



State of Wisconsin
2005 - 2006 LEGISLATURE

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

~~changes~~ pp 7, 8,
16 & 17
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1 **AN ACT to repeal** 115.77 (4) (a), 115.77 (4) (c) to (g), 115.77 (4) (j) (intro.), 115.77
2 (4) (j) 6., 115.77 (4) (j) 8. to 10., 115.77 (7), 115.78 (4), 115.782 (2) (e), 115.782 (3)
3 (c), 115.787 (3) (d), 115.792 (2) (e) and 115.792 (2) (i); **to renumber** 115.77 (4)
4 (j) 1. to 5., 115.77 (4) (j) 7., 115.791 (3) (intro.), 115.791 (3) (a), 115.791 (3) (c) and
5 115.791 (3) (d); **to renumber and amend** 115.782 (2) (d), 115.791 (3) (b), 115.80
6 (5) and 115.80 (9) (a); **to amend** 115.76 (1), 115.76 (14), 115.76 (17), 115.77 (1m)
7 (e), 115.77 (4) (intro.), 115.77 (4) (i), 115.78 (1m) (intro.), 115.78 (1m) (c), 115.782
8 (1) (a), 115.782 (2) (a) (intro.), 115.782 (2) (b) 1., 115.782 (2) (b) 2. (intro.), a. and
9 b., 115.782 (3) (a), 115.782 (3) (b), 115.782 (4) (a) 1. and 2., 115.787 (2) (b),
10 115.787 (2) (c) (intro.), 115.787 (2) (e), 115.787 (2) (g) 3., 115.787 (3) (a), 115.787
11 (3) (b) 1., 115.787 (3) (b) 4., 115.787 (6) (a) 2., 115.792 (2) (d), 115.792 (2) (g),
12 115.792 (3) (b) (intro.), 115.792 (3) (b) 5., 115.792 (3) (b) 11., 115.80 (1) (a) 1.,
13 115.80 (1) (b), 115.80 (2), 115.80 (4), 115.80 (9) (b) 2., 115.81 (title) and 115.812
14 (1); **to repeal and recreate** 115.78 (3), 115.787 (2) (g) 1. and 2. and 115.787 (3)
15 (h) 2.; and **to create** 115.76 (9m), 115.761, 115.782 (2) (f), 115.787 (2) (bm),

1 115.787 (4) (c), 115.791 (3) (b) (intro.) and 2., 115.80 (1) (e), 115.80 (1) (f), 115.80
2 (1) (g), 115.80 (1) (h), 115.80 (2m), 115.80 (5) (c) and 115.80 (9) (a) 1. and 2. of
3 the statutes; **relating to:** special education programs for children with
4 disabilities.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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:

5 **SECTION 1.** 115.76 (1) of the statutes is amended to read:

6 115.76 (1) “Assistive technology device” means any item, piece of equipment
7 or product system that is used to increase, maintain or improve the functional
8 capabilities of a child with a disability other than a medical device that is surgically
9 implanted or the replacement for such a device.

10 **SECTION 2.** 115.76 (9m) of the statutes is created to read:

11 115.76 (9m) “Individualized education program team” or “team” means the
12 group of individuals appointed under s. 115.78.

13 **SECTION 3.** 115.76 (14) of the statutes is amended to read:

14 115.76 (14) “Related services” means transportation and such developmental,
15 corrective and other supportive services as may be required to assist a child with a
16 disability to benefit from special education, including speech–language pathology
17 and audiology services; interpreting services; psychological services; physical and
18 occupational therapy; recreation, including therapeutic recreation; social work
19 services; school nursing services; counseling services, including rehabilitative

1 counseling; orientation and mobility services; medical services for diagnostic and
2 evaluative purposes only; and the early identification and assessment of disabling
3 conditions in children.

4 **SECTION 4.** 115.76 (17) of the statutes is amended to read:

5 115.76 (17) “Transition services” has the meaning given in 20 USC 1401 (30)
6 (34).

7 **SECTION 5.** 115.761 of the statutes is created to read:

8 **115.761 Consent.** In this subchapter, except in s. 115.797, if the consent of a
9 child’s parent is necessary in order for an activity to occur, all of the following are
10 required for that consent to be considered given:

11 (1) The child’s parent is fully informed, in his or her native language or other
12 mode of communication, of all information relevant to the action for which consent
13 is sought.

14 (2) The child’s parent understands and agrees in writing to the carrying out of
15 the activity for which consent is sought.

16 (3) The consent describes the activity for which it is sought and lists the records
17 that will be released and to whom.

18 (4) The child’s parent understands that the granting of consent is voluntary
19 and that it may be revoked at anytime, although revocation of consent is not
20 retroactive.

21 **SECTION 6.** 115.77 (1m) (e) of the statutes is amended to read:

22 115.77 (1m) (e) To the extent consistent with the number and location of
23 children with disabilities ~~residing in the local educational agency~~ who are enrolled
24 by their parents in private elementary and secondary schools located within the local
25 education agency, ensures that those children have an opportunity to participate in

1 special education and related services and that the amount spent to provide those
2 services by the local educational agency is equal to a proportionate amount of federal
3 funds made available under this subchapter.

4 **SECTION 7.** 115.77 (4) (intro.) of the statutes is amended to read:

5 115.77 (4) (intro.) A local educational agency shall submit to the division,
6 pursuant to a schedule and instructions established and published by the division,
7 the agency's plan, ~~including a program narrative,~~ for the provision of special
8 education and related services that includes all of the following:

9 **SECTION 8.** 115.77 (4) (a) of the statutes is repealed.

10 **SECTION 9.** 115.77 (4) (c) to (g) of the statutes are repealed.

11 **SECTION 10.** 115.77 (4) (i) of the statutes is amended to read:

12 115.77 (4) (i) The local educational agency's plan for employing qualified
13 special education and related services staff, ~~evaluating its staff's special education~~
14 ~~in-service needs and the plan for meeting those needs.~~

15 **SECTION 11.** 115.77 (4) (j) (intro.) of the statutes is repealed.

16 **SECTION 12.** 115.77 (4) (j) 1. to 5. of the statutes are renumbered 115.77 (4) (p)
17 to (t).

18 **SECTION 13.** 115.77 (4) (j) 6. of the statutes is repealed.

19 **SECTION 14.** 115.77 (4) (j) 7. of the statutes is renumbered 115.77 (4) (u).

20 **SECTION 15.** 115.77 (4) (j) 8. to 10. of the statutes are repealed.

21 **SECTION 16.** 115.77 (7) of the statutes is repealed.

22 **SECTION 17.** 115.78 (1m) (intro.) of the statutes is amended to read:

23 115.78 (1m) APPOINTMENT OF TEAM. (intro.) The local educational agency shall
24 appoint an individualized education program team ~~for each~~ whenever it proposes to

1 evaluate a child referred to it under s. 115.777. Each team shall consist of all of the
2 following:

3 **SECTION 18.** 115.78 (1m) (c) of the statutes is amended to read:

4 115.78 (1m) (c) At least one special education teacher ~~who has extensive and~~
5 ~~recent training and experience related to the child's known or suspected disability~~
6 ~~as specified in s. 115.76 (5) (a)~~ or, where appropriate, at least one special education
7 provider of the child.

8 **SECTION 19.** 115.78 (3) of the statutes is repealed and recreated to read:

9 115.78 (3) TIME LINE. (a) The local educational agency shall determine if a child
10 is a child with a disability within 60 days after the local educational agency receives
11 parental consent for the evaluation of the child under s. 115.782 (1) (b).

12 (b) The 60-day period under par. (a) does not apply to a local education agency
13 if any of the following occur:

14 1. A child enrolls in a school served by that local educational agency after the
15 60-day period has begun and before a determination by the child's previous local
16 education agency regarding whether the child is a child with a disability, the
17 subsequent local education agency is making sufficient progress to ensure a prompt
18 completion of the evaluation, and the child's parent and the subsequent local
19 education agency agree to a specific time when the evaluation will be completed.

20 2. The child's parent repeatedly fails or refuses to produce the child for the
21 evaluation.

22 **SECTION 20.** 115.78 (4) of the statutes is repealed.

23 **SECTION 21.** 115.782 (1) (a) of the statutes is amended to read:

24 115.782 (1) (a) The local educational agency shall notify the parents of the
25 child, in accordance with s. 115.792, of any evaluation procedures the agency

1 proposes to conduct, ~~the qualifications of the individuals who will conduct the~~
2 ~~evaluation and their names, if known.~~

3 **SECTION 22.** 115.782 (2) (a) (intro.) of the statutes is amended to read:

4 115.782 (2) (a) (intro.) In conducting the evaluation, the individualized
5 education program team shall not use any single ~~procedure~~ measure or assessment
6 as the sole criterion for determining whether a child is a child with a disability or for
7 determining an appropriate educational program for the child. The individualized
8 education program team shall do all of the following:

9 **SECTION 23.** 115.782 (2) (b) 1. of the statutes is amended to read:

10 115.782 (2) (b) 1. Review existing evaluation data on the child, including
11 evaluations and information provided by the child's parents, ~~previous interventions~~
12 ~~and the effects of those interventions,~~ current classroom-based local or state
13 assessments and observations, and observations by teachers and related services
14 providers in the classroom.

15 **SECTION 24.** 115.782 (2) (b) 2. (intro.), a. and b. of the statutes are amended to
16 read:

17 115.782 (2) (b) 2. (intro.) On the basis of that review and information provided
18 by the child's parents, identify the additional data, if any, that are needed, ~~and the~~
19 ~~qualifications of the evaluators that are needed,~~ to determine all of the following:

20 a. Whether the child ~~has a particular category of~~ is a child with a disability and
21 the educational needs of the child or, in case of a reevaluation of a child, whether the
22 child continues to have such a disability and such educational needs.

23 b. The present levels of ~~performance and educational~~ academic achievement
24 and related developmental needs of the child.

1 **SECTION 25.** 115.782 (2) (d) of the statutes is renumbered 115.78 (1m) (h) and
2 amended to read:

3 115.78 (1m) (h) If ~~a~~ the child is attending a public school in a nonresident
4 school district under s. 118.51 or 121.84 (1) (a) or (4), ~~when the individualized~~
5 ~~education program team conducts its initial evaluation of the child or any~~
6 ~~reevaluation of the child under sub. (4), the team shall include~~ at least one person
7 designated by the school board of the child's school district of residence who has
8 knowledge or special expertise about the child.

9 **SECTION 26.** 115.782 (2) (e) of the statutes is repealed.

10 **SECTION 27.** 115.782 (2) (f) of the statutes is created to read:

11 115.782 (2) (f) The local educational agency shall ensure that the evaluation
12 of a child with a disability who transfers from one school district to another in the
13 same school year is coordinated with the child's prior and subsequent schools as
14 necessary and as expeditiously as possible to ensure prompt completion of ~~all~~ ^{the}
15 evaluation.

16 **SECTION 28.** 115.782 (3) (a) of the statutes is amended to read:

17 115.782 (3) (a) Upon the completion of the administration of tests assessments
18 and other evaluation materials, the individualized education program team shall
19 determine whether the child is a child with a disability. The individualized education
20 program team may not determine that a child is a child with a disability solely
21 because the child has received insufficient instruction in reading, including in the
22 essential components of reading instruction, as defined in 20 USC 6368 (3), or math
23 or because the child has limited proficiency in English.

