 the child cannot appropriately receive special education and related services in the
6 local educational agency, the local educational agency shall keep a written record of
7 the reasons for that determination.

8 **115.812 Placement disputes; school board referrals; interagency**
9 **cooperation.**

10 (1) **PLACEMENT DISPUTES.** If a dispute arises between a local educational agency
11 and the department of health and family services, the department of corrections or
12 a county department under s. 46.215, 46.22 or 46.23, or between local educational
13 agencies under s. 115.81 (4) (c), over the placement of a child, the state
14 superintendent shall resolve the dispute. This subsection applies only to placements
15 in nonresidential educational programs made under s. 48.57 (1) (c) and to placements
16 in child caring institutions made under s. 115.81.

17 (2) **SCHOOL BOARD REFERRALS.** Annually on or before August 15, each local
18 educational agency shall report to the appropriate county departments under ss.
19 51.42 and 51.437 the names of children who reside in the local educational agency,
20 are at least 16 years of age, are not expected to be enrolled in an educational program
21 2 years from the date of the report and may require services described under s. 51.42
22 or 51.437 (1). This subsection does not affect a local educational agency's
23 responsibility to make services available to children with disabilities.

24 (3) **INTERAGENCY COOPERATION.** (a) A school board, cooperative educational
25 service agency and county children with disabilities education board may enter into

1 an agreement with a county administrative agency, as defined in s. HFS 90.03 (10),
2 Wis. adm. code, to allow the employes of the school board, agency or county children
3 with disabilities education board to participate in the performance of evaluations
4 and the development of individualized family service plans under s. 51.44.

5 (b) 1. In this paragraph, "public agency" has the meaning given in s. 166.20 (1)
6 (i), except that it excludes a local educational agency.

7 2. If a public agency that is required by federal or state law or by an interagency
8 agreement to provide or pay for the location, identification or evaluation of a child
9 with a disability, including a child with a disability who is not yet 3 years of age, or
10 for assistive technology devices or services, supplementary aids or services,
11 transition services or special education or related services for a child with a
12 disability, and fails to do so, the local educational agency shall provide or pay for the
13 services. The public agency shall reimburse the local educational agency for the cost
14 of providing the services.

15 **115.817 Children with disabilities education board. (1) DEFINITIONS.** In
16 this section "board" means the county children with disabilities education board.

17 **(2) ESTABLISHMENT.** (a) A county board of supervisors may determine to
18 establish a special education program, including the provision of related services for
19 children with disabilities, for school districts in the county.

20 (b) The program may provide for one or more special schools, classes, treatment
21 or instruction centers for children with one or more types of disabilities.

22 (c) A school district shall be included under the county program only to the
23 extent approved by formal action of the school board.

24 **(3) ORGANIZATION.** (a) The board shall consist of 3 or more persons, as
25 determined by the county board of supervisors, elected by the county board or

1 appointed by the chairperson of the county board, as the rules of the county board
2 direct. Board members shall be electors selected from that part of the county
3 participating in the program and shall be representative of the area the board serves.
4 The board may include school board members, members of the county board of
5 supervisors and other electors. Board members shall hold office for a term of 3 years,
6 except that the terms of office of members of the first board shall be 3 years, 2 years
7 and one year. Board members shall receive compensation and reimbursement for
8 mileage in an amount fixed by the county board of supervisors, but not more than
9 that of county board members.

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

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

15 **(4) APPLICATION.** Upon authorization of the county board, the board shall apply
16 to the division for the establishment of a program or part of a program to provide
17 special education and related services. The application shall state whether the
18 program or part will be available in the county at large or only to certain school
19 districts.

20 **(5) BOARD DUTIES.** (a) The board shall have charge of all matters pertaining to
21 the organization, equipment, operation and maintenance of such programs and may
22 do all things necessary to perform its functions, including the authority to erect
23 buildings subject to county board approval and employ teachers and other personnel.
24 The board shall prepare an annual budget, which shall be subject to approval of the
25 county board under s. 65.90 unless a resolution is adopted under sub. (9) (c), and shall

1 include funds for the hiring of staff, the purchase of materials, supplies and
2 equipment and the operation and maintenance of buildings or classrooms.

3 (b) 1. At the close of each fiscal year, the board shall employ a licensed
4 accountant to audit its accounts and certify the audit. The cost of the audit shall be
5 paid from board funds.

6 3. The department shall establish by rule a standard contract and minimum
7 standards for audits performed under this paragraph.

8 (c) If the county board of supervisors establishes an integrated service program
9 for children with severe disabilities under s. 59.53 (7), the county children with
10 disabilities education board shall participate in an integrated service program for
11 children with severe disabilities under s. 59.53 (7), and may enter into written
12 interagency agreements or contracts under the program.

13 (d) Annually by October 1, the board and the school boards of the school
14 districts participating in the county program shall submit a report to the state
15 superintendent that specifies the portion of each school day that each pupil enrolled
16 in the county program who is also enrolled in the school district of the pupil's
17 residence spent in county program classes in the previous school year and the portion
18 of the school day that the pupil spent in school district classes in the previous school
19 year. The state superintendent shall develop guidelines for a full-time equivalency
20 methodology. The state superintendent is not required to promulgate the guidelines
21 as rules.

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

24 (b) The ability of the board to contract with the board of control of a cooperative
25 educational service agency, a school board or other public agency in the county for

1 a portion of administrative or instructional services is not prohibited by par. (a). The
2 board shall be responsible for all programs contracted under this paragraph.

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

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

20 **(8) TRANSPORTATION.** The board may promulgate a plan for the transportation
21 at county expense of children who are receiving special education and related
22 services under this section, special education and related services provided at day
23 care centers or special education and related services provided by a private
24 organization within whose attendance area the child resides and which is situated
25 not more than 5 miles beyond the boundaries of the area the board serves, as

1 measured along the usually traveled route. The plan, upon approval of the state
2 superintendent, shall govern the transportation of such children. Any such plan for
3 transportation during the school term supersedes ss. 115.88 and 121.54 (3).

4 **(9) AREA TAXED.** (a) The tax for the operation and maintenance of each part of
5 a special education program and for the transportation of children under sub. (8)
6 shall be levied against the area of the county participating in the part of the program.

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

11 (c) Upon the adoption of a resolution by a majority of the school boards that are
12 located in whole or in part in the county and are participating in the county program
13 under sub. (2) (c), this subsection shall not apply commencing on the effective date
14 of the resolution. A resolution adopted under this paragraph between January 1 and
15 June 30 in any year shall be effective on January 1 of the year commencing after its
16 adoption. A resolution adopted under this paragraph between July 1 and December
17 31 in any year shall be effective on January 1 of the 2nd year commencing after its
18 adoption. In the year in which the resolution is effective, the county budget under
19 s. 59.60 or 65.90 shall include a line item for the special education program.

