

1989 Assembly Bill 216

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1989 WISCONSIN ACT 26

AN ACT *to repeal* 115.76 (5), 115.80 (2) (a) to (c), 115.80 (3) (e), 115.85 (1) (a) 2, 115.87 (2) and 115.88 (5); *to renumber and amend* 115.80 (2) (intro.) and 115.85 (1) (a) 1; *to consolidate, renumber and amend* 115.89 (1) and (2); *to amend* 115.76 (3) (a) to (e), 115.77 (4) (b) and (e), 115.80 (title), 115.80 (3) (a), (b) and (d), 115.80 (5) (title), (a) and (b) 1, 115.81 (title), 115.81 (3), (4), (5) to (7) and (8), 115.85 (2) (intro.), (am) and (e), 115.86 (2) (c), 115.89 (3) and 118.31 (1); *to repeal and recreate* 115.76 (10), 115.80 (4) and 115.81 (1) and (2); and *to create* 115.77 (3) (am), 115.80 (4m) and 115.81 (9) of the statutes, **relating to:** various changes to the laws pertaining to handicapped education.

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

SECTION 1. 115.76 (3) (a) to (e) of the statutes are amended to read:

115.76 (3) (a) Physical ~~or orthopedic~~ disability handicap.

(b) Mental retardation or other developmental ~~disabilities~~ disability.

(c) Hearing ~~impairment~~ handicap.

(d) Visual ~~disability~~ handicap.

(e) Speech or language ~~disability~~ handicap.

SECTION 2. 115.76 (5) of the statutes is repealed.

SECTION 3. 115.76 (10) of the statutes is repealed and recreated to read:

115.76 (10) "Special education" means specially designed instruction, at no cost to a child or the child's parents, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education and instruction at home and in hospitals and institutions.

SECTION 4. 115.77 (3) (am) of the statutes is created to read:

115.77 (3) (am) Monitoring special education in this state and enforcing this subchapter.

SECTION 5. 115.77 (4) (b) and (e) of the statutes are amended to read:

115.77 (4) (b) Before the program receives any state funds, approve all ~~new or expanded~~ special education programs operated by a school ~~district board~~, county handicapped children's education board, board of control of a cooperative educational service agency, state or county residential facility or day care center of a county department under s. 51.42 for children ~~who have~~ with exceptional educational needs.

(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~~ evaluation of the child by a multidisciplinary team under s. 115.80 (3).

SECTION 6. 115.80 (title) of the statutes is amended to read:

115.80 (title) Identifying and providing special education to children with exceptional educational needs.

SECTION 7. 115.80 (2) (intro.) of the statutes is renumbered 115.80 (2) and amended to read:

115.80 (2) SCHOOL DISTRICT SCREENING. Pursuant to any standards adopted by the state superintendent under s. ~~115.78 (6)~~, each child shall be screened Each school board is responsible for screening each child who resides in the school district and has not graduated from high school to determine if there is reasonable cause to believe

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that the child ~~has is a child with~~ exceptional educational needs ~~when the child~~.

SECTION 8. 115.80 (2) (a) to (c) of the statutes are repealed.

SECTION 9. 115.80 (3) (a), (b) and (d) of the statutes are amended to read:

115.80 (3) (a) ~~A~~ The school board shall appoint a multidisciplinary team shall be appointed by the school board and for each child reported to it under sub. (1) who resides in the school district and has not graduated from high school and for each child identified under sub. (2). ~~A multidisciplinary team shall be~~ composed of 2 or more persons who are skilled in assessing ~~the~~ 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 that~~ the particular child is believed to have. Before a child is sent from a state or county residential facility to a school district, the state superintendent may require that the team for the school district to which the child may be sent, include or consult with, persons appointed by the governing body of the residential facility. For examination ~~the evaluation~~ of a child who resides, and is receiving education, only at a state or county residential facility, ~~or who it is determined may have exceptional educational needs under sub. (2) (b),~~ the multidisciplinary team shall be appointed by, and make recommendations under pars. (c), ~~and~~ (d) ~~and (e)~~ to the governing body of the residential facility in which the child resides.

(b) ~~The~~ Except as provided under s. 115.81 (1) (b), the multidisciplinary team appointed under par. (a) shall, upon written parental approval, examine any child who has attained the age of 3 years and who as a result of screening under sub. (2) is believed to have exceptional educational needs, or is referred to it by a parent as a result of an individual's report under sub. (1) (a), by the governing body of a state or county residential facility or by a school board consent, evaluate each child reported to the school board under sub. (1) who resides in the school district and has not graduated from high school and each child identified under sub. (2).

