

1973 Senate Bill 185

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CHAPTER 89 , Laws of 1973

AN ACT to renumber 121.54 (4) and 121.58 (4); to amend 118.15 (3) (a) 2 and 3 and (b), 119.28 (1), 121.05 (1), 121.14 (1) (intro.) and (2) (b) and (c), 121.15, 121.16, 121.54 (3), 121.58 (2) (b) and (3) and 121.79 (1) (c); to repeal and recreate subchapter IV of chapter 115; and to create 15.377 (4), 115.28 (7) (c), 115.52 (7), 121.135, 121.54 (4) (b) and 121.58 (4) (b) of the statutes, relating to recodification of the laws pertaining to special education of children with exceptional educational needs, authorizing payment of state aids, granting rule-making authority and increasing an appropriation.

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

SECTION 1. Legislative policy. (1) It is the policy of this state to provide, as an integral part of free public education, special education sufficient to meet the needs and maximize the capabilities of all children with exceptional educational needs.

(2) Furthermore, it is the policy of this state to ensure that each child who has exceptional educational needs is provided with the opportunity to receive a special education at public expense suited to his individual needs. To obtain this end, the legislature recognizes the necessity for a flexible program of special education and for frequent reevaluation of the needs, capabilities and progress of a child with exceptional educational needs.

(3) The legislature also recognizes that it is the responsibility of the school district in which a child with exceptional educational needs resides to ensure that the child is able to receive an education at public expense which is tailored to his needs and capabilities. Special assistance, services, classes or centers shall be provided whenever necessary.

(4) Preference is to be given, whenever appropriate, to education of the child in classes along with children who do not have exceptional educational needs. Where it is not desirable to educate the child who has exceptional educational needs with children who do not have such needs, the child shall be provided with whatever special education is appropriate.

(5) Additionally, the legislature recognizes that it is the right of every parent to provide for his child an education of the parent's choice at his own expense.

SECTION 2. 15.377 (4) of the statutes is created to read:

15.377 (4) **COUNCIL ON SPECIAL EDUCATION.** There is created in the department of public instruction a council on special education consisting of 15 members appointed by the state superintendent for 3-year terms. No more than 7 members of the council may be persons who do not have children with exceptional educational needs and who are representatives of the state, school districts, county handicapped children's education boards or cooperative educational service agencies. At least 5 members of the council shall be parents or guardians of a child with exceptional educational needs, at least one member of the council shall be a school board member, at least one member shall be a certified teacher of regular education as defined in s. 115.76 (9) and at least one member shall be a certified teacher of special education.

SECTION 3. 115.28 (7) (c) of the statutes is created to read:

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

SECTION 4. 115.52 (7) of the statutes is created to read:

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

SECTION 5. Subchapter IV of chapter 115 of the statutes is repealed and recreated to read:

**SUBCHAPTER IV
CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS**

115.76 Definitions. In this subchapter:

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

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

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

- (a) Physical, crippling or orthopedic disability.
- (b) Mental retardation or other developmental disabilities.
- (c) Hearing impairment.
- (d) Visual disability.
- (e) Speech or language disability.
- (f) Emotional disturbance.
- (g) Learning disability.

(h) Pregnancy, including up to 2 months after the birth of the child or other termination of the pregnancy.

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

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

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

(6) "Parent" includes a guardian.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Supervision of the education of all children who have attained the age of 3 years, who have exceptional educational needs and who reside in any facility operated by the state or a county. Such supervision shall include:

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

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

3. Recommending to the state superintendent standards for certification of personnel whom the state superintendent determines to be involved in the education of children described in this paragraph.

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

(4) DIVISION DUTIES. The division shall:

(a) Coordinate the development of all special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency or by state or county residential facility for children who have attained the age of 3 years and who have exceptional educational needs.

(b) Before the program receives any state funds, approve all new or expanded special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency or by a state or county residential facility for children who have attained the age of 3 years and who have exceptional educational needs.

(c) Before a discontinuance or reduction of program becomes effective, approve all plans to discontinue or reduce programs operated by a school district, county

handicapped children's education board, board of control of a cooperative educational service agency or by a state or county residential facility for children who have attained the age of 3 years and who have exceptional educational needs.