24 **SECTION 29.** 115.782 (3) (b) of the statutes is amended to read:

1 115.782 (3) (b) ~~If the~~ The individualized education program team determines
2 that ~~a child is a child with a disability, the team shall prepare an evaluation report~~
3 that includes documentation of determination of eligibility. ~~The local educational~~
4 ~~agency shall ask each individualized education program team participant if he or she~~
5 ~~wants a copy of the evaluation report or additional time before the individualized~~
6 ~~education program team develops the child's individualized education program. If~~
7 ~~any individualized education program team participant requests a copy of the~~
8 ~~evaluation report at any point in the process of developing the child's individualized~~
9 ~~education program or considering the child's educational placement, the local~~
10 ~~educational agency shall give a copy of the report to each individualized education~~
11 ~~program team participant before continuing with the process. If no individualized~~
12 ~~education program team participant requests a copy of the evaluation report, the for~~
13 ~~special education. The local educational agency shall give a copy of the evaluation~~
14 ~~report, including the documentation of eligibility~~ [^] to the child's parents with the
15 notice of placement under s. 115.792 (2).

16 **SECTION 30.** 115.782 (3) (c) of the statutes is repealed.

17 **SECTION 31.** 115.782 (4) (a) 1. and 2. of the statutes are amended to read:

18 115.782 (4) (a) 1. Evaluates a child with a disability in accordance with this
19 section before determining that the child is no longer a child with a disability, except
20 that an evaluation is not required before the termination of a child's eligibility for
21 special education and related services because he or she graduated with a regular
22 diploma or because he or she reached the age of 21. In those circumstances, the local
23 educational agency shall provide the child with a summary of the child's academic
24 achievement and functional performance, including recommendations on how to
25 assist the child in meeting his or her postsecondary goals.

1 2. Reevaluates a child with a disability in accordance with this section if the
2 local educational agency determines that conditions warrant a reevaluation or if the
3 child's parent or teacher requests a reevaluation, ~~but at least once every 3 years.~~ The
4 individualized education program team shall reevaluate a child no more frequently
5 than once a year unless the child's parent and the local educational agency agree
6 otherwise, and at least once every 3 years unless the child's parent and the local
7 educational agency agree that a reevaluation is unnecessary.

8 **SECTION 32.** 115.787 (2) (b) of the statutes is amended to read:

9 115.787 (2) (b) A statement of measurable annual goals for the child, including
10 ~~benchmarks or short-term objectives, related to meeting~~ academic and functional
11 goals, designed to meet the child's needs that result from the child's disability to
12 enable the child to be involved in and make progress in the general curriculum, and
13 ~~to meeting~~ meet each of the child's other educational needs that result from the
14 child's disability.

15 **SECTION 33.** 115.787 (2) (bm) of the statutes is created to read:

16 115.787 (2) (bm) For a child with a disability who takes alternate assessments
17 aligned with alternate achievement standards, a description of benchmarks or
18 short-term objectives.

19 **SECTION 34.** 115.787 (2) (c) (intro.) of the statutes is amended to read:

20 115.787 (2) (c) (intro.) A statement of the special education and related services
21 and supplementary aids and services, based on peer-reviewed research to the extent
22 practicable, to be provided to the child, or on behalf of the child, and a statement of
23 the program modifications or supports for school personnel that will be provided for
24 the child to do all of the following:

25 **SECTION 35.** 115.787 (2) (e) of the statutes is amended to read:

1 115.787 (2) (e) 1. A statement of any individual ~~modifications in the~~
2 ~~administration of any~~ appropriate accommodations that are necessary to measure
3 the academic achievement and functional performance of the child on statewide or
4 local educational agency-wide ~~assessment of pupil achievement that are needed for~~
5 ~~the child to participate in the assessment~~ assessments.

6 2. If the individualized education program team determines that a child will
7 ~~not participate in~~ will take an alternate assessment on a particular statewide or local
8 educational agency-wide assessment of pupil achievement, or part of such an
9 assessment, a statement of why ~~that assessment is not~~ the child cannot participate
10 in the regular assessment and why the particular alternate assessment selected is
11 appropriate for the child ~~and how the child will be assessed through alternative~~
12 means.

13 **SECTION 36.** 115.787 (2) (g) 1. and 2. of the statutes are repealed and recreated
14 to read:

15 115.787 (2) (g) 1. Beginning not later than in the first individualized education
16 program that will be in effect when the child is 16, and updated annually thereafter,
17 a statement of appropriate, measurable annual goals for the child based on
18 age-appropriate transition assessments related to training, education, employment
19 and, where appropriate, independent living skills.

20 2. A description of the transition services, including courses of study, needed
21 to assist the child in reaching the goals under subd. 1.

22 **SECTION 37.** 115.787 (2) (g) 3. of the statutes is amended to read:

23 115.787 (2) (g) 3. Beginning at least one year before the child attains the age
24 of 18, and annually thereafter until the child is no longer eligible for special
25 education and related services, a statement that the child has been informed of the

1 parental child's rights that will transfer to the child on reaching the age of 18 under
2 s. 115.807.

3 **SECTION 38.** 115.787 (3) (a) of the statutes is amended to read:

4 115.787 (3) (a) In developing each child's individualized education program,
5 the individualized education program team shall consider the strengths of the child,
6 the concerns of the child's parents for enhancing the education of their child ~~and~~, the
7 results of the initial evaluation or most recent reevaluation of the child, and the
8 academic, developmental, and functional needs of the child.

9 **SECTION 39.** 115.787 (3) (b) 1. of the statutes is amended to read:

10 115.787 (3) (b) 1. In the case of a child whose behavior impedes his or her
11 learning or that of others, ~~consider, when appropriate, strategies, including the use~~
12 of positive behavioral interventions, and supports to address that behavior.

13 **SECTION 40.** 115.787 (3) (b) 4. of the statutes is amended to read:

14 115.787 (3) (b) 4. Consider the ~~communicative~~ communication needs of the
15 child, and, in the case of a child who is hearing impaired, consider the child's
16 language and ~~communicative~~ communication needs, opportunities for direct
17 communications with peers and professional personnel in the child's language and
18 ~~communicative~~ communication mode, academic level and full range of needs,
19 including opportunities for direct instruction in the child's language and
20 ~~communicative~~ communication mode.

21 **SECTION 41.** 115.787 (3) (d) of the statutes is repealed.

22 **SECTION 42.** 115.787 (3) (h) 2. of the statutes is repealed and recreated to read:

23 115.787 (3) (h) 2. When periodic reports, such as quarterly reports or other
24 periodic reports issued concurrently with report cards, on the progress the child is
25 making toward meeting the annual goals under subd. 1. will be provided.

1 **SECTION 43.** 115.787 (4) (c) of the statutes is created to read:

2 115.787 (4) (c) After the annual individualized education program meeting for
3 a school year, the child's parent and the local educational agency may agree not to
4 convene an individualized education program meeting for the purpose of making
5 changes to the child's individualized education program and instead may develop a
6 written document to modify the child's current individualized education program.

7 **SECTION 44.** 115.787 (6) (a) 2. of the statutes is amended to read:

8 115.787 (6) (a) 2. The requirements relating to ~~transition planning~~ annual
9 goals and transition services under sub. (2) (g) 1. and 2. do not apply with respect to
10 a child with a disability who is convicted of a crime under state law and incarcerated
11 in a state prison and whose eligibility under this subchapter will end, because of his
12 or her age, before he or she will be released from prison.

13 **SECTION 45.** 115.791 (3) (intro.) of the statutes is renumbered 115.791 (3) (a)
14 (intro.).

15 **SECTION 46.** 115.791 (3) (a) of the statutes is renumbered 115.791 (3) (b) 1.

16 **SECTION 47.** 115.791 (3) (b) (intro.) and 2. of the statutes are created to read:

17 115.791 (3) (b) (intro.) Notwithstanding the notice requirement in sub. (2) (a),
18 a court or hearing officer may determine not to reduce or deny the cost of
19 reimbursement for failure to provide such notice if any of the following apply:

20 2. Compliance with sub. (2) (a) would likely result in serious emotional harm
21 to the child.

22 **SECTION 48.** 115.791 (3) (b) of the statutes is renumbered 115.791 (3) (a) 2. and
23 amended to read:

24 115.791 (3) (a) 2. Compliance with sub. (2) (a) would likely result in serious
25 physical or serious emotional harm to the child.

1 **SECTION 49.** 115.791 (3) (c) of the statutes is renumbered 115.791 (3) (a) 3.

2 **SECTION 50.** 115.791 (3) (d) of the statutes is renumbered 115.791 (3) (a) 4.

3 **SECTION 51.** 115.792 (2) (d) of the statutes is amended to read:

4 115.792 (2) (d) A description of each evaluative evaluation procedure, test
5 assessment, record or report that the local educational agency used as a basis for the
6 proposed or refused action.

7 **SECTION 52.** 115.792 (2) (e) of the statutes is repealed.

8 **SECTION 53.** 115.792 (2) (g) of the statutes is amended to read:

9 115.792 (2) (g) A statement that the parents of a child with a disability have
10 procedural safeguards under this section and, if this notice is not an initial referral
11 for evaluation, ~~or reevaluation, or a notice of an individualized education program~~
12 ~~meeting~~, the way in which the parents may obtain a description of the procedural
13 safeguards under sub. (3).

14 **SECTION 54.** 115.792 (2) (i) of the statutes is repealed.

15 **SECTION 55.** 115.792 (3) (b) (intro.) of the statutes is amended to read:

16 115.792 (3) (b) (intro.) The local educational agency shall give to the parents
17 of a child with a disability, once a year but also upon the child's initial referral for
18 evaluation, upon ~~each notification of an individualized education program meeting~~
19 ~~and upon reevaluation of the child~~ the first occurrence of the filing of a request for
20 a hearing under s. 115.80, and upon request by the child's parent, a full explanation
21 written so as to be in an easily understood by the general public understandable
22 manner, and in the native language of the child's parents unless it clearly is not
23 feasible to do so, of the procedural safeguards available under this section and under
24 applicable federal law relating to all of the following:

25 **SECTION 56.** 115.792 (3) (b) 5. of the statutes is amended to read:

1 115.792 (3) (b) 5. Opportunity to present and resolve complaints.

2 **SECTION 57.** 115.792 (3) (b) 11. of the statutes is amended to read:

3 115.792 (3) (b) 11. Civil actions, including the period in which to file a civil
4 action.

5 **SECTION 58.** 115.80 (1) (a) 1. of the statutes is amended to read:

6 115.80 (1) (a) 1. A parent, or the attorney representing the child, may file a
7 written request with the division for a hearing within one year after the refusal or
8 proposal of the local educational agency to initiate or change his or her child's
9 evaluation, individualized education program, educational placement or the
10 provision of a free appropriate public education, ~~except that, if the local educational~~
11 ~~agency has not previously provided the parent or the attorney representing the child~~
12 ~~with notice of the right to request a hearing under this subdivision, he or she may~~
13 ~~file a request under this subdivision within one year after the local educational~~
14 ~~agency provides the notice~~ unless the parent was prevented from requesting a
15 hearing due to specific misrepresentation by the local educational agency that it had
16 resolved the problem forming the basis of the request for a hearing, or due to the local
17 educational agency's withholding of information from the parent that was required
18 to be provided to the parent under this subchapter. The division shall develop a
19 model form to assist parents in filing a request under this subdivision.

20 **SECTION 59.** 115.80 (1) (b) of the statutes is amended to read:

21 115.80 (1) (b) A local educational agency may file a written request with the
22 division for a hearing to override a parent's refusal to grant consent for an initial
23 evaluation, or a reevaluation ~~or an initial educational placement~~ or to contest the
24 payment of an independent educational evaluation.