20 **(10) STATE AIDS.** (a) The board may apply for and receive the state aid under
21 ss. 115.88 and 121.41 (1) for the transportation, board and lodging, treatment and
22 instruction of children participating in programs under this section.

23 (b) The board may apply for and receive the state aid under ss. 121.135 and
24 121.14. This paragraph does not apply beginning on the effective date of a resolution
25 adopted under sub. (9) (c).

1 (c) All state aid shall be paid to the county treasurer and credited to the fund
2 of the board.

3 **(11) VIOLATIONS.** The state superintendent shall withhold aid from any board
4 that violates this section.

5 **115.82 Admission and transportation of nonresidents. (1)** A cooperative
6 educational service agency, county children with disabilities education board or
7 school district that provides special education and related services shall admit a
8 nonresident if the program is appropriate for the child's disability. Refusal to admit
9 a child does not relieve the local educational agency that is responsible for providing
10 a free, appropriate public education to the child under this subchapter from that
11 responsibility.

12 **(2)** In addition to the requirements of s. 121.54 (3), when board and lodging are
13 not furnished to a nonresident child with a disability, the school district in which the
14 child resides shall provide transportation, except as follows:

15 (a) If there is a plan of transportation under s. 115.817 (8), the county children
16 with disabilities education board shall provide transportation.

17 (b) If the child is attending a public school in a nonresident school district under
18 s. 118.51, the nonresident school district shall provide transportation.

19 **115.88 State aid. (1) PERSONNEL.** A school board, board of control of a
20 cooperative educational service agency or, upon authorization of the county board,
21 a county children with disabilities education board may employ, for a special
22 education program, either full- or part-time licensed teachers, licensed coordinators
23 of special education, licensed school social workers, licensed school psychologists,
24 paraprofessionals, licensed consulting teachers to work with any teacher of regular
25 education programs who has a child with a disability in a class and any other

1 personnel approved by the department. The board may contract with private or
2 public agencies for physical or occupational therapy services on the basis of
3 demonstrated need.

4 **(1m) PROGRAM AID.** (a) If, upon receipt of the plan under s. 115.77 (4), the state
5 superintendent is satisfied that the special education program has been maintained
6 during the preceding school year in accordance with law, the state superintendent
7 shall certify to the department of administration in favor of each county, cooperative
8 educational service agency and school district maintaining such special education
9 program a sum equal to 63% of the amount expended by the county, agency and
10 school district during the preceding year for salaries of personnel enumerated in sub.
11 (1), including the salary portion of any authorized contract for physical or
12 occupational therapy services, except as provided in par. (b), and other expenses
13 approved by the state superintendent. The department of administration shall pay
14 such amounts to the county, agency and school district from the appropriation under
15 s. 20.255 (2) (b).

16 (b) Salaries of licensed school psychologists and licensed school social workers
17 shall be reimbursed at 51% without regard to whether they are employed in a
18 program for children with disabilities. The school district, county children with
19 disabilities education board or cooperative educational service agency shall include
20 in the plan under s. 115.77 (4) any information required by the state superintendent
21 relating to use of a school psychologist or school social worker.

22 **(2) TRANSPORTATION AID.** If upon receipt of the plan under s. 115.77 (4) the state
23 superintendent is satisfied that the transportation of children with disabilities has
24 been maintained during the preceding year in accordance with the law, the state
25 superintendent shall certify to the department of administration in favor of each

1 county, cooperative educational service agency or school district transporting such
2 pupils 63% of the amount expended for such transportation. Pupils for whom aid is
3 paid under this subsection shall not be eligible for aid under s. 121.58 (2) or (4). The
4 department of administration shall pay such amounts to the county, agency or school
5 district from the appropriations under s. 20.255 (2) (b) and (br). This subsection
6 applies to any child with a disability who requires special assistance in
7 transportation, including any such child attending regular classes who requires
8 special or additional transportation. This subsection does not apply to any child with
9 a disability attending regular or special classes who does not require any special or
10 additional transportation.

11 **(3) BOARD AND LODGING AID.** There shall be paid the amount expended for board
12 and lodging and transportation between the boarding home and the special
13 education program of nonresident children enrolled under s. 115.82 (1) in the special
14 education program. The department shall certify the full amount to the department
15 of administration which shall pay such amount from the appropriation under s.
16 20.255 (2) (b) to the school district, cooperative educational service agency, county
17 children with disabilities education board, state agency of another state or private,
18 nonsectarian special education service which operates the special education
19 program while providing board, lodging and transportation.

20 **(4) HOSPITALS AND CONVALESCENT HOME AID.** The full cost of special education for
21 children in hospitals and convalescent homes for orthopedically disabled children
22 shall be paid from the appropriation under s. 20.255 (2) (b). The supervision of such
23 instruction shall be under the department and the school board of the school district
24 in which the hospital or convalescent home is located. The school board of the district
25 in which the hospital or convalescent home is located shall submit to the department

1 an itemized statement of all revenues and expenditures for the actual cost of such
2 instruction and any other information it requires.

3 **(6) AID FOR INSTRUCTION OUTSIDE OF DISTRICT.** From the appropriation under s.
4 20.255 (2) (b) there shall be paid the full cost of salary and travel expenses, in
5 amounts determined in advance by the state superintendent, to school districts for
6 providing special education outside the school district of employment.

7 **(7) OFFSETTING RECEIPTS.** In any school year, the following revenues shall be
8 deducted from costs aidable under this section before aids are calculated under this
9 section:

10 (a) Any federal operational revenues expended on costs aidable under this
11 section.

12 (b) That portion of state tuition payments attributable to the special annual
13 tuition rate under s. 121.83 (1) (c), regardless of the school year in which the services
14 were provided. The tuition revenues shall be allocated to the most appropriate part
15 of a program.

16 **(8) ENROLLMENT OUT OF STATE.** If a child with a disability is enrolled in a public
17 special education program located in another state and the state superintendent is
18 satisfied that the program in which the child is enrolled complies with this
19 subchapter, the state superintendent shall certify to the department of
20 administration in favor of the school district in which the child resides or the school
21 district attended by the child under s. 118.51 a sum equal to the percentage of the
22 approved costs under subs. (1) and (2) of the amount expended by the school district
23 during the preceding year for the additional costs associated with the child's special
24 education program. The department of administration shall pay the amount to the
25 school district from the appropriation under s. 20.255 (2) (b).

1 **(9) DISTRIBUTION SCHEDULE.** Each county, cooperative educational service
2 agency and school district entitled to state aid under this section shall receive 15%
3 of its total aid entitlement in each month from November to March and 25% of its
4 total entitlement in June.

5 **115.882 Proration of state aid.** If the sum of the appropriations under s.
6 20.255 (2) (b) and (br) in any one year is insufficient to pay the full amount of aid
7 under ss. 115.88 and 118.255, funds in the appropriations shall be used first for the
8 purpose of s. 115.88 (4) and any remaining funds shall be prorated among the
9 counties, school districts and cooperative educational service agencies entitled
10 thereto.