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

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

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

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

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

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

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

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

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

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

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

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

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

115.79 Council on special education. (1) The state superintendent shall consult with the council on special education concerning:

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

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

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

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

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

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

115.80 Identification of children with exceptional educational needs. (1) **INDIVIDUAL'S REPORT.** (a) A parent or a physician, nurse, social worker or administrator of a social agency who has reasonable cause to believe that a child brought to him for services has exceptional educational needs shall report the name of such child and any other information required to the school board for the district in which the child resides or to the division, except as provided in par. (b).

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

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

(2) **SCHOOL DISTRICT SCREENING.** Pursuant to any standards adopted by the state superintendent under s. 115.78 (6), the school district shall screen each child when the child first enrolls in a public school in the school district in order to determine if the child has exceptional educational needs.

(3) **MULTIDISCIPLINARY TEAM.** (a) A multidisciplinary team shall be appointed by the school board and composed of 2 or more persons who are skilled in assessing exceptional educational needs that a child may have and who are skilled in programming for children with exceptional educational needs. The state superintendent shall determine the method of appointing members to the team and may require that there be additional members. The number and specialties of additional members may depend on the exceptional educational needs which the particular child is believed to have.

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

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

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

(e) If the multidisciplinary team recommends a child for special education, it shall also recommend to the school board an educational program fitted to the individual child's needs.

If the educational program recommends instruction at the home, residence or other location of the child, there shall be a physician's statement in writing that the child is unable to attend school.

(4) **TEACHER'S REPORT.** Annually, the school district shall require a report, on forms prepared by the department, from the teacher of each child who has attained the age of 3 years and who is receiving special education under s. 115.85 (2) or in a state or county residential facility supervised under s. 115.77 (3) (d). The report shall state the teacher's assessment of the child's progress in the past year and the teacher's recommendation for further education of the child.

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

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

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

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

3. The parent believes the local school board has placed the child in a special education program which does not satisfactorily serve the child's needs.

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

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

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

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

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

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

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

(4) **RIGHTS AT HEARING.** A parent shall have access to any reports, records, clinical evaluations or other materials upon which a decision relating to the child's educational program was wholly or partially based or which could reasonably have a bearing on the correctness of the decision. At any hearing held under this section, the parent may determine whether the hearing shall be public or private, examine and cross-examine witnesses, introduce evidence, appear in person and be represented by an advocate. The school board shall keep a full record of the hearing. A detailed summary thereof shall be given to the parent, if requested.

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

(6) **HEARING AND DECISION.** The school board shall hold a hearing within 60 days of appeal and shall issue a decision based upon the hearing record and the recommendation of the multidisciplinary team within 30 days of the close of the hearing. If no decision is made by the school board within the 30-day period following the close of the hearing, the decision appealed from shall be deemed affirmed.

(7) **APPEAL TO STATE SUPERINTENDENT.** Within 30 days after the decision of the school board, the parent may appeal the decision to the state superintendent. The state superintendent shall issue a decision based upon the hearing record and the recommendation of the multidisciplinary team within 30 days of appeal. If no decision is made by the superintendent within the 30-day period following the close of the hearing, the decision appealed from shall be deemed affirmed.

(8) **APPEAL TO COURT.** Within 30 days after the decision of the state superintendent, the parent may appeal the decision to the circuit or county court of the county in which the child resides.

115.82 Compulsory attendance. The provisions of s. 118.15 relating to compulsory school attendance apply during the school term to children with exceptional educational needs and may be satisfied by attendance at special education programs operated by a school district, county handicapped children's education board, board of control of a cooperative educational service agency, state or county residential facility or private special education service.

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

(a) Subject to approval by the division under s. 115.77 (4) (b) and (c), establish, maintain, expand, reduce or discontinue a special education program, including special

physical or occupational therapy services, for children with exceptional educational needs.

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

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

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

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

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

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

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

115.85 School district. (1) **RESPONSIBILITY TO MAKE PROGRAMS AVAILABLE.** (a) Each school district shall ensure that appropriate special education programs are available to children with exceptional educational needs who have attained the age of 3 years and who reside in the school district.

(b) A school district may provide special education for preschool children under the age of 3 years and instruction for their parents. Such special education shall be subject to the approval of and shall comply with requirements established by the state superintendent.

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

(2) **PLACEMENT IN APPROPRIATE PROGRAM.** The school board after consultation with the multidisciplinary team and after the parent has consented in writing shall place in an appropriate special education program a child who has been recommended for special education by a multidisciplinary team and who resides in the school district.