25 **SECTION 60.** 115.80 (1) (e) of the statutes is created to read:

1 115.80 (1) (e) 1. If the parent of a child with a disability files a written request
2 with the division for a hearing, and the local educational agency has not previously
3 sent a written notice to the parent regarding the subject matter of the hearing
4 request under s. 115.792 (1) (b), the local educational agency shall, within 10 days
5 of the division receiving the hearing request, send to the child's parent a written
6 explanation of why the agency proposed or refused to take the action raised in the
7 hearing request, a description of other options that the individualized education
8 program team considered and the reason why those options were rejected, a
9 description of each evaluation procedure, assessment, record, or report that the
10 agency used as the basis for the proposed or refused action, and a description of the
11 factors that are relevant to the agency's proposal or refusal. A response by a local
12 educational agency under this paragraph does not preclude the agency from
13 asserting that the parent's request for a hearing is insufficient under subd. 2.

14 2. A hearing requested by a parent or attorney under par. (a) 1. may not occur
15 until the parent or attorney files a request that meets the requirements of par. (a)
16 2. The request under par. (a) 2. shall be considered sufficient unless the agency
17 notifies the hearing officer and the parent in writing that the agency believes the
18 request does not meet the requirements. Within 5 days of receiving a notice under
19 this subdivision, the hearing officer shall determine whether the request meets the
20 requirements under par. (a) 2. and notify the parties.

21 **SECTION 61.** 115.80 (1) (f) of the statutes is created to read:

22 115.80 (1) (f) The local educational agency shall send to the child's parent a
23 written response that addresses the issues raised in the hearing request within 10
24 days of the division receiving the request, except that the agency has 15 days in

1 which to respond if the agency notifies the hearing officer under par. (e) 2. that the
2 request is insufficient.

3 **SECTION 62.** 115.80 (1) (g) of the statutes is created to read:

4 115.80 (1) (g) A parent filing a written request for a hearing under par. (a) 1.
5 may amend its request only if the local educational agency consents in writing and
6 is given the opportunity to resolve the issues presented by the request at a meeting
7 under sub. (2m), or if the hearing officer grants permission at least 5 days before the
8 hearing is scheduled to occur.

9 **SECTION 63.** 115.80 (1) (h) of the statutes is created to read:

10 115.80 (1) (h) A hearing requested under par. (a) 1. may occur if the local
11 educational agency has not resolved the issues presented by the request to the
12 satisfaction of the parent within 30 days of the receipt of the request.

13 **SECTION 64.** 115.80 (2) of the statutes is amended to read:

14 115.80 (2) The division shall maintain a list of qualified hearing officers who
15 are not employed by or under contract with the department or the local educational
16 agency, other than being appointed under this subsection, and who do not have a
17 personal or professional interest that conflicts with the person's objectivity in the
18 hearing, to serve as hearing officers in hearings under this section. A hearing officer
19 must possess knowledge of, and the ability to understand, state and federal special
20 education laws, rules, and regulations, and legal interpretation ^S by federal and state
21 courts. A hearing officer also must possess the knowledge and ability to conduct
22 hearings and render and write decisions in accordance with appropriate, standard
23 legal practice. Upon receipt of a written request for a hearing under sub. (1), the
24 division shall appoint a hearing officer from the list.

25 **SECTION 65.** 115.80 (2m) of the statutes is created to read:

1 115.80 (2m) (a) Except as provided in par. (c), within 15 days of the division
2 receiving a request for a hearing under par. (a) 1. and before the hearing is conducted,
3 the local educational agency shall convene a meeting with the child's parents and the
4 relevant members of the individualized education program team who have specific
5 knowledge of the facts identified in the hearing request. At the meeting, the parents
6 may discuss the subject matter of the hearing request and the facts that form the
7 basis of the request and the agency may resolve the issues.

8 (b) The meeting under par. (a) shall include a representative of the local
9 educational agency who is authorized to make decisions on behalf of the agency. The
10 meeting may not include an agency attorney unless the child's parent is accompanied
11 by an attorney.

12 (c) The parents and the local educational agency may agree in writing to waive
13 the meeting under par. (a) or use mediation under s. 115.797.

14 (d) If the child's parents and the local educational agency resolve the subject
15 matter of the hearing request at the meeting under par. (a), they shall execute a
16 written, signed agreement that is enforceable ^{except that either} ~~unless~~ ^{may} the parent or the agency voids
17 the agreement within 3 business days of its execution.

18 **SECTION 66.** 115.80 (4) of the statutes is amended to read:

19 115.80 (4) At least 5 business days before a hearing is conducted under this
20 section, other than an expedited hearing under 20 USC 1415 (k), each party shall
21 disclose to all other parties all evaluations completed by that date and
22 recommendations based on the offering party's evaluations that the party intends to
23 use at the hearing. The hearing officer may bar any party that fails to comply with
24 this subsection from introducing the relevant evaluation or recommendation at the
25 hearing without the consent of the other party. The party requesting the hearing

1 may not raise issues at the hearing that were not raised in the notice filed under sub.
2 (1) (a) 2. unless the other party agrees.

3 **SECTION 67.** 115.80 (5) of the statutes is renumbered 115.80 (5) (a) and
4 amended to read:

5 115.80 (5) (a) A hearing officer may administer oaths and affirmations, issue
6 subpoenas and enforce subpoenas under ss. 885.01 (4) and 885.12, regulate the
7 course of the hearing and hold conferences for the settlement or simplification of the
8 issues. The hearing officer is not bound by common law or statutory rules of evidence.
9 The hearing officer shall admit all testimony having reasonable probative value, but
10 shall exclude immaterial, irrelevant or unduly repetitious testimony. The hearing
11 officer shall give effect to the rules of privilege recognized by law. A hearing officer
12 has the authority to issue an order consistent with this subchapter and 20 USC 1415
13 (k) and to order whatever remedy is reasonably necessary to bring the parties into
14 compliance with this subchapter.

15 (b) The hearing officer's decision shall consist of findings of fact and conclusions
16 of law and shall be based upon a preponderance of the evidence. The findings of fact
17 shall be based solely upon the evidence received at the hearing. The decision shall
18 be made on substantive grounds based on a determination of whether the child
19 received a free appropriate public education.

20 **SECTION 68.** 115.80 (5) (c) of the statutes is created to read:

21 115.80 (5) (c) In matters alleging a procedural violation, a hearing officer may
22 find that a child did not receive a free appropriate public education only if the
23 procedural inadequacies impeded the child's right to a free appropriate public
24 education, significantly impeded the parents' opportunity to participate in the
25 decision making process regarding the provision of a free appropriate public

1 education to the child, or caused a deprivation of educational benefits. Nothing in
2 this paragraph precludes a hearing officer from ordering a local educational agency
3 to comply with procedural requirements.

4 **SECTION 69.** 115.80 (9) (a) of the statutes is renumbered 115.80 (9) (a) (intro.)
5 and amended to read:

6 115.80 (9) (a) (intro.) Subject to par. (b), a circuit court may award reasonable
7 attorney fees and actual costs ~~to the parents of a child with a disability who is the~~
8 ~~prevailing party~~ in any action or proceeding brought in circuit court under this
9 section: to any of the following:

10 **SECTION 70.** 115.80 (9) (a) 1. and 2. of the statutes are created to read:

11 115.80 (9) (a) 1. A prevailing party who is the parent of a child with a disability.

12 2. A prevailing party who is the local educational agency, against the attorney
13 of a parent or against the parent.

14 **SECTION 71.** 115.80 (9) (b) 2. of the statutes is amended to read:

15 115.80 (9) (b) 2. Fees and costs may not be awarded under par. (a) if they relate
16 to any meeting of the individualized education program team unless the meeting is
17 convened as a result of an administrative hearing or judicial action, or for mediation
18 under s. 115.797 that is conducted before filing a request for a hearing under sub. (1).
19 For the purposes of this subdivision, a meeting held under sub. (2m) is neither a
20 meeting convened as a result of an administrative hearing or judicial action nor an
21 administrative hearing or judicial action.

22 **SECTION 72.** 115.81 (title) of the statutes is amended to read:

23 **115.81 (title) Children in ~~child caring institutions~~ residential care**
24 **centers.**

25 **SECTION 73.** 115.812 (1) of the statutes is amended to read:

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3831/P1dn
PG:lmk:ch

October 18, 2005

Senator Olsen:

In preparing this bill draft I used primarily Greg Dietz's draft, which you provided, and consulted with him frequently. Please note the following questions that arose during the process:

1. I did not include a definition of "day" because I believe s. 990.001 (4) would control. The definition of "evaluation" also seemed unnecessary, and the term "services plan" is not used in the draft so I deleted it as well.
2. In s. 115.782 (2) (a) 3. a., I did not change "child's native language" to "native language of the child's parents." OK?
3. I did not change s. 115.787 (2) (g) 3. ("and annually thereafter until ...") because there is no change in federal law.
4. Note the changed cross-reference to federal law in s. 115.782 (3) (a). Is that correct? Also, I copied federal law exactly here, but I don't think "instruction in reading instruction" makes sense.
5. In s. 115.80 (1) (a) 1., what happens if the parent is prevented from requesting a hearing due to misrepresentation by the LEA? Is there no deadline at all to file a request for a hearing under those circumstances?
6. Please check s. 115.80 (1) (e) to (g) carefully. I feel most uneasy about this portion of the draft. For example, as with all of the changes to s. 115.80, these are drafted to apply only when a parent requests a hearing, not when an LEA requests a hearing. Is that correct?
7. I did not include page 21, lines 5 to 12 or page 22, lines 5 to 7 or 12 to 16. I think all these provisions about awarding fees and costs are covered by chapter 802 of our statutes. See, for example, s. 802.05.

If you have questions or need more information, please let me know.

Peter R. Grant
Managing Attorney
Phone: (608) 267-3362
E-mail: peter.grant@legis.state.wi.us

PROVISIONS

DRAFTER'S NOTE
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LEGISLATIVE REFERENCE BUREAU

LRB-3831/P1dn
PG:lmk:ch

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1. 115.78 : how is "that conforms to the purposes of" diff. from "in a manner that is consistent with"? what are the purposes? is there a statement somewhere?
 Further, the goals of achievements?

2. 115.76(1) : why need? If it's "any item, etc." why need "whether acquired ~~at the~~ commercially..."?
 wants it any way/on

3. 115.76(14) : > p. 3 l. 11-13 : this modifier of "school nursing services" doesn't apply to the other service listed? (also: doesn't l. 7-8 do the same thing?)
 every one will have it

> p. 3 l. 15-16 : this doesn't belong here, "services" don't include "devices".
 [+ see p. 3 l. 2-3]
 include

4. are you deleting the recreation of s. 115.761? (re consent)

5. 115.762(3)(a) : unnecessary. Current language "all children w/ disabilities" - If insert this "including" language - not everywhere else - "child w/ disability" is used, = problem.
 don't include

5m. (c) : can't say "et seq" - what's the last section?
 put in det. # 115.76(1)

ss 115.762(3)(e) : DOI no longer approves the plan? RT
 But see 115.88(1m) - "if you receipt of plan, ss is satisfied re, then ..."
 will get bond to m

115.762(3)(h) : why ac?



see item 5
7
we get cite
1
NCLB
121

5 v. 115.362 (37)(i) :> what does "maintaining personnel qualifications" mean?
> if want LEA to do something, req. it of LEA!