(d) The multidisciplinary team shall recommend a child to the school board for special education if it ~~deems it in the best interests of~~ determines that the child is a child with exceptional educational needs.

SECTION 10. 115.80 (3) (e) of the statutes is repealed.

SECTION 11. 115.80 (4) of the statutes is repealed and recreated to read:

115.80 (4) **INDIVIDUALIZED EDUCATION PROGRAM.** A school board shall appoint staff to develop an individualized education program for each child recommended to it for special education under sub. (3) (d) who is 3 years

of age or older. An individualized education program establishes the education program to be provided a child with exceptional educational needs. School board staff shall review each child's individualized education program at least annually.

SECTION 12. 115.80 (4m) of the statutes is created to read:

115.80 (4m) **EDUCATIONAL PLACEMENT.** A school board shall provide an educational placement under s. 115.85 (2) for each child with exceptional educational needs to implement the child's individualized education program. Except as provided in s. 115.81 (1) (b), a school board may not provide an educational placement for a child without the consent of the child's parent.

SECTION 13. 115.80 (5) (title), (a) and (b) 1. of the statutes are amended to read:

115.80 (5) (title) **REEVALUATION.** (a) 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~~ reevaluated by a multidisciplinary team at least once every 3 years.

(b) 1. Upon ~~reexamination~~ reevaluation by a multidisciplinary team ~~no, the 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~~ may not continue to receive such special education except upon ~~the~~ the recommendation of the multidisciplinary team to the school board.

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

115.81 (title) Procedural safeguards.

SECTION 15. 115.81 (1) and (2) of the statutes are repealed and recreated to read:

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

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

(2) **NOTICES.** A school board shall fully inform the parent of any action it plans to take regarding the parent's child and of all procedural safeguards available to the parent.

SECTION 16. 115.81 (3), (4), (5) to (7) and (8) of the statutes are amended to read:

115.81 (3) (title) **STATUS DURING APPEAL.** ~~A~~ The school board may not change in the program or status educational placement of a child with exceptional educational needs ~~shall not be made within the period afforded~~

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the parent to request a hearing nor, if such hearing is requested, before the hearing officer issues a decision, who is the subject of a hearing, appeal or court proceeding conducted under this subchapter during the pendency of the hearing, appeal or court proceeding unless a program the change is made with the written consent of the child's parent. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be made earlier, upon order of the school board, but without prejudice to any rights that the child or parent may have.

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

(5) (title) INDEPENDENT EVALUATION. If a child's parent believes the diagnosis or that a school board's multidisciplinary team evaluation of the his or her child as shown in the reports or records made available to him the parent under sub. (4) is in error, he or she may obtain an independent examination and evaluation of the child and have the report thereof considered by the school board and 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. The school board shall pay the costs of the independent evaluation unless the parent refuses to give the school board a copy of the independent evaluation or it is found at a hearing that the school board's multidisciplinary team evaluation is appropriate or that the independent evaluation does not meet standards set by the department.

(6) HEARING AND DECISION. Upon receipt of a request for a hearing under sub. (1) (a) or the initiation of a hearing under sub. (1) (b), a school board shall appoint an impartial hearing officer. The hearing officer shall conduct a the hearing and shall issue a decision within 45 days of the receipt of the request for the hearing under sub. (1) (a) or the initiation of the hearing under sub. (1) (b). The hearing officer may issue subpoenas, order an independent evaluation at public school board expense as provided under sub. (5) and grant specific extensions of time for cause, ~~not to exceed 30 days,~~ at the request of

either party. Sections 227.44 to 227.50 do not apply to hearings conducted under this section.

(7) APPEAL TO STATE SUPERINTENDENT. Within ~~30~~ 45 days after the decision of the hearing officer under sub. (6), either party may appeal the decision to the state superintendent. An appeal under this subsection shall be initiated by filing a written request for review with the state superintendent. The request for review shall contain a brief statement of the grounds on which the review is requested and shall be served on all parties. The state superintendent shall appoint an impartial reviewing officer to conduct the appeal. The reviewing officer shall review the record established at the hearing under sub. (6) and shall issue a written decision within 30 days of receipt of appeal the request for review. A reviewing officer may receive additional testimony and may grant specific extensions of time for cause at the request of either party.

(8) APPEAL TO COURT. Within ~~30~~ 45 days after the decision of the reviewing officer appointed by the state superintendent under sub. (7), either party may appeal the decision to the circuit court for the county in which the child resides.

SECTION 17. 115.81 (9) of the statutes is created to read:

115.81 (9) SURROGATE PARENTS. (a) A school board shall appoint a surrogate parent for a child with exceptional educational needs who resides in the school district if any of the following applies:

1. The child's parents are not known.
2. The child's parents are not available.

3. The child is a ward of or in the legal custody of a public agency, or a child welfare agency licensed under s. 48.60, that has the authority to make educational decisions for the child.