The board may delegate this responsibility in such manner and to such person as it deems appropriate, including the multidisciplinary team.

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

(b) If an agency enumerated in par. (a) does not operate a special education program which is appropriate for the child's needs, the child shall be placed in a program operated in this state by a public agency as near as possible to the place where the child resides.

(c) If no public agency in this state operates an appropriate program the child shall be placed, with the approval of the state superintendent, in an appropriate public program in another state.

(d) To provide a special education program which is appropriate to the child's needs, the school board may, upon approval of the state superintendent and if no equivalent public program is locally available, contract with a private special education service whose governing board, faculty, student body and teachings are not chosen or determined by any religious organization or for any sectarian purpose.

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

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

(a) The total number of children who reside in the district and who have been placed in special education programs under s. 115.85 (2), the exceptional educational needs of each such child and the school attended or special education received by each such child. The report shall also specify the number of children with exceptional educational needs who are known to the school district and who are under the age of 3 years and the exceptional educational needs of each such child.

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

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

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

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

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

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

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(2) **ESTABLISHMENT.** Any county board may determine to establish a special education program for children with exceptional educational needs, for school districts in the county. The program may provide for one or more special schools, classes, treatment or instruction centers or any other service authorized under s. 115.83 for children with one or more types of exceptional educational needs. A school district shall be included under such county program only to the extent approved by formal action of the school board of the district. When the county board determines to establish such a program, it shall create a board to be known as the "Handicapped Children's Education Board".

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

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

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

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

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

(6) **ASSIGNMENT OF FUNCTIONS.** The county board may assign by resolution the functions of the board to a cooperative educational service agency operating in the county, but if the board continues to exist, it may contract with the agency board of control or a school board of any district in the county for professional and administrative services or for any of the purposes enumerated in s. 115.83. If the board does continue to exist it remains responsible for the program.

(7) **WITHDRAWAL AND DISSOLUTION.** (a) The school board of any district which is included under the administration of a board may withdraw from participation in any part of the program only with the approval of the state superintendent after conference with the board and a determination by the state superintendent that such withdrawal is in the interest of the program in the county and the school district affected. Such withdrawal shall be effective only if the school board has the approval of the division to establish an equivalent part of a program. Such withdrawal shall not

be effective until the end of the next full school term. The withdrawing school district shall be liable for its proportionate share of all operating costs until its withdrawal becomes effective, shall continue to be liable for its share of debt incurred while it was a participant and shall receive no share in the assets.

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

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

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

(10) **STATE AIDS.** The board may apply for and receive the state aid under ss. 115.88, 121.135, 121.14, 121.15 and 121.58 (2) (b) for the transportation, board and lodging, treatment and instruction of children participating in programs under this section. All state aid shall be paid to the county treasurer and credited to the fund of the board.

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

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

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

(4) In counties having a population of less than 500,000, if a child with exceptional educational needs resides in a school district or county which does not maintain an appropriate special education program and attends a special education program in another school district or county, tuition therefor shall be chargeable under this subsection.

(a) Annually on or before August 1, the school district clerk and the secretary of the county handicapped children's education board shall file with the clerks of the county and the city, village or town of residence of nonresident children admitted to

the program of the school district or county a sworn statement of claim for tuition therefor against the county. The claim shall set forth the residence, name, age, date of entrance and number of weeks in attendance during the preceding school year of each such child, the amount of tuition to which the school district or board lays claim for each such child and the total amount of tuition due the school district or board from the county. The county clerk shall examine the claims for the purpose of determining their accuracy and legality and may call upon school, county or local officials to supply data which will verify the claims.

(b) After examining the claims, the county clerk shall notify the school district clerk or secretary of the board of the result of his examination. If corrections are necessary, the county clerk shall notify the school district clerk or secretary of the board who shall meet with the county clerk, at the expense of the school district or board to make corrections. The county clerk then shall apportion the amount of the claims, for each type of exceptional educational need, on the basis of the ratio of the equalized valuation of that portion of each municipality within the county that lies outside of the territory served by all programs for children with that exceptional educational need that are operated by school districts or pursuant to s. 115.83 to the total equalized valuation of all the territory in the county that lies outside of the territory served by all programs for children with that exceptional educational need operated by school districts or under s. 115.83 and shall certify that amount to the clerks of such municipalities.