11 **115.897 Exhaustion of remedies.** Before the filing of a civil action under any
12 federal law seeking any relief that is also available under this subchapter, the
13 procedures under s. 115.80 shall be exhausted to the same extent as would be
14 required had the action been brought under this subchapter.

15 **115.90 Noncompliance; remedies.**

16 **(1)** If, as the result of a monitoring procedure or a complaint investigation, the
17 state superintendent finds that a local educational agency has violated this
18 subchapter, the state superintendent may require the local educational agency to
19 submit a corrective plan addressing the violation.

20 **(2)** If the state superintendent, after reasonable notice and an opportunity for
21 a hearing, finds that a local educational agency has failed to comply with any
22 requirement in this subchapter, the state superintendent shall reduce or eliminate
23 special education aid to the local educational agency until he or she is satisfied that
24 the local educational agency is complying with that requirement.

1 **(3)** If the state superintendent finds that a corrective plan under sub. (1) has
2 not been implemented, or that withholding aid under sub. (2) has been inadequate
3 to ensure compliance with this subchapter, the state superintendent shall request
4 the attorney general to proceed against the local educational agency for injunctive
5 or other appropriate relief.

6 **SECTION 51.** 116.08 (4) of the statutes is amended to read:

7 **116.08 (4)** Whenever an agency performs any service or function under chs. 115
8 to 121 by contract with a county board or any agency thereof, with a school board or
9 with a county ~~handicapped children's~~ children with disabilities education board, the
10 contract may authorize the agency to make claim for and receive the state aid for
11 performing the service or function. The agency shall transmit a certified copy of the
12 contract containing the authority to collect state aid to the department. When an
13 agency receives the state aid, it shall pay over or credit the amount of state aid
14 received to the proper county or agency thereof, school district or county ~~handicapped~~
15 children's children with disabilities education board for which the service or function
16 was performed according to the contract therefor.

17 **SECTION 52.** 118.15 (1) (dm) of the statutes is amended to read:

18 **118.15 (1) (dm)** The school board shall render its decision, in writing, within
19 90 days of a request under par. (d), except that if the request relates to a child who
20 has been ~~examined by a multidisciplinary~~ evaluated by an individualized education
21 program team under s. ~~115.80~~ 115.782 and has not been recommended for special
22 education, the school board shall render its decision within 30 days of the request.
23 If the school board denies the request, the school board shall give its reasons for the
24 denial.

25 **SECTION 53.** 118.15 (3) (a) of the statutes is amended to read:

1 118.15 (3) (a) Any child who is excused by the school board because the child
2 is temporarily not in proper physical or mental condition to attend a school ~~or an~~
3 ~~educational program under s. 115.85 (2)~~, but who can be expected to return to a school
4 ~~or the program~~ upon termination or abatement of the illness or condition. The school
5 attendance officer may request the parent or guardian of the child to obtain a written
6 statement from a licensed physician, dentist, chiropractor, optometrist or
7 psychologist or Christian Science practitioner living and residing in this state, who
8 is listed in the Christian Science Journal, as sufficient proof of the physical or mental
9 condition of the child. An excuse under this paragraph shall be in writing and shall
10 state the time period for which it is valid, not to exceed 30 days.

11 **SECTION 54.** 118.15 (3) (b) of the statutes is amended to read:

12 118.15 (3) (b) Any child excused by the school board in accordance with the
13 school board's written attendance policy under s. 118.16 (4) and with the written
14 approval of the child's parent or guardian. The child's truancy, discipline or school
15 achievement problems or ~~exceptional educational needs~~ disabilities as described in
16 s. 115.76 ~~(3)~~ (5) may not be used as the reason for an excuse under this paragraph.
17 The excuse shall be in writing and shall state the time period for which it is effective,
18 not to extend beyond the end of the current school year.

19 **SECTION 55.** 118.15 (4m) of the statutes is repealed and recreated to read:

20 118.15 (4m) No school board, board of control of a cooperative educational
21 service agency or county children with disabilities education board, or person
22 employed by a school board, cooperative educational service agency or county
23 children with disabilities education board, may in any manner compel a pregnant
24 girl to withdraw from her educational program.

25 **SECTION 56.** 118.22 (1) (a) of the statutes is amended to read:

1 118.22 (1) (a) "Board" means a school board, technical college district board,
2 board of control of a cooperative educational service agency or county ~~handicapped~~
3 ~~children's~~ children with disabilities education board, but does not include any board
4 of school directors in a city of the 1st class.

5 **SECTION 57.** 118.255 (2) (a) of the statutes is amended to read:

6 118.255 (2) (a) If a school board, cooperative educational service agency or
7 county ~~handicapped children's~~ children with disabilities education board provides
8 physical or mental health treatment services to its pupils, it may also provide such
9 services within the private school facilities to those private school pupils who are
10 referred to the public school board, cooperative educational service agency or county
11 ~~handicapped children's~~ children with disabilities education board by the
12 administrator of a private school for evaluation for possible servicing. There shall
13 be no charge for health treatment services provided to any pupils unless public school
14 students or their parents are charged for similar services. For purposes of state aid,
15 as it is provided under s. 115.88 to the public school district, for the health treatment
16 service program, private school pupils receiving such health treatment services shall
17 be counted among the pupils of the public school district receiving such services,
18 although each child may receive health treatment services within the child's own
19 school facilities, whether public or private.

20 **SECTION 58.** 118.255 (2) (b) of the statutes is amended to read:

21 118.255 (2) (b) A school board, cooperative educational service agency, or
22 county ~~handicapped children's~~ children with disabilities education board providing
23 services under this section may enter into agreements with the administrator of a
24 private school on the scheduling, space and other necessary arrangements for
25 performance of such health treatment services. A school board, cooperative

1 educational service agency or county ~~handicapped children's~~ children with
2 disabilities education board shall not pay any private school for any services or
3 facilities provided under this section. Control of the health treatment services
4 program shall rest with the public school board, cooperative educational service
5 agency or county ~~handicapped children's~~ children with disabilities education board.

6 **SECTION 59.** 118.255 (2) (c) of the statutes is amended to read:

7 118.255 (2) (c) A school board, cooperative educational service agency or county
8 ~~handicapped children's~~ children with disabilities education board may provide
9 health treatment services only within private school facilities located within the
10 boundaries of the school district, cooperative educational service agency or county.

11 **SECTION 60.** 118.255 (3) of the statutes, as affected by 1997 Wisconsin Act 27,
12 is amended to read:

13 118.255 (3) The school board, cooperative educational service agency or county
14 ~~handicapped children's~~ children with disabilities education board maintaining
15 health treatment services shall report annually to the department, and at such other
16 times as the department directs, such information as the department requires.

