

# State of Wisconsin



1999 Assembly Bill 367

Date of enactment: **May 8, 2000**  
Date of publication\*: **May 22, 2000**

## 1999 WISCONSIN ACT 117

**AN ACT to renumber** 121.84 (2); **to renumber and amend** 121.81 (1), 121.84 (1) (a) and 121.84 (3); **to amend** 115.77 (1), 115.77 (4) (j) 10., 115.777 (1), 115.78 (1), 115.782 (2) (d), 115.787 (3) (d), 115.79 (2), 115.792 (1) (b), 115.792 (3) (a), 115.80 (8), 115.82 (2) (b), 115.88 (8), 118.51 (2), 118.51 (3) (a) 1. and 2., 118.51 (5) (a) 4., 118.51 (9), 118.51 (12), 118.51 (17), 121.05 (1) (a) 11., 121.54 (10), 121.58 (2) (a), 121.58 (4) and 121.77 (3); and **to create** 121.81 (1) (a) and (b), 121.84 (1) (a) 2. and 121.84 (4) of the statutes; **relating to**: school district open enrollment and tuition waivers and payments.

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

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

115.77 (1) In sub. (1m) (a) to (d), except as provided in s. 118.51 (12) (a) and (b) 2., if a child with a disability is attending a public school in a nonresident school district under s. 118.51 or 121.84 (1) (a) or (4), "local educational agency" means the school district that the child is attending.

**SECTION 2.** 115.77 (4) (j) 10. of the statutes is amended to read:

115.77 (4) (j) 10. If the local educational agency is a school district, the number of children with disabilities who attend the school district under ~~s. ss.~~ 118.51 and 121.84 (1) (a) and (4), the disability of each such child and the special education or related services received by each such child.

**SECTION 3.** 115.777 (1) of the statutes is amended to read:

115.777 (1) (a) A physician, nurse, psychologist, social worker or administrator of a social agency who reasonably believes that a child brought to him or her for

services has a disability shall refer the child to the local educational agency. If the local educational agency to whom the referral is made is the school district in which the child resides but the child is attending a public school in a nonresident school district under s. 118.51 or 121.84 (1) (a) or (4), the school board of the school district in which the child resides shall provide the name of the child and related information to the school board of the school district that the child is attending.

(b) A person who is required to be licensed under s. 115.28 (7), who is employed by a local educational agency and who reasonably believes a child has a disability, shall refer the child to the local educational agency. If the local educational agency to whom the referral is made is the school district that the child is attending but the child is a nonresident attending a public school in that school district under s. 118.51 or 121.84 (1) (a) or (4), the school board of the school district that the child is attending shall provide the name of the child and related information to the school board of the child's school district of residence.

(c) Any person other than those specified under par. (a) or (b) who reasonably believes that a child is a child with a disability may refer the child to a local educational

\* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

agency. If the local educational agency to whom the referral is made is the school district in which the child resides but the child is attending a public school in a non-resident school district under s. 118.51 or 121.84 (1) (a) or (4), the school board of the school district in which the child resides shall provide the name of the child and related information to the school board of the school district that the child is attending.

**SECTION 4.** 115.78 (1) of the statutes is amended to read:

115.78 (1) **DEFINITION.** In this section, for a child who is attending a public school in a nonresident school district under s. 118.51 or 121.84 (1) (a) or (4), “local educational agency” means the school board of the school district that the child is attending.

**SECTION 5.** 115.782 (2) (d) of the statutes is amended to read:

115.782 (2) (d) ~~If the a child being evaluated is attending a public school in a nonresident school district under s. 118.51, as part of or 121.84 (1) (a) or (4), when the individualized education program team conducts its initial evaluation of the child and as part of or any reevaluation of the child under sub. (4), the individualized education program team shall collaborate with appropriate personnel include at least one person designated by the school board of the child’s school district of residence who has knowledge or special expertise about the child.~~

**SECTION 6.** 115.787 (3) (d) of the statutes is amended to read:

115.787 (3) (d) If a child is attending a public school in a nonresident school district under s. 118.51, or 121.84 (1) (a) or (4), when the individualized education program team for the child ~~shall develop~~ develops the child’s individualized education program ~~in collaboration with appropriate personnel, the team shall include at least one person~~ designated by the school board of the school district in which the child resides who has knowledge or special expertise about the child.

**SECTION 7.** 115.79 (2) of the statutes is amended to read:

115.79 (2) An educational placement is provided to implement a child’s individualized education program. Except as provided in s. 118.51 (12) (a) and (b) 2., if a child with a disability is attending a public school in a nonresident school district under s. 118.51 or 121.84 (1) (a) or (4), the school board of the school district that the child is attending shall provide an educational placement for the child and shall pay tuition charges instead of the school district in which the child resides if required by the placement.