6 - 115.27 (1m) (intro) : why delete "the retroaction of" ?
(see 115.88 (1m))

7 115.27 (1m) (a) : see item 5 above.

8. 115.27 (1m) (b) : OK, but wrong place for this I think
p. 6 l. 1-3 : why not say "except as provided in par. (c)" ? - skip (c)

9. 115.27 (1m) (bg) p. 6 l. 6-7 why needed?

9m. 115.27 (4) (intro) : p. 7 l. 3 : why Δ "the agency's plan" to "a plan" ?

10. 115.27 (4) (p) : why need this here if have it
at 115.27 (1m) (f) ?

can be
diff way } 11. 115.27 (4) (g) : why do this + RP (4) (i) ?

incl. 12 115.27 (8) : why extra verbiage ? Doesn't seem to
add any thing.

see Δ 13. 115.78 (1m) (intro) : 'why Δ ? who spots i.e.p. team ?

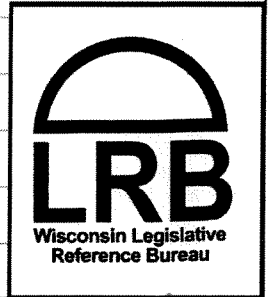
14. 115.78 (1r) : what does "in whole or in part"
refer to ? (better placement wd. be at
end of 115-78)

p. 10 l. 5 : "... to the parent (+) the i.e.p. ?"

delete
dn } 15. 115.78 (3) ; - p. 10 l. 17 : why Δ "before" to "prior to" ? (fcd)
- don't need "but only"

16. 115.78 (5) : why needed at all ?

+ see 115.787 (2) (e) 2
(p. 18, l. 6)
+ P. 19, l. 14 } 17. 115.782 (2)(a) (intro) : why Δ "i.e.p. team"
to "lea" ? See 115.78 (2) (a),
which directs the i.e.p. team to
evaluate the child. Also see 115.782 (2)(b) (intro) : refers to
i.e.p. team.
Δ & LEA



✓ 18. 115.782(2)(a)3. : re d. : why Δ "insert" to "provide"

✓ 19. 115.782(2)(b)1. : p.13 l.4 : why commas after "based" + "voice" ?

other Δ too on l.5 : I don't get it.

could there be a spot for them

✓ 20. 115.782(3)(a) : l.15-16 : this doesn't need to be the iop team ? who are they, then ?

21. 115.782(3)(b) : p.15 l.13 : this refers to the eval. report, but doesn't say that one shd be prepared or who is req'd to prepare it.

eval. must prepare report after redaction (while what could)

22. 115.782(4)(a)1. : p.15 l.21 : "is not" is preferred drafting style over "shall not" here
l.22 : why the Δ ?
p.16 l.2 : " " " ?
l.3 : " " " ?

✓ 23. 115.782(4)(c) : p.16 l.13 "find" is used so l.16 she remain "finding"
o/c / A

check in this

24. 115.787(2)(b)m) p.17 l.11 : I think "aligned with" not "to" is correct.

✓ 25. 115.787(2)(c) 1. + 2. : additional words are unnecessary

✓ 26. 115.787(2)(g)3. : why Δ (p.19 l.1) - also, l.2-3 : what is Δ in fed'l law

✓ 27. 115.787(2)(h)1. : unneeded Δ



→, + does this mean, forever ? NO

✓ 28. 115.787(3)(b)1. : p.19, l.22 : don'tt "intermittent" & "support" over the games?

~~29. 115.787(3)(c) : how~~

✓ 29. 115.787(4)(c) : why rewritten? why "amend or modify" p.20 l.22

✓ 30. 115.787(4)(d) : why is this here? LEA shall "encourage" whom?

✓ 31. 115.787(4)(e)1. : changes can be made either - by entire iep team OR - by amending the iep }? makes no sense

int. 32. 115.787(7) : p.21 l.18-19 : incorrect drafting style l.21-23 : how do this section require ~~the~~ info. that's not req'd by this section?

✓ 33. 115.791(3)(a)(intro.) : p.22 l.4 : no, no diff.

✓ 34. 115.792(1)(a)2. a & b. : where's this go?

35. 115.797(6) last sentence : additional lang is unnecessary (p.25, l.4-6) initially a not - a

115.80(1)(a)1. why not AM?

36. 115.80(1)(b) : p.25 l.11-13 : why needed? An LEA can't make any request under para.(a). Also, the LEA can make such a request under para.(b) - so what's the diff?

del. ref to para. (a)

✓ 37. 115.80(1)(e)1. : p.25 l.17 no, x-not was in it place.



38. 115.85 (1)(e)2. : - see re Δ'
- p. 26 l. 15 : ship, not par, et?

39. 115.85 (1)(g) : p. 26 l. 20 : you left "under
par. (a) 1." ; should it be "par. (a) 1."?

? 40. p. 27 l. 15

? 41. 115.85 (1)(h) p. 27 l. 9-10 "will commence" ?
what's this mean?

42. 115.85 (2m)(a) p. 28 l. 7 : "shall be provided the
opportunity" = same as "may" but
harder.

43. 115.85 (2m)(b) : Δ' unnecessary

RPN → 44. 115.85 (2m)(d)

45. 115.85 (5)(b) p. 29 l. 21 Δ unnecessary

? 46. 115.85 (6) : "decision's final" ??

RPN → 47. 115.85 (9)(a) 2. : p. 31 l. 3-9

RPN 48. 115.85 (9)(cm)

49. 115.85 (9)(d) 1. c & d. p. 32 l. 3-8

[GD draft allows LEA to recover -
+ what if you're in fee et?
- doesn't apply there?



57. ① evaluate child

grp. qual indiv's ② determine whether child is a CWD

i.e.p. team ③ develop i.e.p.

i.e.p. team ④ determine spec. ed placement

115-782 (3) (a) after consent of a team of
qualified indiv. det if child = CWD.

need statutor at beg of 115-787 that i.e.p.
team does ~~any~~ i.e.p.?

12/5/05

called Greg to discuss timeline - & LM

his p. 27

(6) says 45 days from receipt of request

so p. 27 top says "no", 45 days
from filing of amended request?q. what does p. 27 l 2-3 mean
re "including the timeline under (2m)"?

q. p. 27 l 7-10 "meaning"?

p. 28 (2m) - how does this
affect 45 d. requirement?TC w/
Greg: agrees it's not clear -maybe just set 45 days except as
provided under fed law?

2005 – 2006 LEGISLATURE

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

1 AN ACT *to repeal* 115.77 (4) (a) to (k), 115.77 (7), 115.78 (4), 115.782 (2) (e),
2 115.782 (3) (c), 115.787 (3) (d), 115.787 (3) (e), 115.792 (2) (e), and 115.792 (2)
3 (i); *to renumber* 115.791 (3) (a), 115.791 (3) (c) and 115.791 (3) (d); *to renumber*
4 *and amend* 115.77 (4) (n), 115.782 (2) (d), 115.791 (3) (intro), 115.791 (3) (b),
5 115.80 (5) and 115.80 (9) (a); *to amend* 115.758, 115.76 (1), 115.76 (14), 115.76
6 (17), 115.762 (3) (a), 115.762 (3) (c), 115.762 (3) (g), 115.762 (3) (j), 115.77 (1m)
7 (intro), 115.77 (1m) (a), 115.77 (1m) (b), 115.77 (1m) (bg), 115.77 (1m) (e),
8 115.77 (1m) (f), 115.77 (4) (intro.), 115.77 (8), 115.775 (1), 115.775(2), 115.78
9 (1m) (intro.), 115.78 (1m) (c), 115.78 (1m) (d), 115.782 (1) (a), 115.782 (2) (a)
10 (intro.), 115.782 (2) (a) 1., 115.782 (2) (a) 3., 115.782 (2) (b) 1., 115.782 (2) (b) 2.
11 (intro.), a. and b., 115.782 (2) (c), 115.782 (3) (a), 115.782 (3) (b), 115.782 (4) (a)
12 1. and 2., 115.782 (4) (c), 115.787 (2) (a), 115.787 (2) (b), 115.787 (2) (c)
13 (intro.), 1. and 2., 115.787 (2) (e), 115.787 (2) (g) 3., 115.787 (2) (h) 1., 115.787 (3)
14 (a), 115.787(3) (b) 1., 115.787 (3) (b) 4., 115.787 (3) (c), 115.787 (5), 115.787 (7),
15 115.792 (2) (d), 115.792 (2) (g), 115.792 (3) (b) (intro.), 115.792 (3) (b) 5.,

1 115.792 (3) (b) 9., 115.792 (3) (b) 11., 115.797 (1) (a), 115.797 (6), 115.80 (1) (b),
 2 115.80 (2), 115.80 (4), 115.80 (6), 115.80 (9) (b) 2., 115.80 (9) (d) 1. a., 115.81
 3 (title) and 115.812 (1); **to repeal and recreate** 115.762 (3) (e), 115.762 (3) (h),
 4 115.762 (3) (i), 115.78 (3), 115.787 (2) (g) 1. and 2. and 115.787 (2)(h) 2.; and **to**
 5 **create** 115.77 (4) (p), 115.77 (4) (q), 115.77 (4) (r), 115.78 (1r), 115.78 (5),
 6 115.782 (1) (c), 115.782 (2) (f), 115.787 (2) (bm), 115.787 (4) (c), 115.787 (4) (d),
 7 115.787 (4) (e) 1. and 2., 115.791 (3) (b) (intro.) and 2., 115.792 (1) (a) 2. a. and
 8 b., 115.80 (1) (e), 115.80 (1) (f), 115.80 (1) (g), 115.80 (1) (h), 115.80 (2m),
 9 115.80 (5) (c), 115.80 (9) (a) 1. to 3., 115.80 (9) (cm) and 115.80 (9) (d) 1. c. and
 10 d. of the statutes; **relating to:** special education programs for children with
 11 disabilities.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 115.758 of the statutes is amended to read:

2 **115.758 Construction.** To the extent possible, this subchapter shall be construed
 3 in a manner that is consistent with and that conforms to the purposes of 20 USC-1400 to
 4 1487 1482. + to constitute of to specified in 1401(d)

5 **SECTION 2.** 115.76 (1) of the statutes is amended to read:

6 115.76 (1) "Assistive technology device" means any item, piece of equipment, or
 7 product system, whether acquired commercially off the shelf, modified, or customized,

1 that is used to increase, maintain or improve the functional capabilities of a child with a
✓ 2 disability other than a medical device that is surgically implanted or the replacement of
3 such a device.

✓ 4 [Original Section 2 deleted]

5 **SECTION 3.** 115.76 (14) of the statutes is amended to read:

6 **115.76(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 and
9 audiology services; interpreting services; psychological services; physical and
10 occupational therapy; recreation, including therapeutic recreation; social work services;
11 school nursing services designed to enable a child with a disability to receive a free
12 appropriate public education as described in the individualized education program of the
13 child; counseling services, including rehabilitative counseling; orientation and mobility
14 services; medical services for diagnostic and evaluative purposes only and the early
15 identification and assessment of disabling conditions in children. The term does not
16 include a medical device that is surgically implanted, or the replacement of such a device.

17 **SECTION 4.** 115.76 (17) of the statutes is amended to read:

18 115.76 (17) “Transition services” has the meaning given in 20 USC 1401 (30)
19 (34).