17 **SECTION 61.** 118.255 (4) of the statutes, as affected by 1997 Wisconsin Act 27,
18 is amended to read:

19 118.255 (4) If the state superintendent is satisfied that the health treatment
20 services program has been maintained during the preceding school year in
21 accordance with law, the state superintendent shall certify to the department of
22 administration in favor of each school board, cooperative educational service agency
23 and county ~~handicapped children's~~ children with disabilities education board
24 maintaining such health treatment services, an amount equal to 63% of the amount
25 expended for items listed in s. 115.88 (1) ~~(1m)~~ by the school board, cooperative

1 educational service agency and county ~~handicapped children's~~ children with
2 disabilities education board during the preceding year for these health treatment
3 services. The department of administration, upon such certification shall distribute
4 the amounts to the appropriate school board, cooperative educational service agency
5 and county ~~handicapped children's~~ children with disabilities education board.

6 **SECTION 62.** 118.29 (2) (a) (intro.) of the statutes is amended to read:

7 118.29 (2) (a) (intro.) Notwithstanding chs. 441, 447, 448 and 450, a school bus
8 operator validly authorized under ss. 343.12 and 343.17 (3) (c) to operate the school
9 bus he or she is operating, any school employe or volunteer, county ~~handicapped~~
10 ~~children's~~ children with disabilities education board employe or volunteer or
11 cooperative educational service agency employe or volunteer authorized in writing
12 by the administrator of the school district, the board or the agency, respectively, or
13 by a school principal, and any private school employe or volunteer authorized in
14 writing by a private school administrator or private school principal:

15 **SECTION 63.** 118.29 (2) (b) of the statutes is amended to read:

16 118.29 (2) (b) Any school district administrator, county ~~handicapped children's~~
17 children with disabilities education board administrator, cooperative educational
18 service agency administrator, public or private school principal or private school
19 administrator who authorizes an employe or volunteer to administer a drug or
20 prescription drug to a pupil under par. (a) is immune from civil liability for the act
21 of authorization unless it constitutes a high degree of negligence.

22 **SECTION 64.** 118.29 (3) of the statutes is amended to read:

23 118.29 (3) EMERGENCY CARE; CIVIL LIABILITY EXEMPTION. Any school bus operator
24 validly authorized under ss. 343.12 and 343.17 (3) (c) to operate the school bus he or
25 she is operating and any public or private school employe or volunteer, county

1 ~~handicapped children's~~ children with disabilities education board employe or
2 volunteer or cooperative educational service agency employe or volunteer, other than
3 a health care professional, who in good faith renders emergency care to a pupil of a
4 public or private school is immune from civil liability for his or her acts or omissions
5 in rendering such emergency care. The immunity from civil liability provided under
6 this subsection is in addition to and not in lieu of that provided under s. 895.48 (1).

7 **SECTION 65.** 118.29 (4) of the statutes is amended to read:

8 118.29 (4) WRITTEN POLICIES. Any school board, county ~~handicapped children's~~
9 children with disabilities education board, cooperative educational service agency or
10 governing body of a private school whose employes or volunteers may be authorized
11 to administer drugs or prescription drugs to pupils under this section shall adopt a
12 written policy governing the administration of drugs and prescription drugs to
13 pupils. In developing the policy, the school board, board, agency or governing body
14 shall seek the assistance of one or more appropriate health care professionals who
15 are employes of the school board, board, agency or governing body or are providing
16 services or consultation under s. 121.02 (1) (g). The policy shall include procedures
17 for obtaining and filing in the school or other appropriate facility the written
18 instructions and consent required under sub. (2) (a), for the periodic review of such
19 written instructions, for the storing of drugs and prescription drugs, for record
20 keeping and for the appropriate instruction of persons who may be authorized to
21 administer drugs or prescription drugs to pupils under this section.

22 **SECTION 66.** 118.295 of the statutes is amended to read:

23 **118.295 Suicide intervention; civil liability exemption.** Any school
24 board, private school, county ~~handicapped children's~~ children with disabilities
25 education board or cooperative educational service agency, and any officer, employe

1 or volunteer thereof, who in good faith attempts to prevent suicide by a pupil is
2 immune from civil liability for his or her acts or omissions in respect to the suicide
3 or attempted suicide. The civil liability immunity provided in this section is in
4 addition to and not in lieu of that provided under s. 895.48 (1).

5 **SECTION 67.** 118.30 (2) (b) 1. of the statutes is repealed and recreated to read:

6 118.30 (2) (b) 1. If a pupil is enrolled in a special education program under
7 subch. V of ch. 115, the school board shall comply with s. 115.77 (1) (bg).

8 **SECTION 68.** 118.31 (1) of the statutes is amended to read:

9 118.31 (1) In this section, “corporal punishment” means the intentional
10 infliction of physical pain which is used as a means of discipline. “Corporal
11 punishment” includes, but is not limited to, paddling, slapping or prolonged
12 maintenance of physically painful positions, when used as a means of discipline.
13 “Corporal punishment” does not include actions consistent with an individualized
14 education program developed under s. ~~115.80 (4) (a)~~ 115.787 or reasonable physical
15 activities associated with athletic training.

16 **SECTION 69.** 118.33 (2) (m) of the statutes is amended to read:

17 118.33 (2) (m) Adopt policies to accommodate pupils with exceptional
18 educational interests, needs or requirements, not limited to children with
19 ~~exceptional educational needs~~ disabilities, as defined under s. 115.76 (3) (5).

20 **SECTION 70.** 118.51 (1) (a) of the statutes, as created by 1997 Wisconsin Act 27,
21 is amended to read:

22 118.51 (1) (a) “Child with ~~exceptional educational needs~~ a disability” has the
23 meaning given in s. 115.76 (3) (5).

24 **SECTION 71.** 118.51 (5) (a) 4. of the statutes, as created by 1997 Wisconsin Act
25 27, is amended to read:

1 118.51 (5) (a) 4. Whether the special education program or related services
2 described in the child's individualized education program under s. ~~115.80 (4)~~ 115.787
3 (2) are available in the nonresident school district or whether there is space available
4 in the special education program identified in the child's individualized education
5 program, including any class size limits, pupil-teacher ratios or enrollment
6 projections established by the nonresident school board.

7 **SECTION 72.** 118.51 (5) (a) 5. of the statutes, as created by 1997 Wisconsin Act
8 27, is repealed.

9 **SECTION 73.** 118.51 (5) (a) 6. of the statutes, as created by 1997 Wisconsin Act
10 27, is amended to read:

11 118.51 (5) (a) 6. Whether the child has been ~~reported~~ referred to his or her
12 resident school board under s. ~~115.80~~ 115.777 (1) or identified by his or her resident
13 school board under s. ~~115.80 (2)~~ 115.77 (1m) (a) but not yet evaluated by a
14 multidisciplinary individualized education program team appointed by his or her
15 resident school board under s. ~~115.80 (3)~~ 115.78 (1).