**SECTION 8.** 115.792 (1) (b) of the statutes is amended to read:

115.792 (1) (b) The local educational agency shall establish and maintain procedures to ensure that a child’s parents are provided prior written notice whenever the local educational agency proposes to initiate or change,

or refuses to initiate or change, the identification, evaluation or educational placement of the child, or the provision of a free appropriate public education to the child. In this paragraph, “local educational agency” includes the nonresident school district that a child is attending under s. 118.51 or 121.84 (1) (a) or (4).

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

115.792 (3) (a) In this subsection, “local educational agency” includes the nonresident school district that a child is attending under s. 118.51 or 121.84 (1) (a) or (4).

**SECTION 10.** 115.80 (8) of the statutes is amended to read:

115.80 (8) Except as provided in [20 USC 1415 \(k\)](#), during the pendency of any proceedings under this section, the local educational agency may not change the educational placement of a child unless the child’s parents agree to the change. If the child is applying for initial admission to a public school, the child shall, with the consent of the child’s parents, be placed in the public school program until all proceedings under this section have been completed. In this subsection, “local educational agency” includes the nonresident school district that a child is attending under s. 118.51 or 121.84 (1) (a) or (4).

**SECTION 11.** 115.82 (2) (b) of the statutes is amended to read:

115.82 (2) (b) If the child is attending a public school in a nonresident school district under s. 118.51 or 121.84 (1) (a) or (4), the nonresident school district shall provide transportation.

**SECTION 12.** 115.88 (8) of the statutes is amended to read:

115.88 (8) **ENROLLMENT OUT OF STATE.** If a child with a disability is enrolled in a public special education program located in another state and the state superintendent is satisfied that the program in which the child is enrolled complies with this subchapter, the state superintendent shall certify to the department of administration in favor of the school district in which the child resides or the school district attended by the child under s. 118.51 or 121.84 (1) (a) or (4) a sum equal to the percentage of the approved costs under subs. (1) and (2) of the amount expended by the school district during the preceding year for the additional costs associated with the child’s special education program. The department of administration shall pay the amount to the school district from the appropriation under s. 20.255 (2) (b).

**SECTION 12m.** 118.51 (2) of the statutes is amended to read:

118.51 (2) **APPLICABILITY.** ~~Beginning in the 1998–99 school year, a~~ Δ pupil may attend a public school, including a prekindergarten, 4-year-old kindergarten, early childhood or school-operated day care program, in a nonresident school district under this section, except that a pupil may attend a prekindergarten, 4-year-old kindergarten, early childhood or school-operated day care pro-

gram in a nonresident school district only if the pupil's resident school district offers the same type of program that the pupil wishes to attend and the pupil is eligible to attend that program in his or her resident school district.

**SECTION 13.** 118.51 (3) (a) 1. and 2. of the statutes are amended to read:

118.51 (3) (a) 1. The parent of a pupil who wishes to attend a public school in a nonresident school district under this section shall submit an application, on a form provided by the department under sub. (15) (a), to the school board of the nonresident school district that the pupil wishes to attend, not earlier than the first Monday in February and not later than the 3rd Friday following the first Monday in February of the school year immediately preceding the school year in which the pupil wishes to attend. On the 4th Monday in February, the nonresident school board shall send a copy of the application to the pupil's resident school board and the department. The application may include a request to attend a specific school or program offered by the nonresident school district.

2. A nonresident school board may not act on any application received under subd. 1. until after the 3rd Friday following the first Monday in February. If a nonresident school board receives more applications for a particular grade or program than there are spaces available in the grade or program, the nonresident school board shall determine which pupils to accept on a random basis.

**SECTION 14.** 118.51 (5) (a) 4. of the statutes is amended to read:

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

**SECTION 15.** 118.51 (9) of the statutes is amended to read:

118.51 (9) APPEAL OF REJECTION. If the nonresident school board rejects an application under sub. (3) (a) or (7) or the resident school board prohibits a pupil from attending public school in a nonresident school district under sub. (6), (7) or (12) (b) 1., the pupil's parent may appeal the decision to the department within 30 days after the decision. If the nonresident school board provides notice that the special education or related service is not available under sub. (12) (a), the pupil's parent may appeal the required transfer to the department within 30 days after receipt of the notice. If the resident school board provides notice of transfer under sub. (12) (b) 2., the pupil's parent may appeal the required transfer to the department within 30 days after receipt of the notice. The

department shall affirm the school board's decision unless the department finds that the decision was arbitrary or unreasonable.