20 **SECTION 5.** 115.762 (3) (a) of the statutes is amended to read:

21 **115.762 (3) (a)** Ensuring that all children with disabilities, regardless of the
22 severity of their disabilities, including children who are not yet 3 years of age, homeless
23 children, wards of the state, or children with disabilities attending private schools, who

1 reside in this state and who are in need of special education and related services are
2 identified, located and evaluated.

3 **SECTION 6.** 115.762 (3) (c) of the statutes is amended to read:

4 115.762 (3) (c) Complying with the requirements of this subchapter and
5 applicable federal law, including 20 USC 1415 (k) and 42 USC 11431 et seq. *check*

6 **SECTION 7.** 115.762 (3) (e) of the statutes is repealed and recreated to read:

7 115.762 (3) (e) Determining local educational ^{agency} eligibility for assistance, including
8 whether a local educational agency is failing to comply with any requirements of the
9 local educational agency plan submitted to the division pursuant to s. 115.77 (4).

10 **SECTION 8.** 115.762 (3) (g) of the statutes is amended to read:

11 115.762 (3) (g) Monitoring and enforcing local educational agency and residential
12 care center for children and youth compliance with this subchapter and applicable federal
13 law, including 20 USC 1415 (k) and 42 USC 11431 et seq. *check*

14 **SECTION 9.** 115.762 (3) (h) of the statutes is repealed and recreated to read:

15 115.762 (3) (h) Developing and maintaining a performance plan in compliance
16 with 20 USC 1416(b).

17 **SECTION 10.** 115.762 (3) (i) of the statutes is repealed and recreated to read: *new*

18 115.762 (3) (i) Establishing and maintaining ~~personnel~~ ^{personnel} qualifications in
19 compliance with 20 USC 1412 (a) (14), ^{requiring} including a requirement that local educational
20 agencies take measurable steps to recruit, hire, train, and retain highly qualified personnel
21 to provide special education and related services to children with disabilities under this
22 subchapter.

23 **SECTION 11.** 115.762 (3) (j) of the statutes is amended to read:

To ensure that personnel necessary to carry out this subchapter are appropriately & adequately prepared & trained,

1 115.762 (3) (j) Examining data, including data disaggregated by race and
2 ethnicity, to determine if significant discrepancies are occurring in the rate of long-term
3 suspensions and expulsions of children with disabilities among local educational agencies
4 or compared to such rates for nondisabled children within such agencies. If such
5 discrepancies are occurring, the division shall review and, if appropriate, revise or require
6 the affected local educational agency to revise its policies, procedures and practices
7 relating to the development and implementation of individualized education programs,
8 the use of positive behavioral interventions and supports and procedural safeguards to
9 ensure that such policies, procedures and practices comply with this subchapter.

} don't need
"strategies"
here

10 **SECTION 12.** 115.77 (1m) (intro) of the statutes is amended to read:

11 **115.77 (1m)** A local educational agency shall demonstrate to the satisfaction of
12 the division that it does all of the following:

why?

13 **SECTION 13.** 115.77 (1m) (a) of the statutes is amended to read:

14 **115.77 (1m) (a)** Identifies, locates and evaluates all children with disabilities who
15 are in need of special education and related services, including such children who are not
16 yet 3 years of age, are homeless children, are wards of the state, or children with
17 disabilities attending private school located within the local educational agency. A local
18 educational agency may provide special education and related services to children with
19 disabilities who are not yet 3 years of age under an interagency agreement with a county
20 agency responsible for the early intervention program under s. 51.44.

21 **SECTION 14.** 115.77 (1m) (b) of the statutes is amended to read:

22 **115.77 (1m)(b)** Makes available a free appropriate public education to children
23 with disabilities as required by this subchapter and applicable state and federal law. A

1 local educational agency that provides special education and related services to children
2 with disabilities participating in early intervention programs under s. 51.44 is not required
3 to provide such child with a free appropriate public education.

4 **SECTION 15.** 115.77 (1m) (bg) of the statutes is amended to read:

5 115.77 (1m) (bg) Includes all children with disabilities in all statewide and local
6 educational agency-wide assessments, including assessments described under section
7 1111 of the Elementary and Secondary Education Act of 1965, with appropriate
8 modifications and alternate assessments where necessary, or in alternative assessments
9 for those children who cannot participate in statewide or local educational agency-wide
10 assessments and as indicated in their respective individualized education programs.

what are these?
} need
us @ site 500/
better, state
but site

11 **SECTION 16.** 115.77 (1m) (e) of the statutes is amended to read:

12 115.77 (1m) (e) To the extent consistent with the number and location of children
13 with disabilities ~~residing in the local educational agency~~ who are enrolled by their parents
14 in private elementary and secondary schools located within the local educational agency,
15 ensures that those children have an opportunity to participate in special education and
16 related services and that the amount spent to provide those services by the local
17 educational agency is equal to a proportionate amount of federal funds made available
18 under this subchapter.

*is resident
reg. min. to
attendance
reg. min -
intentional?
yes*

19 **SECTION 17.** 115.77 (1m) (f) of the statutes is amended to read:

20 115.77 (1m) (f) Establishes written policies and , procedures, and programs for
21 implementing this subchapter and applicable federal law.

22 **SECTION 18.** 115.77 (4) (intro.) of the statutes is amended to read:

1 115.77 (4) (intro.) A local educational agency shall submit to the division,
 2 pursuant to a schedule and instructions established and published by the division, ~~the~~
 3 ~~agency's a plan, including a program narrative, that provides assurances to the division~~
 4 ~~that the local educational agency will meet the conditions required by 20 USC 1413(a),~~
 5 ~~which shall include for the provision of special education and related services that~~
 6 ~~includes~~ ^{including} all of the following:

*what's this?
= 613/a)*

7 **SECTION 19.** 115.77 (4) (a) to (k) of the statutes are repealed.

8 **SECTION 20.** 115.77 (4) (n) of the statutes is renumbered 115.77 (4) (s) and
 9 amended to read:

10 115.77 (4) (s) Any other information the division requires to permit its review and
 11 approval of the plan.

12 **SECTION 21.** 115.77 (4) (p) of the statutes is created to read:

13 115.77 (4) (p) The local educational agency, in providing for the children with
 14 disabilities within its jurisdiction, has in effect policies, procedures, and programs that are
 15 consistent with this subchapter and applicable federal law.

16 **SECTION 22.** 115.77 (4) (q) of the statutes is created to read:

17 115.77 (4) (q) The local educational agency's plan for ensuring that all personnel
 18 necessary to carry out ^{the requirements of} this subchapter are appropriately and adequately prepared
 19 according to applicable state and federal law.

20 **SECTION 23.** 115.77 (4) (r) of the statutes is created to read:

21 115.77 (4) (r) The data regarding children with disabilities and nondisabled
 22 children ⁽ⁱⁿ⁾ the local educational agency that the division is required to collect or report to
 23 be in compliance with 20 USC 1400 to 1482.

*recording id?
no (eg priv. schools)*

1 **SECTION 24.** 115.77 (7) of the statutes is repealed.

2 **SECTION 25.** 115.77 (8) of the statutes is amended to read:

3 **115.77 (8)** The local educational agency shall serve children with disabilities who
4 are attending a charter school under contract with the local educational agency under s.
5 118.40 in the same manner as it serves children with disabilities attending schools of the
6 local educational agency, including providing supplementary and related services on site
7 at the charter school to the same extent to which the local educational agency has a
8 policy or practice of providing such services on the site to other schools of the local
9 educational agency and shall provide funds under this subchapter to such charter schools
10 in the same manner as it on the same basis as the local educational agency provides funds
11 under this subchapter to schools of the local educational agency, including proportional
12 distribution based on relative enrollment of children with disabilities, and at the same
13 time as the agency distributes other federal funds to the agency's other public schools.

14 **SECTION 26.** 115.775 (1) of the statutes is amended to read:

15 **115.75 (1)** Except as provided in sub. (2), an operator of a charter school under s.
16 118.40 (2r) is a local educational agency, as defined in 20 USC 1401 ~~(15)~~ (19), and shall
17 comply with 20 USC 1400 to ~~1491~~ 1482.

18 **SECTION 27.** 115.775 (2) of the statutes is amended to read:

19 **115.775 (2)** The board of directors of the school district operating under ch. 119 is
20 a local educational agency under this section and shall comply with 20 USC 1400 to
21 ~~1491~~ 1482 if the board of directors enters into ~~an~~ a written agreement with an operator
22 of a charter school under s. 118.40 (2r) under which the board of directors agrees to serve
23 as the local educational agency.

1 SECTION 28. 115.78 (1m) (intro.) of the statutes is amended to read:

2 115.78 (1m) APPOINTMENT OF INDIVIDUALIZED EDUCATION PROGRAM TEAM.

WHO APPOINTS?

3 (intro.) The local educational agency shall appoint an individualized education program
4 team for each whenever it proposes to evaluate a child referred to it under s. 115.777.

5 Each team shall consist of all An individualized education program team means a group

6 of individuals ^{appointed by LEA} comprised of the following:

7 SECTION 29. 115.78 (1m) (c) of the statutes is amended to read:

8 115.78 (1m) (c) At least one special education teacher who has extensive and
9 recent training and experience related to the child's known or suspected disability as
10 specified in s. 115.76 (5) (a) or, where appropriate, at least one special education provider
11 of the child.

12 SECTION 30. 115.78 (1m) (d) of the statutes is amended to read:

13 115.78 (1m) (d) A representative of the local educational agency who is qualified
14 to provide, or supervise the provision of, special education, is knowledgeable about the
15 general education curriculum and is knowledgeable about and authorized to commit the
16 available resources of the local educational agency.

17 SECTION 31. 115.78 (1r) of the statutes is created to read:

18 115.78 (1r) INDIVIDUALIZED EDUCATION PROGRAM TEAM ATTENDANCE. (a) A
19 member of the individualized education program team shall not be required to attend a
20 meeting of the individualized education program team, in whole or in part, if the parent
21 of a child with a disability and the local educational agency agree that the attendance of
22 such member is not necessary because the member's area of the curriculum or related
23 service is not being modified or discussed in the meeting.

Move to 77

614(d)

who?

1 (b) A member of the individualized education program team may be excused from
 2 attending a meeting of the individualized education program team, in whole or in part,
 3 when the meeting involves a modification to or discussion of the member's areas of the
 4 curriculum or related services, if the parents and the local educational agency consent to
 5 the excusal, and the member submits in writing to the parent the individualized education
 6 program team, input into the development of the individualized education program prior
 7 to the meeting.

by whom?
 who?

8 (c) A parent's agreement under par. (a) and consent under par. (b) shall be in
 9 writing.

LEA's need not be?
 RT.

10 **SECTION 32. 115.78 (3)** of the statutes is repealed and recreated to read:

11 115.78 (3) TIME LINE. (a) The local educational agency shall determine if a
 12 child is a child with a disability within 60 days after the local educational agency receives
 13 parental consent for the evaluation of the child under s. 115.782 (1) (b).

14 (b) The 60-day period under par. (a) does not apply to a local educational agency
 15 if any of the following occur:

16 1. A child enrolls in a school served by that local educational agency after the
 17 60-day period has begun and prior to a determination by the child's previous local
 18 educational agency as to whether the child is a child with a disability, but only if the
 19 subsequent local educational agency is making sufficient progress to ensure a prompt
 20 completion of the evaluation, and the child's parent and the subsequent local educational
 21 agency agree to a specific time when the evaluation will be completed.

unnecessary;
 are 3 conditions
 all must be
 present.

22 2. The child's parent repeatedly fails or refuses to produce the child for the
 23 evaluation.