16 **SECTION 74.** 118.51 (12) of the statutes, as created by 1997 Wisconsin Act 27,
17 is amended to read:

18 118.51 (12) SPECIAL EDUCATION PROGRAM OR RELATED SERVICES. (a) *Unavailable*
19 *after enrollment.* If the individualized education program for a pupil, developed or
20 revised under s. ~~115.80 (4)~~ 115.787 after a child begins attending public school in a
21 nonresident school district under this section, requires a special education program
22 or related service that is not available in the nonresident school district or if there
23 is no space available in the special education program identified in the child's
24 individualized education program, including any class size limits, pupil-teacher
25 ratios or enrollment projections established by the nonresident school board, the

1 nonresident school board may notify the child's parent and the child's resident school
2 board that the program or service is not available in the nonresident school district.
3 If such notice is provided, the child shall be transferred to his or her resident school
4 district, which shall provide an educational placement for the child under ~~ss. 115.80~~
5 ~~(4m) and 115.85~~ s. 115.79 (2).

6 (b) *Undue financial burden.* 1. If the costs of the special education program
7 or services required in the individualized education program under ~~s. 115.80 (4)~~
8 ~~115.787 (2)~~ for a child with ~~exceptional educational needs~~ a disability whose parent
9 has submitted an application under sub. (3) (a), as proposed to be implemented by
10 the nonresident school district, would impose upon the child's resident school district
11 an undue financial burden in light of the resident school district's total economic
12 circumstances, including its revenue limit under subch. VII of ch. 121, its ability to
13 pay tuition costs for the pupil and the per pupil special education program or services
14 costs for children with ~~exceptional educational needs~~ disabilities continuing to be
15 served by the resident school district, the child's resident school board may notify the
16 child's parent and the nonresident school board by the first Friday following the first
17 Monday in April that the pupil may not attend the nonresident school district to
18 which the child has applied.

19 2. If the costs of the special education program or services required in an
20 individualized education program for a pupil, developed or revised under ~~s. 115.80~~
21 ~~(4) 115.787~~ after a child begins attending public school in a nonresident school
22 district under this section, as implemented or proposed to be implemented by the
23 nonresident school district, would impose upon the child's resident school district an
24 undue financial burden in light of the resident school district's total economic
25 circumstances, including its revenue limit under subch. VII of ch. 121, its ability to

1 pay tuition costs for the pupil and the per pupil special education program or services
2 costs for children with ~~exceptional educational needs~~ disabilities continuing to be
3 served by the resident school district, the child's resident school board may notify the
4 pupil's parent and the nonresident school board that the program or services impose
5 such an undue financial burden on the resident school district. If such notice is
6 provided, the child shall be transferred to his or her resident school district, which
7 shall provide an educational placement for the child under ~~ss. 115.80 (4m) and 115.85~~
8 s. 115.79 (2). The pupil's parent may appeal a required transfer under this
9 subdivision to the department within 30 days after receipt of the notice. The
10 department shall affirm the resident school board's determination unless the
11 department finds that the determination was arbitrary or unreasonable.

12 **SECTION 75.** 118.51 (13m) of the statutes, as created by 1997 Wisconsin Act 27,
13 is amended to read:

14 118.51 (13m) PARTICIPATION IN CERTAIN PROGRAMS. A pupil attending a public
15 school in a nonresident school district under this section shall be considered a
16 resident of the nonresident school district for the purposes of participating in
17 programs of a cooperative educational service agency or a county handicapped
18 children's children with disabilities education board.

19 **SECTION 76.** 118.51 (14) (a) 2. of the statutes, as created by 1997 Wisconsin Act
20 27, is amended to read:

21 118.51 (14) (a) 2. If the pupil is a child with ~~exceptional educational needs~~ a
22 disability and transportation of the pupil is required in the individualized education
23 program developed for the child under s. ~~115.80 (4)~~ 115.787 (2) or is required under
24 s. 121.54 (3), the nonresident school district shall provide such transportation for the
25 child.

1 **SECTION 77.** 118.51 (17) of the statutes, as created by 1997 Wisconsin Act 27,
2 is amended to read:

3 118.51 (17) SPECIAL EDUCATION TUITION. The resident school board shall pay
4 to the nonresident school board, for each child who is attending public school in the
5 nonresident school district under this section and is enrolled in a program for
6 children with ~~exceptional educational needs~~ disabilities, tuition calculated using the
7 daily tuition rate under s. 121.83 for children enrolled in such programs in the
8 nonresident school district, or an amount agreed to by the school boards of the 2
9 school districts.

10 **SECTION 78.** 118.52 (6) (a) of the statutes, as created by 1997 Wisconsin Act 27,
11 is amended to read:

12 118.52 (6) (a) *Individualized education program requirements.* The school
13 board of a pupil's resident school district shall reject a pupil's application to attend
14 a course in a public school in a nonresident school district if the resident school board
15 determines that the course conflicts with the individualized education program for
16 the pupil under s. ~~115.80 (4)~~ 115.787 (2).

17 **SECTION 79.** 118.55 (7r) (am) of the statutes, as created by 1997 Wisconsin Act
18 27, is amended to read:

19 118.55 (7r) (am) A school board may refuse to permit a pupil to attend a
20 technical college under this subsection if the pupil is a child with ~~exceptional~~
21 ~~educational needs~~ a disability, as defined in s. 115.76 (3) ~~(5)~~, and the school board
22 determines that the cost to the school district under par. (dm) would impose an undue
23 financial burden on the school district.

24 **SECTION 80.** 118.55 (7r) (dm) of the statutes, as created by 1997 Wisconsin Act
25 27, is amended to read:

1 118.55 **(7r)** (dm) If a pupil who is attending a technical college under this
2 subsection is a child with ~~exceptional educational needs~~ a disability, as defined in s.
3 115.76 ~~(3)~~ (5), the payment under par. (d) shall be adjusted to reflect the cost of any
4 special services required for the pupil.

5 **SECTION 81.** 119.18 (20) of the statutes is amended to read:

6 119.18 **(20)** DIPLOMAS. The board may grant diplomas in testimony of the
7 completion of high school or special education requirements, including the
8 requirements of special schools established under s. 119.28 ~~and special classes,~~
9 ~~centers or services established under s. 115.83.~~

10 **SECTION 82.** 119.28 (1) of the statutes is amended to read:

11 119.28 **(1)** The board shall establish and maintain such special schools for
12 children with ~~exceptional educational needs~~ disabilities, as defined in s. 115.76 ~~(3)~~
13 (5), as are required to accommodate pupils of school age desiring to attend school.
14 The board shall prescribe the courses of study and the educational and other
15 activities in special schools.