(c) Upon receipt of the certification from the county clerk, each municipal clerk shall spread the amounts thereof upon the tax rolls for collection. When taxes are collected, such amounts shall be paid by the county treasurer to the treasurer of each school district or county handicapped children's education board to which due, subject to the priority given to high school tuition under s. 74.03 (5).

(5) In counties having a population of 500,000 or more, the school district of residence shall pay tuition charges for children with exceptional educational needs as provided in par. (a) or (b).

(a) Annually on or before August 1, the school district clerk shall file with the clerk of the school district of residence of such nonresident children who reside in school districts that lie wholly or partially in counties having a population of 500,000 or more a sworn statement of claim against the school district of residence. The claim shall set forth the name, age, date of entrance and number of weeks in attendance during the preceding school year of each such child, the amount of tuition to which the school district lays claim for each such child and the total amount of tuition due the school district of attendance from the school district of residence. After examining the claim and verifying it, the clerk of the school district of residence shall cause reimbursement to be made to the treasurer of the claimant school district as other claims are paid.

(b) Any 2 or more school districts, by written agreement of their school boards, may admit residents of the other school districts to any phase of the program for children with exceptional educational needs and waive all claims for tuition for such admittance.

(6) If a child with exceptional educational needs resides in a school district or area served by a county handicapped children's education board which maintains an appropriate special education program for such child and if the child attends a special education program in another school district or area served by another county handicapped children's education board, tuition therefor shall be charged to the child's parent unless the state superintendent and the school district administrators or county

handicapped children's education boards have approved the transfer. If the state superintendent and school district administrators or county handicapped children's education boards approve the transfer of a child to an equivalent special education program in another school district or area served by another county handicapped children's education board for good reason to serve the best interests of the child, the child may attend such special education program and tuition therefor shall be paid by the school district or county of residence.

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

(8) Upon the advance approval of the state superintendent, the school board of any district may place a child in a special education program outside this state in accordance with s. 115.85 (2) (c) or a special education program operated by a private, nonsectarian special education service either within or outside the state in accordance with s. 115.85 (2) (d). If the child resides in a county having a population of less than 500,000, the county of residence shall pay the tuition and transportation in accordance with the procedure established for the payment of tuition by the county under sub. (4). If the child resides in a county having a population of 500,000 or more, the school district of residence shall pay the tuition and transportation in accordance with the procedure established for the payment of tuition by the school district under sub. (5).

115.88 State aid. (1) PROGRAM AID. If, upon receipt of the report under s. 115.84, the state superintendent is satisfied that the special education program has been maintained during the preceding school year in accordance with law, he shall certify to the department of administration in favor of each county, cooperative educational service agency and school district maintaining such special education program a sum equal to 70% of the amount expended by the county, agency and school district during the preceding year for special books and equipment used in programs under this subchapter, salaries of personnel enumerated in s. 115.83 (1), except as provided in pars. (a) and (b), and other expenses approved by the state superintendent. The department of administration shall pay such amounts to the county, agency and school district from the appropriation under s. 20.255 (1) (d). The amount of aid paid to any county, agency or school district under this subsection shall be reduced by any amounts received by that county, cooperative educational service agency or school district under sub. (7) for the same school year.

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

(b) Salaries of senior level school psychologists and senior level school social workers shall be reimbursed at 33-1/3% without regard to whether they are employed in a program for handicapped children. Salaries of senior level school psychologists and senior level school social workers shall be reimbursed at 50% if the school psychologist or social worker spends at least 50% of his time as a part of a multidisciplinary team under s. 115.80 (3) or working directly with or on behalf of a child who has been placed in a special education program under s. 115.85 (2) and such salaries shall be reimbursed at 70% if the school psychologist or social worker spends all of his time as a part of a multidisciplinary team under s. 115.80 (3) or working directly with or on behalf of a child who has been placed in a special education program under s. 115.85 (2). The school district, county handicapped children's education board or cooperative educational service agency shall include in the report

under s. 115.84 any information required by the state superintendent relating to use of a school psychologist or school social worker.