1 ✓ **SECTION 33.** 115.78 (4) of the statutes is repealed.

2 **SECTION 34.** 115.78 (5) of the statutes is created to read:

3 115.78 (5) ALTERNATIVE MEANS OF MEETING PARTICIPATION. When conducting
4 individualized education program team meetings and placement meetings, the parent of a
5 child with a disability and a local educational agency may agree to use alternative means
6 of meeting participation, such as video conferences and conference calls.

*the parent
"conducts" the
mtg?
- move to
?
encl
p. 160*

7 **SECTION 35.** 115.782 (1) (a) of the statutes is amended to read:

8 115.782 (1) (a) The local educational agency shall notify the parents of the child,
9 in accordance with s. 115.792, of any evaluation procedures the agency proposes to
10 conduct, ~~the qualifications of the individuals who will conduct the evaluation and their~~
11 ~~names, if known.~~

12 **SECTION 36.** 115.782 (1) (c) of the statutes is created to read:

13 115.782 (1) (c) The local educational agency proposing to conduct an initial
14 evaluation shall obtain informed consent ^{of} for a child ^{who} that is a ward of the state in
15 compliance with 20 USC 1414(a)(1)(D)(iii).

shall obtain inf. consent

16 **SECTION 37.** 115.782 (2) (a) (intro.) of the statutes is amended to read:

17 115.782 (2) (a) (intro.) In conducting the evaluation, the individualized education
18 ~~program team~~ local educational agency shall not use any single procedure measure or
19 assessment as the sole criterion for determining whether a child is a child with a disability
20 or for determining an appropriate educational program for the child. The individualized
21 education ~~program team~~ local educational agency shall do all of the following:

22 **SECTION 38.** 115.782 (2) (a) 1. of the statutes is amended to read:

1 115.782 (2) (a) 1. Use a variety of assessment tools and strategies to gather
2 relevant functional, ~~and developmental, and academic~~ information, including information
3 provided by the child's parent, that may assist in determining whether the child is a child
4 with a disability and the content of the child's individualized education program,
5 including information related to enabling the child to be involved in and progress in the
6 general curriculum or, for preschool children, to participate in appropriate activities.

7 **SECTION 39.** 115.782 (2) (a) 3. of the statutes is amended to read:

8 115.782 (2) (a) 3. Ensure all of the following:

9 a. That ~~tests assessments~~ and other evaluation materials used to assess a child
10 under this section are selected and administered so as not to be racially or culturally
11 discriminatory and are provided and administered in the ~~child's native language or other~~
12 ~~mode of communication, unless it is clearly language and form most likely to yield~~
13 ~~accurate information on what the child knows and can do academically, developmentally,~~
14 ~~and functionally, unless it is not feasible to do so provide or administer.~~

15 b. That any ~~standardized tests assessments~~ and other evaluation materials that are
16 given to the child ~~have been validated for the specific purpose for which they are used for~~
17 ~~purposes for which the assessments or measures are valid and reliable,~~ are administered
18 by trained and knowledgeable personnel and are administered in accordance with any
19 instructions provided by the producer of such ~~tests assessments.~~

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 ~~provided.~~

1 **SECTION 40.** 115.782 (2) (b) 1. of the statutes is amended to read:

2 115.782 (2) (b) 1. Review existing evaluation data on the child, including
3 evaluations and information provided by the child's parents, ~~previous interventions and~~
4 ~~the effects of those interventions,~~ current classroom-based, local, or state assessments,
5 and classroom-based observations, and observations by teachers and related services
6 providers.

7 **SECTION 41.** 115.782 (2) (b) 2. (intro.), a. and b. of the statutes are amended to
8 read:

9 115.782 (2) (b) 2. (intro.) On the basis of that review and information provided by
10 the child's parents, identify the additional data, if any, that are needed, ~~and the~~
11 ~~qualifications of the evaluators that are needed,~~ to determine all of the following:

12 a. Whether the child ~~has a particular category of~~ is a child with a disability and the
13 educational needs of the child or, in case of a reevaluation of a child, whether the child
14 continues to have such a disability and such educational needs.

15 b. The present levels of ~~performance and educational~~ academic achievement and
16 related developmental needs of the child.

17 **SECTION 42.** 115.782 (2) (c) of the statutes is amended to read:

18 115.782 (c) The local educational agency shall administer such tests assessments
19 and other evaluation materials measures as may be needed to produce the data identified
20 under par. (b) 2.

21 **SECTION 43.** 115.782 (2) (d) of the statutes is renumbered 115.78 (1m) (h) and
22 amended to read:

1 115.78 (1m) (h) If a the child is attending a public school in a nonresident school
 2 district under s. 118.51 or 121.84 (1) (a) or (4), ~~when the individualized education~~
 3 ~~program team conducts its initial evaluation of the child or any reevaluation of the child~~
 4 ~~under sub. (4), the team shall include~~ at least one person designated by the school board
 5 of the child's school district of residence who has knowledge or special expertise about
 6 the child.

7 **SECTION 44.** 115.782 (2) (e) of the statutes is repealed.

8 **SECTION 45.** 115.782 (2) (f) of the statutes is created to read:

9 115.782 (2) (f) The local educational agency shall ensure that the evaluation of a
 10 child with a disability who transfers from one school district to another school district in
 11 the same school year is coordinated with the child's prior and subsequent schools as
 12 necessary and as expeditiously as possible to ensure prompt completion of the evaluation.

13 **SECTION 46.** 115.782 (3) (a) of the statutes is amended to read:

14 115.782 (3) (a) Upon the completion of the administration of tests assessments
 15 and other evaluation materials measures, ~~the individualized education program team a~~
 16 team of qualified individuals and the parent of the child shall determine whether the child
 17 is a child with a disability and the educational needs of the child. ~~The individualized~~
 18 ~~education program team may~~ A child shall not be determine determined that a child is a
 19 child with a disability solely because the child has received insufficient if the determinat
 20 factor for such determination is lack of appropriate instruction in reading, including in the
 21 essential components of reading instruction, as defined in 20 USC 6368 (3), or lack of
 22 instruction in math, or because the child has limited proficiency in English.

23 **SECTION 47.** 115.782 (3) (b) of the statutes is amended to read:

*Who's?
 + who determines?
 + see p. 19 11-15
 "an instructional
 determinat
 factor"*

1 115.782 (3) (b) If the individualized education program team determines that a
2 child is a child with a disability, the team shall prepare an evaluation report that includes
3 documentation of determination of eligibility. The local educational agency shall ask
4 each individualized education program team participant if he or she wants a copy of the
5 evaluation report or additional time before the individualized education program team
6 develops the child's individualized education program. If any individualized education
7 program team participant requests a copy of the evaluation report at any point in the
8 process of developing the child's individualized education program or considering the
9 child's educational placement, the local educational agency shall give a copy of the report
10 to each individualized education program team participant before continuing with the
11 process. If no individualized education program team participant requests a copy of the
12 evaluation report, the for special education. The local educational agency shall give a Δ
13 copy of the evaluation report and the documentation of determination of eligibility, shall
14 be given to the child's parents with the notice of placement under s. 115.792 (2).

15 **SECTION 48.** 115.782(3) (c) of the statutes is repealed.

16 **SECTION 49.** 115.782(4) (a). of the statutes is amended to read:

17 115.782 (4) REEVALUATIONS. (a) A local educational agency shall ensure that the
18 individualized education program team does do all of the following:

19 1. Evaluates Evaluate a child with a disability in accordance with this section
20 before determining that the child is no longer a child with a disability, except that an
21 evaluation shall not be required before the termination of a child's eligibility for special
22 education and related services due to graduation from secondary school with a regular
23 diploma or because he or she reached the age of 21. In those circumstances, the local

1 educational agency shall provide the child with a summary of the child's academic
2 achievement and functional performance, which shall include recommendations on how
3 to assist the child in meeting the child's postsecondary goals.

4 2. Reevaluates a child with a disability in accordance with this section if the local
5 educational agency determines that conditions the educational or related services needs,
6 including improved academic performance, of the child warrant a reevaluation or if the
7 child's parent or teacher requests a reevaluation, but at least once every 3 years. A
8 reevaluation shall occur no more frequently than once a year unless the child's parent and
9 the local educational agency agree otherwise, and at least once every 3 years unless the
10 child's parent and the local educational agency agree that a reevaluation is unnecessary.

11 **SECTION 50.** 115.782 (4) (c) of the statutes is amended to read:

12 115.782 (4) (c) If the individualized education program team and other a team of
13 qualified professionals, as determined by the local educational agency, find under sub. (2)
14 (b) 2. that no additional data are needed to determine whether the child continues to be a
15 child with a disability and to determine the child's educational needs, the local
16 educational agency shall notify the child's parents of that finding determination, and the
17 reasons for it the determination, and the right of the child's parents to request an
18 assessment to determine whether the child continues to be a child with a disability and to
19 determine the child's educational needs. The local educational agency is not required to
20 conduct such an assessment unless the child's parents request it.

21 **SECTION 51.** 115.787 (2) (a) of the statutes is amended to read:

22 115.787 (2) (a) A statement of the child's present level of educational academic
23 achievement and functional performance, including how the child's disability affects the

1 child's involvement and progress in the general curriculum or, for a preschool child, as
2 appropriate, how the disability affects the child's participation in appropriate activities.

3 **SECTION 52.** 115.787 (2) (b) of the statutes is amended to read:

4 115.787 (2) (b) A statement of measurable annual goals for the child, including
5 ~~benchmarks or short-term objectives, related to meeting~~ academic and functional goals,
6 designed to meet the child's needs that result from the child's disability to enable the
7 child to be involved in and make progress in the general curriculum, and ~~to meeting~~ meet
8 each of the child's other educational needs that result from the child's disability.

9 **SECTION 53.** 115.787 (2) (bm) of the statutes is created to read:

10 115.787 (2) (bm) For a child with a disability who takes alternate assessments
11 aligned to alternate achievement standards, a description of benchmarks or short-term
12 objectives.

13 **SECTION 54.** 115.787 (2) (c) (intro.) 1. and 2. of the statutes are amended to read:

14 115.787 (2) (c) (intro.) A statement of the special education and related services
15 and supplementary aids and services, based on peer-reviewed research to the extent
16 practicable, to be provided to the child, or on behalf of the child, and a statement of the
17 program modifications or supports for school personnel that will be provided for the child
18 to do all of the following:

19 1. Advance appropriately toward attaining the annual goals.

20 2. Be involved and make progress in the general curriculum in accordance with
21 par. (a) and participate in extracurricular and other nonacademic activities.

22 **SECTION 55.** 115.787 (2) (e) of the statutes is amended to read:

1 115.787 (2) (e) 1. A statement of any individual modifications in the
 2 ~~administration of any appropriate accommodations that are necessary to measure the~~
 3 ~~academic achievement and functional performance of the child on statewide or local~~
 4 ~~educational agency-wide assessment of pupil achievement that are needed for the child~~
 5 ~~to participate in the assessment assessments~~

6 2. If the individualized education program team determines that a child will not
 7 ~~participate in~~ will take an alternate assessment on a particular statewide or local
 8 educational agency-wide assessment of pupil achievement, ~~or part of such an~~
 9 ~~assessment,~~ a statement of why ~~that assessment is not~~ the child cannot participate in the
 10 regular assessment and why the particular alternate assessment selected is appropriate for
 11 the child and how the child will be assessed through alternative means.