16 **SECTION 83.** 119.72 (2) (d) of the statutes is amended to read:

17 119.72 **(2)** (d) Children who have language, psychomotor development, social,
18 behavioral or educational problems that warrant intervention, as determined by the
19 board, other than children with ~~exceptional educational needs~~ disabilities, as
20 defined under s. 115.76 ~~(3)~~ (5).

21 **SECTION 84.** 120.13 (26m) of the statutes is amended to read:

22 120.13 **(26m)** (title) ~~CONTRACTS WITH COUNTY HANDICAPPED CHILDREN'S~~ CHILDREN
23 WITH DISABILITIES EDUCATION BOARDS. Contract with a county ~~handicapped children's~~
24 children with disabilities education board for special education services. The costs
25 of such services shall be included in the school district's shared cost under s. 121.07

1 (6). This subsection applies beginning on the effective date of a resolution adopted
2 under s. ~~115.86~~ 115.817 (9) (c).

3 **SECTION 85.** 121.004 (10) of the statutes is amended to read:

4 121.004 (10) TEACHERS EMPLOYED. "Teacher" means a person holding a license
5 or certificate under s. 115.28 (7), but does not include any person under s. 115.29 (3).
6 In computing the number of teachers employed, professional workers who devote
7 less than full time to their professional duties shall be counted in proportion to the
8 time devoted to such duties. Teachers who devote full time to ~~handicapped~~ children
9 with disabilities shall not be counted.

10 **SECTION 86.** 121.05 (1) (a) 1. of the statutes is amended to read:

11 121.05 (1) (a) 1. Pupils enrolled concurrently in the school district and in a
12 special education program operated by a county ~~handicapped children's~~ children
13 with disabilities education board and in facilities of the school district. This
14 subdivision does not apply beginning on the effective date of a resolution adopted
15 under s. ~~115.86~~ 115.817 (9) (c);

16 **SECTION 87.** 121.05 (1) (a) 2. of the statutes is amended to read:

17 121.05 (1) (a) 2. Pupils enrolled in home instruction or any other school district
18 special education program ~~under s. 115.83~~;

19 **SECTION 88.** 121.05 (1) (a) 6. of the statutes is amended to read:

20 121.05 (1) (a) 6. Pupils enrolled in a special education program operated by a
21 county ~~handicapped children's~~ children with disabilities education board under
22 contract with the school board. This subdivision applies beginning on the effective
23 date of a resolution adopted under s. ~~115.86~~ 115.817 (9) (c).

24 **SECTION 89.** 121.135 (title) of the statutes is amended to read:

1 **121.135** (title) **State aid to county ~~handicapped children's~~ children with**
2 **disabilities education boards.**

3 **SECTION 90.** 121.135 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
4 is amended to read:

5 121.135 (1) If, upon receipt of the ~~report plan~~ under s. ~~115.84~~ 115.77 (4), the
6 state superintendent is satisfied that there are children participating in a special
7 education program provided by a county ~~handicapped children's~~ children with
8 disabilities education board, the state superintendent shall certify to the department
9 of administration from the appropriation under s. 20.255 (2) (bh) in favor of the
10 county ~~handicapped children's~~ children with disabilities education board the
11 amount determined under sub. (2), except as provided under sub. (3).

12 **SECTION 91.** 121.135 (2) (a) 1. of the statutes is amended to read:

13 121.135 (2) (a) 1. "Additional general aid" means the amount determined by
14 calculating the percentage of a school district's shared costs that would be paid under
15 s. 121.08 if its membership included each pupil who is a resident of the school district
16 and solely enrolled in a special education program provided by a county ~~handicapped~~
17 ~~children's~~ children with disabilities education board and the school district's shared
18 costs were increased by the costs of the county ~~handicapped children's~~ children with
19 disabilities education board program for all pupils participating in the county
20 ~~handicapped children's~~ children with disabilities education board program who are
21 residents of the school district, and multiplying the costs of the county ~~handicapped~~
22 ~~children's~~ children with disabilities education board program by that percentage.

23 **SECTION 92.** 121.135 (2) (a) 2. of the statutes is amended to read:

24 121.135 (2) (a) 2. "Costs of the county ~~handicapped children's~~ children with
25 disabilities education board program" means the gross cost of the county

1 ~~handicapped children's~~ children with disabilities education board program minus all
2 nonduplicative revenues and other financing sources except property taxes and state
3 aid paid under this section in the previous school year.

4 **SECTION 93.** 121.135 (2) (c) of the statutes is amended to read:

5 121.135 (2) (c) The state superintendent shall pay the additional general aid
6 to the county ~~handicapped children's~~ children with disabilities education board. If
7 a school district is eligible for minimum aid under s. 121.10, the state superintendent
8 shall pay to the county ~~handicapped children's~~ children with disabilities education
9 board the minimum aid amount for which the school district is eligible under s.
10 121.10 for those pupils enrolled solely in the county ~~handicapped children's~~ children
11 with disabilities education board program who are residents of the school district.

12 **SECTION 94.** 121.135 (3) of the statutes, as affected by 1997 Wisconsin Act 27,
13 is amended to read:

14 121.135 (3) This section does not apply beginning on the effective date of a
15 resolution adopted under s. ~~115.86~~ 115.817 (9) (c), except that in the school year
16 beginning July 1 of the year prior to the effective date of the resolution, the state
17 superintendent shall certify to the department of administration from the
18 appropriation under s. 20.255 (2) (bh) in favor of the county ~~handicapped children's~~
19 children with disabilities education board an amount equal to one-half the amount
20 specified under sub. (2) for each pupil enrolled.

21 **SECTION 95.** 121.14 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
22 is amended to read:

23 121.14 (1) State aid shall be paid to each district or county ~~handicapped~~
24 ~~children's~~ children with disabilities education board only for those academic summer
25 classes or laboratory periods for which the state superintendent has given prior

1 review and approval as to the content of such classes or laboratory periods so as to
2 assure that such classes and laboratory periods are only for necessary academic
3 purposes. Recreational programs and team sports shall not be eligible for aid under
4 this section, and pupils participating in such programs shall not be counted as pupils
5 enrolled under s. 121.004 (5) nor shall costs associated with such programs be
6 included in shared costs under s. 121.07 (6).

7 **SECTION 96.** 121.14 (2) (b) of the statutes is amended to read:

8 121.14 (2) (b) Annually on or before October 1, the school district clerk or
9 chairperson of the county ~~handicapped children's~~ children with disabilities
10 education board shall file with the department a report stating the summer average
11 daily membership equivalent.

12 **SECTION 97.** 121.14 (3) of the statutes is amended to read:

13 121.14 (3) References to county ~~handicapped children's~~ children with
14 disabilities education boards under subs. (1) and (2) (b) do not apply beginning on the
15 effective date of a resolution adopted under s. ~~115.86~~ 115.817 (9) (c).