(2) **TRANSPORTATION AID.** If upon receipt of the report under s. 115.84 the state superintendent is satisfied that the transportation of children with exceptional educational needs has been maintained during the preceding year in accordance with the law, he shall certify to the department of administration in favor of each county, cooperative educational service agency or school district transporting such pupils 70% of the difference between the amount expended for such transportation and the amount of aid specified in s. 121.58 (2) or (4), whichever is applicable. The department of administration shall pay such amounts to the county, agency or school district from the appropriation under s. 20.255 (1) (d). This subsection applies to any child with exceptional educational needs who requires special assistance in transportation, including any such child attending regular classes who requires special or additional transportation. This subsection shall not apply to any child with exceptional educational needs attending regular or special classes who does not require any special or additional transportation.

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

(4) **HOSPITALS AND CONVALESCENT HOME AID.** The full cost of special education for children in hospitals and convalescent homes for crippled children shall be paid from the appropriation under s. 20.255 (1) (d). The supervision of such instruction shall be under the department and the school board of the school district in which the hospital or convalescent home is located. The school board of the district in which the hospital or convalescent home is located shall submit to the department an itemized statement of all receipts and disbursements for the actual cost of such instruction and any other information it requires.

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

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

(7) **ADVANCEMENT OF AID FOR NEW OR EXPANDED PROGRAMS.** Any school district, board of control of a cooperative educational service agency or county handicapped children's education board whose application under s. 115.77 (4) to establish or expand a special education program has been authorized may request, and upon a determination of need by the state superintendent, shall receive in advance, for the first year of operation:

(a) For a new program, 75% of the estimated amount of aid which will be paid under sub. (1) for the first year.

(b) For an expanded program, 75% of the difference between the estimated amount of aid which will be paid under sub. (1) for the first year and the amount of aid which the program received for the previous year under sub. (1).

115.89 Noncomplying school district; remedies. (1) If, after a public hearing in the school district, the state superintendent finds that a school district has not provided programs for children with exceptional educational needs as required by s. 115.85 (1) and (2), he shall make findings to that effect, including a finding that the school district has denied equal educational opportunities to children with exceptional educational needs.

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

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

115.90 Temporary waiver. Until July 1, 1976, the state superintendent may annually waive the application to any school district of such provisions of this subchapter as he deems necessary, except that application of s. 115.88 may not be waived.

SECTION 6. 118.15 (3) (a) 2 and 3 and (b) of the statutes are amended to read:

118.15 (3) (a) 2. Any child who is ~~exempted~~ excused by the school board because he is temporarily not in proper physical or mental condition to attend school or his educational program under s. 115.85 (2), but who can be expected to return to his program upon termination of his illness or condition. ~~Prior to making an exemption under this subdivision, the school board shall obtain the~~ The certificate of a reputable physician in general practice, reputable licensed psychologist or that of a Christian Science practitioner living and residing in this state, who is listed in the Christian Science Journal, as to shall be sufficient proof of the physical or mental condition of the child and of the expectations for the child upon termination of his illness or condition. An excuse under this subdivision shall be in writing and shall state the time period for which it is valid not to exceed 30 days.

3. Any child exempted for good cause by the school board of the district in which the child resides, except that good cause may not be based upon the child's exceptional educational needs as described in s. 115.76 (3).

(b) Upon the ~~ordering by the school board of the exemption~~ of a child under par. (a) ~~2 or 3~~ the school district clerk shall file mail notice of such ~~order with~~ action to the parent or guardian of the child. A parent or guardian of an exempted child may appeal the exemption to the state superintendent. Within 30 days after the decision of the state superintendent, the parent or guardian may appeal the decision to the circuit court of the county in which the school is located.

SECTION 7. 119.28 (1) of the statutes is amended to read:

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

SECTION 8. 121.05 (1) of the statutes is amended to read:

121.05 (1) Annually on or before October 1, the school district clerk shall file with the department a report stating ~~the~~:

(a) The number of pupils enrolled and the on the 3rd Friday of September of the current year, including pupils enrolled concurrently in the school district and in a special education program operated by a county handicapped children's education board and attending one or more regular classes operated by the school district and including pupils enrolled in home instruction or any other school district special education program under s. 115.83;

(b) The number of teachers employed in the school district on the 3rd Friday of September of the current school year; and the

(c) The estimated budget for the current school year.