12 SECTION 56. 115.787 (2) (g) 1. ~~and 2,~~ of the statutes ~~are~~ repealed and recreated to
 13 read:

14 115.787 (2) (g) 1. Beginning not later than the first individualized education
 15 program to be in effect when the child is 16, and updated annually thereafter, a statement
 16 of appropriate, measurable post-secondary goals for the child based on age-appropriate
 17 transition assessments related to training, education, employment and, where appropriate,
 18 independent living skills. ; *and*

19 ~~2. Beginning not later than the first individualized education program to be in~~
 20 ~~effect when the child is 16, and updated annually thereafter,~~ a description of the transition
 21 services, including courses of study, needed to assist the child in reaching ^{those} the goals under

22 ~~subd.~~ *SEC 115.787(2)(g) 2 is EP*

23 SECTION 57. 115.787 (2) (g) 3. of the statutes is amended to read:

a 1 115.787 (2) (g) 3. Beginning at least not later than one year before the child
2 attains the age of 18, and annually thereafter ~~until the child is no longer eligible for~~
3 ~~special education and related services~~, a statement that the child has been informed of the *daily on*
4 ~~parental-child's~~ rights that will transfer to the child on reaching the age of 18 under s. *child*
5 115.807. *was id*
post.

6 **SECTION 58.** 115.787 (2) (h) 1. of the statutes is amended to read:

7 115.787 (h) 1. How the child's progress toward meeting the annual goals
8 described in par. (b) will be measured.

9 **SECTION 59.** 115.787 (2) (h) 2. of the statutes is repealed and recreated to read:

10 115.787 (2) (h) 2. When periodic reports, such as quarterly reports or other
11 periodic reports issued concurrently with report cards, on the progress the child is making
12 toward meeting the annual goals under subd. 1. will be provided.

13 **SECTION 60.** 115.787 (3) (a) of the statutes is amended to read:

14 115.787 (3) (a) In developing each child's individualized education program, the
15 individualized education program team shall consider the strengths of the child, the
16 concerns of the child's parents for enhancing the education of their child and, the results
17 of the initial evaluation or most recent reevaluation of the child, and the academic,
18 developmental, and functional needs of the child.

19 **SECTION 61.** 115.787 (3) (b) 1. of the statutes is amended to read:

20 115.787 (3) (b) 1. In the case of a child whose behavior impedes his or her
21 learning or that of others, ~~consider, when appropriate, strategies, including the use of~~
22 positive behavioral interventions, and supports, and other strategies, to address that
23 behavior.

1 **SECTION 62.** 115.787 (3) (b) 4. of the statutes is amended to read:

2 115.787 (3) (b) 4. Consider the ~~eommunieative~~ communication needs of the child,
3 and, in the case of a child who is hearing impaired, consider the child's language and
4 ~~eommunieative~~ communication needs, opportunities for direct communications with
5 peers and professional personnel in the child's language and ~~eommunieative~~
6 communication mode, academic level and full range of needs, including opportunities for
7 direct instruction in the child's language and ~~eommunieative~~ communication mode.

8 **SECTION 63.** 115.787 (3) (c) of the statutes is amended to read:

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 in the
11 development of the individualized education program of the child, including the
12 determination of appropriate positive behavioral interventions and supports, and other
13 strategies and the determination of supplementary aids and services, program
14 modifications and support for school personnel.

✓15 **SECTION 64.** 115.787 (3) (d) of the statutes is repealed.

✓16 **SECTION 65.** 115.787 (3) (e) of the statutes is repealed.

17 **SECTION 66.** 115.787 (4) (c) of the statutes is created to read:

18 115.787 (4) (c) In making changes to a child's individualized education program
19 after the annual individualized education program meeting for a school year, the parent of
20 a child with a disability and the local educational agency may agree not to convene an
21 individualized education program meeting for the purpose of making such changes and
22 instead may develop a written document to amend or modify the child's current
23 individualized educational program.

the iep team?
ye!

1 **SECTION 67.** 115.787 (4) (d) of the statutes is created to read:

2 115.787 (4) (d) To the extent possible, the local educational agency shall
3 encourage the consolidation of reevaluation meetings for the child and other
4 individualized education program team meetings for the child.

} intent?
6/14 p. 99

5 **SECTION 68.** 115.787 (4) (e) 1. and 2. of the statutes are created to read:

6 115.787 (4) (e) 1. Changes to the individualized education program may be made
7 either by the entire individualized education program team or, as provided in par. (c), by
8 amending the IEP rather than by redrafting the entire individualized education program.

either convene
team or
do in
phase

9 2. Upon request, a parent shall be provided with a revised copy of the
10 individualized education program with the amendments made in par. (c).

11 **SECTION 69.** 115.787 (5) of the statutes is amended to read:

12 **115.787 (5) FAILURE TO MEET TRANSITION OBJECTIVES.** If a participating agency,
13 other than the local educational agency, fails to provide transition services in accordance
14 with sub. (2) (g) ~~2.~~, the local educational agency shall reconvene the individualized
15 education program team to identify alternative strategies to meet the transition objectives
16 for the child set out in the individualized education program.

17 **SECTION 70.** 115.787 (7) of the statutes is amended to read:

18 115.787 (7) CONSTRUCTION. Nothing in this section shall be construed to requires
19 require the individualized education program team to include information under one
20 component of a child's individualized education program that is already contained under
21 another component of the individualized education program or to require additional
22 information be included in a child individualized education program beyond what is
23 explicitly required by this section.

1 **SECTION 71.** 115.791 (3) (intro.) of the statutes is renumbered 115.791 (3) (a)
2 (intro.) and amended to read:

3 115.791 (3) (a) (intro.) Notwithstanding the notice requirement in sub. (2) (a), the
4 cost of reimbursement ~~may~~ shall not be reduced or denied for failure to provide such
5 notice if any of the following apply:

6 **SECTION 72.** 115.791 (3) (a) of the statutes is renumbered 115.791 (3) (b) 1.

7 **SECTION 73.** 115.791 (3) (b) (intro.) and 2. of the statutes are created to read:

8 115.791 (3) (b) (intro.) Notwithstanding the notice requirement in sub. (2) (a), the
9 cost of reimbursement may, in the discretion of a court or hearing officer not be
10 reduced or denied for failure to provide such notice if any of the following apply:

11 2. Compliance with sub. (2) (a) would likely result in serious emotional harm to
12 the child.

13 **SECTION 74.** 115.791 (3) (b) of the statutes is renumbered 115.791 (3) (a) 2. and
14 amended to read:

15 115.791 (3) (a) 2. Compliance with sub. (2) (a) would likely result in serious
16 physical ~~or serious emotional~~ harm to the child.

17 **SECTION 75.** 115.791 (3) (c) of the statutes is renumbered 115.791 (3) (a) 3.

18 **SECTION 76.** 115.791 (3) (d) of the statutes is renumbered 115.791 (3) (a) 4.

19 **SECTION 77.** 115.792 (1) (a) 2. a. and b. of the statutes is created to read:

20 115.792 (1) (a) 2. a. For a child who is a ward of the state, a surrogate may be
21 appointed by the judge overseeing the child's care provided that the surrogate meets the
22 requirements of subpar. 2.

AM to
2. in order
these

1 b. The local educational agency shall appoint a surrogate pursuant to subpar. 2 for
2 homeless children.

3 **SECTION 78.** 115.792 (2) (d) of the statutes is amended to read:

4 115.792 (2) (d) A description of each ~~evaluative~~ evaluation procedure, test
5 assessment, record or report that the local educational agency used as a basis for the
6 proposed or refused action.

7 **SECTION 79.** 115.792 (2) (e) of the statutes is repealed.

8 **SECTION 80.** 115.792 (2) (g) of the statutes is amended to read:

9 115.792 (2) (g) A statement that the parents of a child with a disability have
10 procedural safeguards under this section and, if this notice is not an initial referral for
11 evaluation, ~~or reevaluation, or a notice of an individualized education program meeting,~~
12 the way in which the parents may obtain a description of the procedural safeguards under
13 sub. (3).

14 **SECTION 81.** 115.792 (2) (i) of the statutes is repealed.

15 **SECTION 82.** 115.792 (3) (b) (intro.) of the statutes is amended to read:

16 115.792 (3) (b) (intro.) The local educational agency shall give to the parents of a
17 child with a disability, once a year but also upon the child's initial referral or parental
18 request for evaluation, upon ~~each notification of an individualized education program~~
19 ~~meeting and upon reevaluation of the child~~ the first occurrence of the filing of a request
20 for a hearing under s. 115.80, or upon request by the child's parent, a full explanation
21 written ~~so as to be~~ in an easily understood by the general public understandable manner,
22 and in the native language of the child's parents unless it clearly is not feasible to do so,

1 of the procedural safeguards available under this section and under applicable federal law
2 relating to all of the following:

3 **SECTION 83.** 115.792 (3) (b) 5. of the statutes is amended to read:

4 115.792 (3) (b) 5. Opportunity to present and resolve complaints, including the
5 time period in which to make a complaint and the opportunity for the local educational
6 agency to resolve the complaint.

7 **SECTION 84.** 115.792 (3) (b) 9. of the statutes is amended to read:

8 115.792 (3) (b) 9. Mediation availability.

9 **SECTION 85.** 115.792 (3) (b) 11. of the statutes is amended to read:

10 115.792 (3) (b) 11. Civil actions, including the period in which to file a civil
11 action.

12 **SECTION 86.** 115.797 (1) (a) of the statutes is amended to read:

13 115.797 (1) (a) "Dispute" means any disagreement between parties concerning
14 the proposal or refusal to initiate or change the evaluation, individualized education
15 program or educational placement of a child with a disability or the provision of a free
16 appropriate public education to such a child. "Dispute" includes any such disagreement
17 between parties ^{that} which arises prior to the filing of a due process hearing request under s.
18 115.80, and also includes any such disagreement ^{or} in which other processes, including a
19 hearing under s. 115.80 or litigation, have been requested or commenced.

20 **SECTION 87.** 115.797 (6) of the statutes is amended to read:

21 **115.797 (6) AGREEMENTS.** If the parties resolve the dispute or a portion of the
22 dispute, or agree to use another procedure to resolve the dispute, the mediator shall
23 ensure that the resolution or agreement is reduced to writing, that it is signed by the

1 parties and that a copy is given to each party. The written agreement shall include a
 2 statement that all discussions that occurred during the mediation process shall be ^{or}
 3 confidential and may not be used as evidence in any subsequent due process hearing or
 4 civil proceeding. ^{action} The resolution or agreement is legally binding upon the parties and is
 5 enforceable in any state court of competent jurisdiction or in a district court of the United } state or
 6 States. } d. ct.

7 **SECTION 88.** 115.80 (1) (b) of the statutes is amended to read:

8 115.80 (1) (b) A local educational agency may file a written request with the
 9 division for a hearing to override a parent's refusal to grant consent for an initial
 10 evaluation; or a reevaluation or an initial educational placement or to contest the payment
 11 of an independent educational evaluation. A local educational agency may not file a
 12 request under par. (a) to override a parent's refusal to grant consent for the initial
 13 provision of special education and related services to a child with a disability.