**SECTION 16.** 118.51 (12) of the statutes is amended to read:

118.51 (12) SPECIAL EDUCATION PROGRAM OR RELATED SERVICES. (a) *Unavailable after enrollment.* If the individualized education program for a pupil, developed or revised under s. 115.787 after a child begins attending public school in a nonresident school district under this section, requires a special education ~~program~~ or related ~~service~~ services that is are not available in the nonresident school district or if there is no space available in to provide the special education ~~program~~ or related services identified in the child's individualized education program, including any class size limits, pupil-teacher ratios or enrollment projections established by the nonresident school board, the nonresident school board may notify the child's parent and the child's resident school board that the ~~program or special education or related~~ service is not available in the nonresident school district. If such notice is provided, the child shall be transferred to his or her resident school district, which shall provide an educational placement for the child under s. 115.79 (2).

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

2. If the costs of the special education ~~program~~ or related services required in an individualized education program for a pupil, developed or revised under s. 115.787 after a child begins attending public school in a nonresident school district under this section, as implemented or proposed to be implemented by the nonresident school district, would impose upon the child's resident school district an undue financial burden in light of the resident school district's total economic circumstances, including its revenue limit under subch. VII of ch. 121, its ability to pay tuition costs for the pupil and the per pupil special education ~~program~~ or related services costs for children with disabilities continuing to be

served by the resident school district, the child's resident school board may notify the pupil's parent and the non-resident school board that the program costs of the special education or related services impose such an undue financial burden on the resident school district. If such notice is provided, the child shall be transferred to his or her resident school district, which shall provide an educational placement for the child under s. 115.79 (2). ~~The pupil's parent may appeal a required transfer under this subdivision to the department within 30 days after receipt of the notice. The department shall affirm the resident school board's determination unless the department finds that the determination was arbitrary or unreasonable.~~

**SECTION 17.** 118.51 (17) of the statutes is amended to read:

118.51 (17) SPECIAL EDUCATION TUITION. The resident school board shall pay to the nonresident school board, for each child who is attending public school in the nonresident school district under this section and is ~~enrolled in a program for children with disabilities receiving special education or related services under subch. V of ch. 115,~~ tuition calculated using the daily tuition rate under s. 121.83 for such children enrolled in ~~such programs~~ in the nonresident school district, or an amount agreed to by the school boards of the 2 school districts.

**SECTION 18.** 121.05 (1) (a) 11. of the statutes is amended to read:

121.05 (1) (a) 11. Pupils residing in the school district but attending a public school in another school district under s. 118.51 or 121.84 (4).

**SECTION 19.** 121.54 (10) of the statutes is amended to read:

121.54 (10) ~~FULL-TIME OPEN ENROLLMENT ATTENDANCE IN NONRESIDENT SCHOOL DISTRICT.~~ Subject to s. 118.51 (14) (a) 2., a school board may elect to provide transportation, including transportation to and from summer classes, for nonresident pupils who are attending public school in the school district under s. 118.51 or 121.84 (4), or its resident pupils who are attending public school in another school district under s. 118.51 or 121.84 (4), or both, except that a school board may not provide transportation under this subsection for a nonresident pupil to or from a location within the boundaries of the school district in which the pupil resides.

**SECTION 20.** 121.58 (2) (a) of the statutes is amended to read:

121.58 (2) (a) A school district which provides transportation to and from a school under ss. 121.54 (1) to (3), (5) and (6) and 121.57, and the nonresident school district that a pupil attends under s. 118.51 or 121.84 (4) which elects to provide transportation under s. 121.54 (10), shall be paid state aid for such transportation at the rate of \$30 per school year per pupil so transported whose residence is at least 2 miles and not more than 5 miles from the school attended, \$45 per school year per pupil so

transported whose residence is at least 5 miles and not more than 8 miles from the school attended, \$60 per school year per pupil so transported whose residence is at least 8 miles and not more than 12 miles from the school attended, \$68 per school year per pupil so transported whose residence is at least 12 miles and not more than 15 miles from the school attended, \$75 per school year per pupil so transported whose residence is at least 15 miles and not more than 18 miles from the school attended, and \$85 per school year per pupil so transported whose residence is more than 18 miles from the school attended. Such state aid shall be reduced proportionately in the case of a pupil transported for less than a full school year because of nonenrollment. State aid for transportation shall not exceed the actual cost thereof. No state aid of any kind may be paid to a school district which charges the pupil transported or his or her parent or guardian any part of the cost of transportation provided under ss. 121.54 (1) to (3), (5), (6) and (10) and 121.57 or which wilfully or negligently fails to transport all pupils for whom transportation is required under s. 121.54.