SECTION 9. 121.135 of the statutes is created to read:

121.135 State aid to county handicapped children's education boards. If, upon receipt of the report under s. 115.80 (3), the state superintendent is satisfied that any children enrolled and participating in a special education program provided by a county handicapped children's education board under this subchapter and not counted as pupils enrolled under s. 121.05 are receiving the substantial equivalent of an elementary or high school education from those services, he shall certify to the department of administration from the appropriation under s. 20.255 (1) (f) in favor of the county handicapped children's education board providing those services \$88 per pupil enrolled. Enrollment for aid purposes shall be determined in accordance with s. 121.05. Aids payable under this subsection shall take effect with the fiscal year beginning July 1, 1973.

SECTION 10. 121.14 (1) (intro.) and (2) (b) and (c) of the statutes are amended to read:

121.14 (1) (intro.) State aid shall be paid to each school district or county handicapped children's education board operating summer classes which:

(2) (b) Annually on or before October 1, the school district clerk or chairman of the county handicapped children's education board shall file with the department a report stating the number of pupils enrolled in summer classes. In computing the number of pupils enrolled in summer classes, the total number of accredited classroom or laboratory periods in which each pupil is enrolled, as determined by multiplying the total number of periods in each day in which the pupil is enrolled by the total number of days in which enrolled, shall be divided by 720. The quotient represents the proportion of a pupil enrolled for which the school district or county handicapped children's education board shall be paid state aid.

(c) For the purpose of computing state aid, the total number of pupils enrolled in summer classes determined under par. (b) shall be added to the number of pupils

enrolled in the school district as reported under s. 121.05 or 115.84 where applicable or enrolled in a program operated by a county handicapped children's education board as reported under s. 115.84. For nonresident high school pupils in summer classes, school districts shall be paid the amounts set forth in ss. 121.09 (3), 121.10 (3), 121.12 (3) and 121.13 (3). For nonresident students who are receiving the substantial equivalent of a high school education, the county handicapped children's education board shall be paid the amounts set forth in s. 121.135.

SECTION 11. 121.15 of the statutes is amended to read:

121.15 State aid for driver education programs. To promote a uniformly effective driver education program among high school and vocational, technical and adult education school pupils, each school district operating high school grades, each county handicapped children's education board which provides the substantial equivalent of a high school education and each vocational, technical and adult education district shall receive \$30 for each pupil of high school age who successfully completes a course in driver education approved by the department, but in no case may the state aid exceed the actual cost of instruction. If the appropriation under s. 20.255 (1) (q) is inadequate in any year to provide \$30 per pupil, the state aid shall be prorated after the appropriation for administration is deducted. Such state aid shall be paid at the same time as the state aid under ss. 121.08 to 121.13 is paid.

SECTION 12. 121.16 of the statutes is amended to read:

121.16 State aid to counties. If a county maintains an institution in which children are received for care and if such institution maintains the educational facilities required to be provided by a common school district, the county shall be paid state aid under ss. ~~115.85~~ 115.88 and 121.08 to 121.13. The educational facilities in such institutions shall be under the supervision of the department and the ~~coordinator of the cooperative educational service agency~~ school district in which the institution is located.

SECTION 13. 121.54 (3) of the statutes is amended to read:

121.54 (3) (title) TRANSPORTATION FOR CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS. Every school board shall provide transportation for ~~handicapped~~ children with exceptional educational needs, as defined in s. 115.76 ~~(1) (3)~~, to any public or private elementary or high school, to the Wisconsin school for the visually handicapped or the Wisconsin school for the deaf or to any special educational program for ~~handicapped~~ children with exceptional educational needs sponsored by a state tax-supported institution of higher education, regardless of distance, if the request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this subsection.

SECTION 14. 121.54 (4) of the statutes is renumbered 121.54 (4) (a).

SECTION 15. 121.54 (4) (b) of the statutes is created to read:

121.54 (4) (b) A school board, a county handicapped children's education board or a cooperative educational service agency may provide transportation regardless of distance for children with exceptional educational needs who attend a summer special education program under s. 115.83 (4), if a request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this paragraph.

SECTION 16. 121.58 (2) (b) and (3) of the statutes are amended to read:

121.58 (2) (b) State aid for approved transportation under s. 121.54 (3) shall be paid on the same basis as it is paid for transportation of ~~nonhandicapped~~ children who do not have exceptional educational needs, except that state aid shall be paid for such approved transportation of less than 2 miles at the rate of \$24 per school year per pupil. Such state aid shall be supplemented by the state aid under s. ~~115.85~~ 115.88 in an amount not to exceed the full cost.