(b) The school board may not appoint as a surrogate parent for a child any employe of a public agency, or a child welfare agency licensed under s. 48.60, who is involved in the education or care of the child.

(c) Notwithstanding ss. 48.34 (4) and (4m), 48.345, 48.363, 48.427 (3), 767.24 (3), 880.12 and 880.15, a surrogate parent has the authority to act as the child's parent in all matters relating to this subchapter.

SECTION 18. 115.85 (1) (a) 1. of the statutes is renumbered 115.85 (1) (a) and amended to read:

115.85 (1) (a) Each school district board shall ensure that appropriate special education programs and related services are available to children with exceptional educational needs who have attained the age of 3 years and, who have not graduated from high school and who reside in the school district, or who reside in a state or county residential facility located in the school district, and receive special education full- or part-time in the school district. Each state or county residential facility shall ensure that the such programs and services are available

to such other children who reside in the facility. Each school board shall ensure that to the maximum extent appropriate, a child with exceptional educational needs is educated with children who are not children with exceptional educational needs and that special classes, separate schooling or other removal from the regular educational environment occurs only when the nature or severity of the child's handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The school board shall ensure that a continuum of alternative placements is available to meet the needs of children with exceptional educational needs.

SECTION 19. 115.85 (1) (a) 2. of the statutes is repealed.

SECTION 20. 115.85 (2) (intro.), (am) and (e) of the statutes are amended to read:

115.85 (2) (intro.) The school board ~~after consultation with the multidisciplinary team and after the parent has consented in writing shall place in~~ provide an appropriate special education program educational placement for a child who has been recommended for special education by a multidisciplinary team and who resides in the school district with exceptional educational needs. The school board may delegate this responsibility in such manner and to such person as it deems appropriate, including the multidisciplinary team. The governing body of a state or county residential facility shall place in an appropriate special education program a child who resides, and is receiving special education, only in the facility.

(am) If an agency enumerated in par. (a) does not operate a special education program which is appropriate for the child's needs, or if requested by the child's parents and recommended by the ~~multidisciplinary team~~ staff who developed the child's educational placement, the child may be placed in a model school special education program established under s. 36.25 (19). If the local school board utilizes this placement option, the school district of residence shall pay any tuition charges for children with exceptional educational needs the child.

(e) The school board may place a child with exceptional 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).

SECTION 21. 115.86 (2) (c) of the statutes is amended to read:

115.86 (2) (c) 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. Beginning July 1, 1978, each~~ Each school district which that participates in the county program for any of the disability areas handicaps under s. 115.76 (3), or subdivisions

thereof under s. 115.76 (3) (b) based upon the severity of ~~handicapping condition~~ the handicap, must subscribe to all of the services offered by the board ~~in for~~ for each of the disability areas handicaps or subdivisions thereof under s. 115.76 (3) (b), for which the school board has resolved to participate, ~~however, a~~ A school board may, however, arrange with the board for such necessary support or intervention services to primary programs subscribed to. A board created under this section shall be known as the "Handicapped Children's Education Board".

SECTION 22. 115.87 (2) of the statutes is repealed.

SECTION 23. 115.88 (5) of the statutes is repealed.

SECTION 24. 115.89 (1) and (2) of the statutes are consolidated, renumbered 115.89 (1) and amended to read:

115.89 (1) If, after a public hearing in the school district or as the result of a monitoring procedure or a complaint investigation, the state superintendent finds that a school district board 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 violated this subchapter or the rules promulgated under this subchapter, he or she may make recommendations to the school district board to remedy the denial violation and may require the school district board to submit a remedial plan incorporating such recommendations.

SECTION 25. 115.89 (3) of the statutes is amended to read:

115.89 (3) If, after consultation with the school board, the state superintendent finds that the remedial plan has not incorporated his or her recommendations, or that its implementation has been inadequate to remedy the denial of equal educational opportunities ensure compliance with this subchapter and the rules promulgated under this subchapter, he or she shall request the attorney general to proceed against the school district for injunctive or other appropriate relief.

SECTION 26. 118.31 (1) of the statutes is amended to read:

118.31 (1) In this section, "corporal punishment" means the intentional infliction of physical pain which is used as a means of discipline. "Corporal punishment" includes, but is not limited to, paddling, slapping or prolonged maintenance of physically painful positions, when used as a means of discipline. "Corporal punishment" does not include actions consistent with an ~~individual educational~~ individualized education program

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developed under s. 115.80 ~~(3)~~(e) (4) or reasonable physical activities associated with athletic training.