14 **SECTION 89.** 115.80 (1) (e) of the statutes is created to read:

15 115.80 (1) (e) 1. If the parent of a child with a disability files a written request
 16 with the division for a hearing, and the local educational agency has not previously sent a
 17 written notice under s. 115.792 (1) (b) to the parent regarding the subject matter of the
 18 hearing request, the local educational agency shall, within 10 days of the division
 19 receiving the hearing request, send to the child's parent a written explanation of why the
 20 local educational agency proposed or refused to take the action raised in the hearing
 21 request, a description of other options that the individualized education program team
 22 considered and the reasons why those options were rejected, a description of each
 23 evaluation procedure, assessment, record, or report that the local educational agency used

1 as the basis for the proposed or refused action, and a description of the factors that are
2 relevant to the local educational agency's proposal or refusal. A response by a local
3 educational agency under this paragraph does not preclude the agency from asserting that
4 the parent's request for a hearing is insufficient under subd. 2.

5 2. A party may not have a due process hearing until the party, or the attorney
6 representing the party, files a notice that meets the requirements of sub^{par.}(1)(a)2. The due
7 process hearing request notice required under sub^{par.}(1)(a)2. shall be deemed to be
8 sufficient unless the party receiving the notice notifies the hearing officer and the other
9 party in writing that the receiving party believes the notice ^{dis} has not ^{meet} met the requirements
10 of sub^{par.}(1)(a)2. Within 5 days of receiving a notice under this ^{subd.} paragraph, the hearing
11 officer shall determine whether the request meets the requirements under par. (a) 2. and
12 notify the parties.

13 **SECTION 90.** 115.80 (1) (f) of the statutes is created to read:

14 115.80 (1) (f) Except as provided in par. (e), the non-complaining party shall,
15 within 10 days of receiving the due process hearing request, send to the complainant a
16 response that specifically addresses the issues raised in the request. ^{except that a} The party providing
17 a hearing officer notification under par. (e) ^{2.} shall provide the notification within 15 days
18 of receiving the request.

19 **SECTION 91.** 115.80 (1) (g) of the statutes is created to read:

20 115.80 (1) (g) A party filing a written request for a hearing under par. (a) 1. may
21 amend its request only if the other party consents in writing and is given the opportunity
22 to resolve the issues presented by the request at a meeting under sub. (2m), or if the
23 hearing officer grants permission at least 5 days before the hearing is scheduled to occur.

1 The applicable timeline for a due process hearing under sub. (6) shall recommence at the
 2 time the party files an amended due process hearing request, including the timeline under
 3 sub. (2m). Nothing in this section shall be construed to preclude a parent from filing a
 4 separate due process hearing request on an issue separate from a due process hearing
 5 request already filed.

6 **SECTION 92.** 115.80 (1) (h) of the statutes is created to read:

7 115.80 (1) (h) A hearing requested under par. (a) 1. may occur if the local
 8 educational agency has not resolved the issues presented by the request to the satisfaction
 9 of the parent within 30 days of the receipt of the request and all the applicable timelines
 10 for a due process hearing under this section will commence.

10. 45 days starts after mfg. under (2m) ps

11 **SECTION 93.** 115.80 (2) of the statutes is amended to read:

12 115.80 (2) The division shall maintain a list of qualified hearing officers who are
 13 not employed by or under contract with the department or the local educational agency,
 14 other than being appointed under this subsection, and who do not have a personal or
 15 professional interest that conflicts with the person's objectivity in the hearing, to serve as
 16 hearing officers in hearings under this section. A hearing officer must possess knowledge
 17 of, and the ability to understand, state and federal special education laws, rules, and
 18 regulations, and legal interpretations by federal and state courts. A hearing officer also
 19 must possess the knowledge and ability to conduct hearings and render and write
 20 decisions in accordance with appropriate, standard legal practice. Upon receipt of a
 21 written request for a hearing under sub. (1), the division shall appoint a hearing officer
 22 from the list.

23 **SECTION 94.** 115.80 (2m) of the statutes is created to read:

1 115.80 **(2m)** (a) Except as provided in par. (c), within 15 days of the division
2 receiving a request for a hearing under sub. (1) (a) 1. and before the hearing is conducted,
3 the local educational agency shall convene a meeting with the child's parents and the
4 relevant members of the individualized education program team who have specific
5 knowledge of the facts identified in the hearing request. At the meeting, the parents of
6 the child shall discuss their hearing request and the facts that form the basis of the request
7 and the local educational agency shall be provided with the opportunity to resolve the
8 issues.

9 (b) The meeting under par. (a) shall include a representative of the local
10 educational agency who is authorized to make decisions on behalf of the local
11 educational agency. The meeting may not include an attorney of the local educational
12 agency unless the child's parent is accompanied by an attorney.

13 (c) The parents and the local educational agency may agree in writing to waive
14 the meeting under par. (a) or use mediation under s. 115.797.

15 (d) If the child's parents and the local educational agency resolve the subject
16 matter of the hearing request at the meeting under par. (a), they shall execute a legally
17 binding agreement that is signed by both the parent and the local educational agency and
18 is enforceable in the circuit court of the county where the local educational agency is
19 located. Either the parent or the local educational agency may void the agreement within
20 3 business days of its execution.

21 **SECTION 95.** 115.80 (4) of the statutes is amended to read:

22 115.80 **(4)** At least 5 business days before a hearing is conducted under this
23 section, other than an expedited hearing under 20 USC 1415 (k), each party shall disclose

mtg ~ 1/15
15 days

1 to all other parties all evaluations completed by that date and recommendations based on
2 the offering party's evaluations that the party intends to use at the hearing. The hearing
3 officer may bar any party that fails to comply with this subsection from introducing the
4 relevant evaluation or recommendation at the hearing without the consent of the other
5 party. The party requesting the hearing may not raise issues at the hearing that were not
6 raised in the notice filed under sub. (1) (a) 2. unless the other party agrees.

7 **SECTION 96.** 115.80 (5) of the statutes is renumbered 115.80 (5) (a) and amended
8 to read:

9 115.80 (5) (a) A hearing officer may administer oaths and affirmations, issue
10 subpoenas and enforce subpoenas under ss. 885.01 (4) and 885.12, regulate the course of
11 the hearing and hold conferences for the settlement or simplification of the issues. The
12 hearing officer is not bound by common law or statutory rules of evidence. The hearing
13 officer shall admit all testimony having reasonable probative value, but shall exclude
14 immaterial, irrelevant or unduly repetitious testimony. The hearing officer shall give
15 effect to the rules of privilege recognized by law. A hearing officer has the authority to
16 issue an order consistent with this subchapter and 20 USC 1415 (k) and to order whatever
17 remedy is reasonably necessary to bring the parties into compliance with this subchapter.

18 (b) The hearing officer's decision shall consist of findings of fact and conclusions
19 of law and shall be based upon a preponderance of the evidence. The findings of fact
20 shall be based solely upon the evidence received at the hearing. The decision shall be
21 made on substantive grounds based on a determination of whether the child has received
22 a free appropriate public education.

23 **SECTION 97.** 115.80 (5) (c) of the statutes is created to read:

1 115.80 (5) (c) In matters alleging a procedural violation, a hearing officer may
2 find that a child did not receive a free appropriate public education only if the procedural
3 inadequacies impeded the child's right to a free appropriate public education,
4 significantly impeded the parents' opportunity to participate in the decision making
5 process regarding the provision of a free appropriate public education to the child, or
6 caused a deprivation of educational benefits. Nothing in this paragraph precludes a
7 hearing officer from ordering a local educational agency to comply with procedural
8 requirements.

9 **SECTION 98.** 115.80(6) of the statutes is amended to read:

10 115.80 (6) The hearing officer shall issue a decision within 45 days after the
11 ~~receipt of the request for the hearing~~ of the commencement of the decisions timeline
12 under sub. (1). The hearing officer may order an independent educational evaluation of
13 the child at local educational agency expense and grant specific extensions of time for
14 cause at the request of either party. If the hearing officer grants an extension of time, he
15 or she shall include that extension and the reason for the extension in the record of the
16 proceedings. The local educational agency shall pay the cost of the hearing.

new
?

17 **SECTION 99.** 115.80 (9) (a) of the statutes is renumbered 115.80 (9) (a) (intro.)
18 and amended to read:

19 115.80 (9) (a) (intro.) Subject to par. (b), a circuit court may award reasonable
20 attorney fees and actual costs ~~to the parents of a child with a disability who is the~~
21 ~~prevailing party~~ in any action or proceeding brought in circuit court under this section: to
22 any of the following:

23 **SECTION 100.** 115.80 (9) (a) 1. to 3. of the statutes are created to read:

1 115.80 (9) (a) 1. A prevailing party who is the parent of a child with a disability.

2 2. A prevailing party who is the local educational agency, ^(or universities) against the attorney of a parent
3 who files a due process hearing request or subsequent cause of action that is frivolous,
4 unreasonable, or without foundation, or against the attorney of a parent who continued to
5 litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

see 8/22/05
ch files (new)

how diff?

6 3. A prevailing party who is the local educational agency against the attorney of a parent
7 , or against the parent, if the parent's due process hearing request or subsequent cause of
8 action was presented for any improper purpose, such as to harass, to cause unnecessary
9 delay, or to needlessly increase the cost of litigation.

10 SECTION 101. 115.80 (9) (b) 2. of the statutes is amended to read:

11 115.80 (9) (b) 2. Fees and costs may not be awarded under par. (a) if they relate to
12 any meeting of the individualized education program team unless the meeting is
13 convened as a result of an administrative hearing or judicial action, or for mediation
14 under s. 115.797 ~~that is conducted before filing a request for a hearing under sub. (1).~~ For
15 the purposes of this subdivision, a meeting held under sub. (2m) is neither a meeting
16 convened as a result of an administrative hearing or judicial action nor an administrative
17 hearing or judicial action.

diff. ok

18 SECTION 102. 115.80 (9) (cm) is created to read:

19 115.80 (9) (cm) Fees awarded under par. (a) shall be based on rates prevailing in
20 the community in which the action or proceeding arose for the kind and quality of
21 services furnished. No bonus or multiplier may be used in calculating the fees awarded
22 under this subsection.

new delete

23 SECTION 103. 115.80 (9) (d) 1. a. is amended to read:

1 115.80 (9) (d) 1. a. During the course of the action, the parent or the parent's
2 attorney unreasonably protracted the final resolution of the controversy.

ok

3 **SECTION 104.** 115.80 (9) (d) 1. c. and d. are created to read:

4 115.80 (9) (d) 1. c. The amount of attorneys' fees otherwise authorized to be
5 awarded unreasonably exceeds the hourly rate prevailing in the community for similar
6 services by attorneys of reasonably comparable skill, reputation, and experience.

} del.

7 d. The time spent and legal services furnished were excessive considering the nature of
8 the action or proceeding.

9 **SECTION 105. 115.81 (title) of the statutes is amended to read:**

10 **115.81 (title) Children in ~~child-caring institutions~~ residential care centers.**

11 **SECTION 106. 115.812 (1) of the statutes is amended to read:**

12 115.812 (1) PLACEMENT DISPUTES. If a dispute arises between a local educational
13 agency and the department of health and family services, the department of corrections
14 or a county department under s. 46.215, 46.22 or 46.23, or between local educational
15 agencies under s. 115.81 (4) (c), over the placement of a child, the state superintendent
16 shall resolve the dispute. This subsection applies only to placements in nonresidential
17 educational programs made under s. 48.57 (1) (c) and to placements in ~~child-caring~~
18 ~~institutions~~ residential care centers made under s. 115.81.

19 **SECTION 107. Initial applicability.**

20 (1) The treatment of sections 115.80 (1) (a) 1., (b), (e), (f), (g) and (h), (2),
21 (2m),(4), (5), and (9) of the statutes first applies to request for hearings filed on the
22 effective date of this section.

23 (END)
24