(3) STATE AID FOR BOARD AND LODGING. A school district which provides board and lodging or housing under s. 121.57 (2) in lieu of transportation shall be paid state aid for such board and lodging or housing at the rate of not more than \$6 per week of 5 days for each pupil so boarded and lodged or housed, but not to exceed 60% of the cost. For ~~handicapped~~ children with exceptional educational needs such state aid shall be supplemented by the state aid under s. ~~115.85~~ 115.88 in an amount not to exceed the full cost of such board and lodging.

SECTION 17. 121.58 (4) of the statutes is renumbered 121.58 (4) (a).

SECTION 18. 121.58 (4) (b) of the statutes is created to read:

121.58 (4) (b) State aid for approved transportation under s. 121.54 (4) (b) shall be paid on the same basis as it is paid for children who do not have exceptional educational needs, except that state aid shall be paid for such approved transportation of less than 2 miles at the rate of \$4 per pupil. Such state aid shall be supplemented by state aid under s. 115.88 (2).

SECTION 19. 121.79 (1) (c) of the statutes is amended to read:

121.79 (1) (c) For ~~mentally handicapped children, including mentally retarded, emotionally disturbed and epileptic children~~ a child with exceptional educational needs as described under s. 115.76 (3), in foster homes, from the appropriation under s. 20.255 (1) (fb).

SECTION 20. Cross reference. (1) Wherever the reference "115.79 to 115.85" appears in section 119.04 of the statutes, the reference "115.79 to 115.90" is substituted.

(2) Wherever the reference "115.84" appears in section 20.255 (1) (e) of the statutes, the reference "115.88" is substituted.

SECTION 21. Council on special education; initial terms. Of the members first appointed to the council on special education under section 15.377 (4) of the statutes as created by this act, 5 shall be appointed for terms of one year, 5 for terms of 2 years and 5 for terms of 3 years. Successors shall be appointed in accordance with section 15.377 (4) of the statutes.

SECTION 22. Private contracting; court test. Upon enactment of this section, the attorney general shall promptly commence an action seeking a declaratory judgment as to whether the constitution permits the school district to contract with private, nonsectarian special educational services as provided in section 115.85 (2) (d) of the statutes as created by this act. The attorney general shall petition for leave to commence the action as an original action before the Wisconsin supreme court. If the petition is denied, he shall commence the action in the circuit court for Dane County.

SECTION 23. Appropriation increases. (1) The appropriation under section 20.255 (1) (a) of the statutes, as affected by the laws of 1973, is increased by \$9,100 for fiscal year 1973-74 and by \$10,400 for fiscal year 1974-75 to provide an additional staff position in the state aids and finance division of the department of public

instruction and by \$700 for fiscal year 1973-74 and by \$700 for fiscal year 1974-75 for expenses of the council on special education.

(2) The appropriation under section 20.255 (1) (e) of the statutes, as affected by the laws of 1973, is increased by \$247,100 for fiscal year 1974-75 to fund homebound instruction under this act.

(3) The appropriation under section 20.255 (1) (f) of the statutes, as affected by the laws of 1973, is increased \$167,000 for fiscal year 1973-74 and by \$174,900 for fiscal year 1974-75 to provide funds for general aids for county programs at \$165,400 in 1973-74 and \$172,900 in 1974-75 and summer program aids at \$1,600 in 1973-74 and \$2,000 in 1974-75.

(4) The appropriation under section 20.255 (1) (q) of the statutes, as affected by the laws of 1973, is increased by \$1,100 for fiscal year 1973-74 and by \$1,500 for fiscal year 1974-75 to fund driver education aids under this act.

SECTION 23m. Reconciliations. (1) If the 1973-75 biennial budget act contains a school district cost limitation which limits the budgeted per pupil shared cost increase for each school district for fiscal year 1973-74 or calendar year 1974, such shared cost limitation shall be computed exclusive of the cost of any new or expanded special education programs under this act.

(2) If the 1973-75 biennial budget act contains any provisions in conflict with the provisions of this act, the provisions of this act shall supersede the conflicting provisions of the budget act.

SECTION 24. Effective date. This act shall take effect July 1, 1973, or the day after its publication, whichever is later, and shall first apply to aids paid for the 1973-74 school year.