**SECTION 21.** 121.58 (4) of the statutes is amended to read:

121.58 (4) STATE AID FOR SUMMER CLASS TRANSPORTATION. Annually on or before October 1 of the year in which transportation is provided under s. 121.54 (4), or under s. 121.54 (10) if the transportation is provided by the nonresident school district that a pupil attends under s. 118.51 or 121.84 (4), the school district clerk shall file with the department a report, containing such information as the department requires, on transportation provided by the school board to and from summer classes. Upon receipt of such report and if the summer classes meet the requirements of s. 121.14 (1), state aid shall be paid for such transportation. A school district which provides such transportation shall be paid state aid for such transportation at the rate of \$4 per pupil transported to and from public school whose residence is at least 2 miles and not more than 5 miles by the nearest traveled route from the public school attended, and \$6 per pupil transported to and from public school whose residence is more than 5 miles by the nearest traveled route from the public school attended, if the pupil is transported 30 days or more. The state aid shall be reduced proportionately if the pupil is transported less than 30 days.

**SECTION 22.** 121.77 (3) of the statutes is amended to read:

121.77 (3) Subsections (1) (b) and (2) do not apply to a pupil attending a public school in a nonresident school district under s. 118.51 or 121.84 (4).

**SECTION 23.** 121.81 (1) of the statutes is renumbered 121.81 (1) (intro.) and amended to read:

121.81 (1) (intro.) GENERAL. Before the admission of a nonresident pupil to an elementary or a high school of a school district, the school board of that district shall make a written agreement with the ~~parents~~ pupil's parent

or guardian for the payment of tuition at the rate established in accordance with this subchapter, except when the tuition is otherwise chargeable under this subchapter or under subch. V of ch. 115. The tuition amount shall be calculated under s. 118.51 (16) (a) 3. except as follows:

**SECTION 24.** 121.81 (1) (a) and (b) of the statutes are created to read:

121.81 (1) (a) If the nonresident pupil attends school in the school district for less than a full school term, the tuition amount shall be prorated based on the number of days that school is in session and the nonresident pupil attends school in the school district.

(b) If the pupil is receiving special education or related services under subch. V of ch. 115, the tuition amount shall be calculated using the daily tuition rate under s. 121.83 for children receiving such special education and related services or an amount agreed to by the school board and the pupil's parent or guardian.

**SECTION 25.** 121.84 (1) (a) of the statutes is renumbered 121.84 (1) (a) 1. and amended to read:

121.84 (1) (a) 1. A school board shall ~~may~~ permit a pupil who is ~~was~~ enrolled in a school under its jurisdiction and is ~~and~~ a resident of the school district at the beginning of the school year to complete the school year at the school ~~he or she is attending~~ without payment of tuition, even though the pupil is no longer a resident of the school district.

**SECTION 26.** 121.84 (1) (a) 2. of the statutes is created to read:

121.84 (1) (a) 2. A school board shall permit a pupil who was a resident of the school district on the 3rd Friday in September or the 2nd Friday in January of the current school year and who has been enrolled in the school district for at least 20 school days during the current school year to complete the current school year at the school he or she is attending without payment of tuition, even though the pupil is no longer a resident of the school district.

**SECTION 27.** 121.84 (2) of the statutes is renumbered 121.84 (5).

**SECTION 28.** 121.84 (3) of the statutes is renumbered 121.84 (1) (d) and amended to read:

121.84 (1) (d) The school district of attendance shall continue to count pupils under ~~sub. (1)~~ this subsection in membership.

**SECTION 29.** 121.84 (4) of the statutes is created to read:

121.84 (4) (a) A school board shall permit a pupil to whom all of the following apply to attend school in the school district in the current school year without payment of tuition:

1. The pupil was a resident of the school district on the 2nd Friday in January of the previous school year.

2. The pupil was enrolled in the school district continuously from the 2nd Friday in January of the previous school year to the end of the school term of the previous school year.

3. The pupil ceased to be a resident of the school district after the first Monday in February of the previous school year.

4. The pupil continues to be a resident of this state.

(b) If a pupil attends school in a school district outside the pupil's school district of residence under par. (a), s. 118.51 (12), (14), (16) and (17) apply to the pupil as if the pupil were attending school in a nonresident school district under s. 118.51. If the pupil is rejected as a result of s. 118.51 (12) (a), prohibited from attending as a result of s. 118.51 (12) (b) 1. or transferred as a result of s. 118.51 (12) (b) 2., s. 118.51 (9) applies.

**SECTION 30. Initial applicability.**

(1) The treatment of sections 121.81 (1) and 121.84 (1) (a) and (2) to (4) of the statutes and the creation of section 121.81 (1) (a) and (b) of the statutes first apply to pupils who wish to attend school in a school district outside their school district of residence in the school year beginning after the effective date of this subsection.

(2) The treatment of section 118.51 (2) of the statutes first applies to applications submitted during the first complete application period, as specified in section 118.51 (3) (a) 1. of the statutes, as affected by this act, beginning after the effective date of this subsection.