

# State of Wisconsin



1995 Senate Bill 522

Date of enactment: **June 10, 1996**  
Date of publication\*: **June 24, 1996**

## 1995 WISCONSIN ACT 431

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

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

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

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

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

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

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

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

115.81 (3) (title) ~~STATUS DURING APPEAL HEARING AND COURT PROCEEDING.~~ The school board may not change the educational placement of a child with exceptional

educational needs who is the subject of a hearing, ~~appeal~~ or court proceeding conducted under this subchapter during the pendency of the hearing, ~~appeal~~ or court proceeding unless the change is made with the written consent of the child's parent. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be made earlier, upon order of the school board, but without prejudice to any rights that the child or parent may have.

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

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

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

115.81 (6) HEARING AND DECISION. Upon receipt of a written request for a hearing under sub. (1) (a) or the initiation of a hearing under sub. (1) (b), a school board, the department shall appoint an impartial hearing officer who is not otherwise employed by the department from the list maintained under sub. (4m). The hearing officer shall conduct the hearing and shall issue a decision within 45 days of the receipt of the request for the hearing under sub. (1) (a) or the initiation of the hearing under sub. (1) (b). The hearing officer may issue subpoenas, order an independent evaluation at school board expense and grant specific extensions of time for cause at the request of either party. If the hearing officer grants an extension of time, he or she shall include that extension and the reason for the extension in the record of the proceedings. The school board shall pay the cost of the hearing officer. Sections 227.44 to 227.50 do not apply to hearings conducted under this section subsection.

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

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

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

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

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

**SECTION 10. Initial applicability.**

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

**SECTION 11. Effective date.**

(1) This act takes effect on January 1, 1996, or on the day after publication, whichever is later.