16 **SECTION 98.** 121.41 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
17 is amended to read:

18 121.41 (1) STATE AID. To promote a uniformly effective driver education
19 program among high school and technical college pupils, each school district
20 operating high school grades, each county ~~handicapped children's~~ children with
21 disabilities education board which provides the substantial equivalent of a high
22 school education and each technical college district shall receive \$100 for each pupil
23 of high school age who completes a course in driver education approved by the
24 department under s. 115.28 (11), but in no case may the state aid exceed the actual
25 cost of instruction. If the appropriation under s. 20.255 (2) (em) is inadequate in any

1 year to provide \$100 per pupil, the state aid shall be prorated after the appropriation
2 for administration is deducted. Such state aid shall be paid at the same time as the
3 state aid under s. 121.08 is paid.

4 **SECTION 99.** 121.54 (3) of the statutes, as affected by 1997 Wisconsin Act 27,
5 is amended to read:

6 121.54 (3) (title) ~~TRANSPORTATION FOR CHILDREN WITH EXCEPTIONAL EDUCATIONAL~~
7 ~~NEEDS~~ DISABILITIES. Every school board shall provide transportation for children with
8 ~~exceptional educational needs~~ disabilities, as defined in s. 115.76 (3) (5), to any public
9 or private elementary or high school, to the Wisconsin school for the visually
10 handicapped or the Wisconsin school for the deaf or to any special ~~educational~~
11 education program for children with ~~exceptional educational needs~~ disabilities
12 sponsored by a state tax-supported institution of higher education, including a
13 technical college, regardless of distance, if the request for such transportation is
14 approved by the state superintendent. Approval shall be based on whether or not the
15 child can walk to school with safety and comfort. Section 121.53 shall apply to
16 transportation provided under this subsection.

17 **SECTION 100.** 121.54 (4) (a) of the statutes is renumbered 121.54 (4).

18 **SECTION 101.** 121.54 (4) (b) of the statutes, as affected by 1997 Wisconsin Act
19 27, is repealed.

20 **SECTION 102.** 121.55 (3) of the statutes is amended to read:

21 121.55 (3) If the estimated cost of transporting a pupil under s. 121.54 (2) (b)
22 1. is more than 1.5 times the school district's average cost per pupil for bus
23 transportation in the previous year, exclusive of transportation for kindergarten
24 pupils during the noon hour and for ~~handicapped~~ pupils with disabilities, the school
25 board may fulfill its obligation to transport a pupil under s. 121.54 (2) (b) 1. by

1 offering to contract with the parent or guardian of the pupil. The contract shall
2 provide for an annual payment for each pupil of not less than \$5 times the distance
3 in miles between the pupil's residence and the private school he or she attends, or the
4 school district's average cost per pupil for bus transportation in the previous year
5 exclusive of transportation for kindergarten pupils during the noon hour and for
6 handicapped pupils with disabilities, whichever is greater, but the payment shall not
7 exceed the actual cost nor may the aids paid under s. 121.58 (2) (a) for the pupil
8 exceed the cost thereof. A school board which intends to offer a contract under this
9 subsection shall notify the parent or guardian of the private school pupil of its
10 intention at least 30 days before the commencement of the school term of the public
11 school district.

12 **SECTION 103.** 121.57 (1) (b) of the statutes, as affected by 1997 Wisconsin Act
13 27, is amended to read:

14 121.57 (1) (b) This subsection also applies to handicapped children with
15 disabilities. The state superintendent may grant permission for a handicapped child
16 with a disability to be transported to a school in another school district if an
17 acceptable form of transportation is provided and if such school offers equal or better
18 educational opportunities for the child.

19 **SECTION 104.** 121.58 (3) of the statutes is amended to read:

20 121.58 (3) STATE AID FOR BOARD AND LODGING. A school district which provides
21 board and lodging or housing under s. 121.57 (2) in lieu of transportation shall be
22 paid state aid for such board and lodging or housing at the rate of not more than \$6
23 per week of 5 days for each pupil so boarded and lodged or housed, but not to exceed
24 60% of the cost. For children with ~~exceptional educational needs~~ disabilities, as

1 defined in s. 115.76 (5), such state aid shall be supplemented by the state aid under
2 s. 115.88 in an amount not to exceed the full cost of such board and lodging.

3 **SECTION 105.** 121.76 (1) (a) of the statutes is amended to read:

4 121.76 (1) (a) "Agency of service" means a school board, board of control of a
5 cooperative educational service agency, county ~~handicapped children's~~ children with
6 disabilities education board or governing body of a nonsectarian private school or
7 university model school, which provides services for which tuition may be charged.

8 **SECTION 106.** 121.76 (1) (b) of the statutes is amended to read:

9 121.76 (1) (b) "Pupil" includes a child with ~~exceptional educational needs a~~
10 disability, as defined in ~~ss. s. 115.76 (2) and (3) (5)~~.

11 **SECTION 107.** 121.77 (1) (b) of the statutes, as affected by 1997 Wisconsin Act
12 27, is amended to read:

13 121.77 (1) (b) If facilities are adequate, a school board, board of control of a
14 cooperative educational service agency or county ~~handicapped children's~~ children
15 with disabilities education board may admit nonresident pupils who meet its
16 entrance requirements. Nonresident pupils shall have all of the rights and privileges
17 of resident pupils and shall be subject to the same rules and regulations as resident
18 pupils. The agency of service shall charge tuition for each nonresident pupil.

19 **SECTION 108.** 121.78 (3) (a) of the statutes is amended to read:

20 121.78 (3) (a) Special education ~~programs and related services~~ under s. 115.85
21 ~~(2) subch. V of ch. 115.~~

22 **SECTION 109.** 121.83 (1) (a) 3. (intro.) and b. of the statutes are amended to read:

23 121.83 (1) (a) 3. (intro.) If the pupil is ~~enrolled in a program for children with~~
24 ~~exceptional educational needs~~ receives special education and related services under
25 subch. V of ch. 115:

1 b. The federal and state aid for pupil transportation and ~~exceptional~~ special
2 education and related services shall be added.

3 **SECTION 110.** 121.83 (1) (c) of the statutes is amended to read:

4 121.83 (1) (c) If the pupil is ~~enrolled in a program for children with exceptional~~
5 ~~educational needs~~ receives special education and related services under subch. V of
6 ch. 115, the special annual tuition rate is the sum of instructional and specified
7 services costs unique to that program divided by the average daily membership of all
8 pupils enrolled in the program, including those for whom tuition is paid.

9 **SECTION 111.** 121.905 (3) (a) of the statutes is amended to read:

10 121.905 (3) (a) Calculate the sum of the amount of aid received under ss.
11 121.08, 121.10 and 121.105 and subch. VI in the previous school year and property
12 taxes levied for the previous school year, excluding funds described under s. 121.91
13 (4) (c), and the costs of the county ~~handicapped children's~~ children with disabilities
14 education board program, as defined in s. 121.135 (2) (a) 2., for pupils who were
15 school district residents and solely enrolled in a special education program provided
16 by a county ~~handicapped children's~~ children with disabilities education board in the
17 previous school year.

18 **SECTION 112.** 121.905 (3) (b) of the statutes, as affected by 1997 Wisconsin Act
19 27, is amended to read:

20 121.905 (3) (b) Divide the result in par. (a) by the sum of the average of the
21 number of pupils enrolled in the 3 previous school years and the number of pupils
22 enrolled who were school district residents and solely enrolled in a special education
23 program provided by a county ~~handicapped children's~~ children with disabilities
24 education board program in the previous school year.

1 **SECTION 113.** 121.91 (4) (a) 3. of the statutes, as affected by 1997 Wisconsin Act
2 27, is amended to read:

3 121.91 (4) (a) 3. Notwithstanding subd. 2., if a school board increases the
4 services that it provides by adding responsibility for providing a service that is
5 transferred to it from another governmental unit for a child with ~~exceptional~~
6 ~~educational needs~~ a disability, as defined in s. 115.76 ~~(3)~~ (5), or for a limited-English
7 speaking pupil, as defined in s. 115.955 (7), the limit otherwise applicable under sub.
8 (2m) in the current school year is increased by an amount equal to the estimated cost
9 of providing the service less the estimated amount of aid that the school district will
10 receive for the child or pupil in the following school year under s. 115.88 ~~(1)~~ (1m) to
11 (6) and (8), 115.995 or 118.255, as determined by the state superintendent. A school
12 board that transfers or receives responsibility for providing a service under this
13 subdivision shall notify the state superintendent. A school board that transfers
14 responsibility for providing a service under this subdivision shall provide the state
15 superintendent with an estimate of the reduction in cost attributable to the transfer,
16 even if that estimate is zero. The state superintendent shall notify the transferring
17 school district when a receiving school district notifies the state superintendent that
18 it has received responsibility for providing a service transferred to it under this
19 subdivision.

20 **SECTION 114.** 253.02 (1) (a) of the statutes is amended to read:

21 253.02 (1) (a) "Children with special health care needs" means children who
22 have health problems that require intervention beyond routine and basic care,
23 including children with or at risk for disabilities, ~~handicapping conditions~~, chronic
24 illnesses and conditions, health-related educational problems and health-related
25 behavioral problems.

1 **SECTION 115.** 253.12 (1) (g) of the statutes is amended to read:

2 253.12 (1) (g) “Other severe disability” means a severe sensory impairment,
3 severe ~~physical handicap~~ orthopedic impairment or developmental delay that
4 results from injury, infection or disease, is chronic in nature and requires long-term
5 care.

6 **SECTION 116.** 254.162 (1) (d) of the statutes is amended to read:

7 254.162 (1) (d) School-based programs serving children under 6 years of age,
8 including kindergartens, ~~programs~~ special education and related services for
9 children with ~~exceptional educational needs~~ disabilities, as defined in s. 115.76 (5),
10 and other early childhood programs.

11 **SECTION 117.** 340.01 (56) (a) 4. of the statutes, as affected by 1997 Wisconsin
12 Act 27, is amended to read:

13 340.01 (56) (a) 4. Children with disabilities, as defined under s. 115.76 (2) ~~with~~
14 ~~exceptional educational needs of a type specified under s. 115.76 (3) (a) to (L) (5)~~, to
15 or from an educational program approved by the department of public instruction.

16 **SECTION 118.** 346.475 of the statutes is amended to read:

17 **346.475** (title) **Human service vehicles; loading or unloading**
18 **handicapped children with disabilities.** No person who operates a human
19 service vehicle may stop to load or unload passengers who are ~~handicapped children~~
20 with disabilities unless the vehicle is entirely off the traveled portion of the roadway
21 in an area where stopping, standing or parking is not prohibited and the children do
22 not have to cross the roadway in order to be loaded or unloaded.

23 **SECTION 119.** 448.56 (1) of the statutes, as affected by 1997 Wisconsin Act 27,
24 is amended to read:

1 448.56 (1) WRITTEN REFERRAL. Except as provided in this subsection and s.
2 448.52, a person may practice physical therapy only upon the written referral of a
3 physician, chiropractor, dentist or podiatrist. Written referral is not required if a
4 physical therapist provides services in schools to children with exceptional
5 educational needs disabilities, as defined in s. 115.76 (5), pursuant to rules
6 promulgated by the department of public instruction; provides services as part of a
7 home health care agency; provides services to a patient in a nursing home pursuant
8 to the patient's plan of care; provides services related to athletic activities,
9 conditioning or injury prevention; or provides services to an individual for a
10 previously diagnosed medical condition after informing the individual's physician,
11 chiropractor, dentist or podiatrist who made the diagnosis. The affiliated
12 credentialing board may promulgate rules establishing additional services that are
13 excepted from the written referral requirements of this subsection.

14 **SECTION 120.** 814.04 (intro.) of the statutes is amended to read:

15 **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 106.04 (6) (i)
16 and (6m) (a), 115.80 (9), 769.313, 814.025, 814.245, 895.035 (4), 895.75 (3), 895.77 (2),
17 895.79 (3), 895.80 (3), 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed
18 costs shall be as follows:

19 **SECTION 121.** 904.085 (2) (a) of the statutes, as affected by 1997 Wisconsin Act
20 (Senate Bill 272), is amended to read:

21 904.085 (2) (a) "Mediation" means mediation under s. 93.50 (3), conciliation
22 under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3. or 111.87, mediation
23 under s. ~~115.812~~ 115.797, negotiation under s. 289.33 (9), mediation under ch. 655
24 or s. 767.11, or any similar statutory, contractual or court-referred process

1 facilitating the voluntary resolution of disputes. "Mediation" does not include
2 binding arbitration or appraisal.

3 **SECTION 122.** 938.34 (7d) (d) of the statutes is amended to read:

4 938.34 (7d) (d) This subsection does not apply to a juvenile who is a child with
5 ~~exceptional educational needs~~ a disability, as defined under s. 115.76 (3) (5).

6 **SECTION 123.** 938.345 (1) (e) of the statutes is amended to read:

7 938.345 (1) (e) Place any juvenile not specifically found under chs. 46, 49, 51,
8 115 and 880 to be developmentally disabled, or mentally ill or to ~~have exceptional~~
9 ~~educational needs~~ be a child with a disability, as defined in s. 115.76 (5), in facilities
10 which exclusively treat those categories of juveniles.

11 **SECTION 124. Effective dates.** This act takes effect on the day after
12 publication, except as follows:

13 (1) The treatment of section 46.21 (1) (d) of the statutes takes effect on January
14 1, 1998, or on the day after publication, whichever is later.

15 (END)