

CHAPTER 116

COOPERATIVE EDUCATIONAL SERVICE AGENCIES

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Cross-reference: See definitions in s. 115.001.

116.01 Purpose. The organization of school districts in Wisconsin is such that the legislature recognizes the need for a service unit between the school district and the department. The cooperative educational service agencies are designed to serve educational needs in all areas of Wisconsin by serving as a link both between school districts and between school districts and the state. Cooperative educational service agencies may provide leadership, coordination and education services to school districts, University of Wisconsin System institutions and centers and technical colleges. Cooperative educational service agencies may facilitate communication and cooperation among all public and private schools, agencies and organizations that provide services to pupils.

NOTE: This section is shown as amended eff. 1–1–96 by 1995 Wis. Act 27, s. 9145 (1). The treatment by Act 27, s. 9145 (1), was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27, s. 9145 (1), it read:

116.01 Purpose. The organization of school districts in Wisconsin is such that the legislature recognizes the need for a service unit between the school district and the state superintendent. The cooperative educational service agencies are designed to serve educational needs in all areas of Wisconsin by serving as a link both between school districts and between school districts and the state. Cooperative educational service agencies may provide leadership, coordination and education services to school districts, University of Wisconsin System institutions and centers and technical colleges. Cooperative educational service agencies may facilitate communication and cooperation among all public and private schools, agencies and organizations that provide services to pupils.

History: 1977 c. 418; 1983 a. 27; 1995 a. 27 ss. 3914e, 9145 (1).

See note to Art. I, sec. 18, citing 62 Atty. Gen. 75.

116.015 Legal status. A cooperative educational service agency may in its name enter into contracts authorized by this chapter and may sue and be sued.

History: 1977 c. 221; 1983 a. 27 s. 2200 (42).

116.02 Board of control; membership. (1) (a) Each agency shall be governed by a board of control composed of members of school boards of school districts within the agency. Annually on or after the 4th Monday in April, the school board of each school district in the agency shall appoint one of its members as its representative for the purpose of determining the composition of the board of control. For the purpose of determining membership on the board of control, a school district operating elementary grades only and lying in more than one union high school district shall be considered part of the union high school district territory in which the major portion of its equalized valuation lies. The board of control shall hold an annual organizational meeting on or after the 2nd Monday in May. No annual organizational meeting may be held after the 2nd Monday in August.

(c) The department shall cause to convene annually on the day that the board of control holds its annual organizational meeting under par. (a) a convention composed of the representative from each school board in the agency. There shall be no more than one representative from each union high school district. The convention may direct the board of control to determine a different date for the annual organizational meeting.

NOTE: Par. (c) is shown as amended by 1995 Wis. Act 27. The treatment by Act 27, s. 9145 (1), was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Par. (c), as not affected by 1995 Wis. Act 27 s. 9145 (1), reads as follows:

(c) The state superintendent shall cause to convene annually on the day that the board of control holds its annual organizational meeting under par. (a) a convention composed of the representative from each school board in the agency. There shall be no more than one representative from each union high school district. The convention may direct the board of control to determine a different date for the annual organizational meeting.

(2) The annual convention shall establish bylaws for governing the agency, including bylaws for all of the following:

(a) Subject to sub. (1) (a), setting the date of the annual convention and establishing procedures for calling a special meeting.

(b) Providing for regular meetings of the board of control.

(c) Establishing an initial plan of representation for the agency and specifying how the plan may be amended.

(d) Specifying the number of members on the board of control.

(e) Specifying what constitutes a vacancy on the board of control and establishing procedures for filling a vacancy on the board of control.

(f) Specifying the officers on the board of control, establishing procedures for choosing those officers, specifying their terms of office and their duties and establishing procedures for removing them from office.

(g) Providing for the establishment of fiscal control, responsibility and accountability requirements.

(h) Designating a public depository.

History: 1979 c. 110; 1981 c. 8; 1983 a. 27; 1993 a. 184, 492; 1995 a. 27 ss. 3914m to 3915s, 9145 (1).

116.03 Board of control; duties. The board of control shall:

(1) Determine the policies of the agency.

(2) Receive state aid for the operation of the agency.

(4) Determine each participating local unit's prorated share of the cost of cooperative programs and assess the costs of each program against each unit participating in the program including, without limitation because of enumeration, unemployment compensation, litigation expense, collective bargaining and monetary awards by courts and agencies, but no board of control may levy any taxes. No cost may be assessed against a unit for a cooperative program unless the unit enters into a contract for the service.

(9) Require a bond of the agency administrator and such other employes as determined by the board of control. The agency administrator, within 15 days following the beginning of contractual duties, shall file a bond executed by 2 qualified sureties approved by the board of control or may file a surety company bond in an amount determined by the board of control, but at least equal to 5% of the current administrative budget of the agency. If the board of control so determines, the agency treasurer shall file personal or surety bonds in such amounts as the board of control requires. The agency may purchase surety company bonds with agency funds.

(10) Authorize the expenditure of money for the purposes set forth in this chapter and for the actual and necessary expenses of

the board of control and agency administrator and for the acquisition of equipment, space and personnel. All accounts of the agency shall be paid by check, share draft or other draft signed by the chairperson and secretary to the board of control.

NOTE: Sub. (10) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(10) Authorize the expenditure of money for the purposes set forth in this chapter and for the actual and necessary expenses of the board and agency administrator and for the acquisition of equipment, space and personnel. All accounts of the agency shall be paid by check, share draft or other draft signed by the chairperson and secretary.

(11) Establish the salaries of the agency administrator and other professional and nonprofessional employees. State reimbursement for the cost of the salary of the agency administrator shall be equal to the actual salary paid or the maximum of the salary range for supervisors in the department, whichever is less.

NOTE: Sub. (11) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(11) Establish the salaries of the agency administrator and other professional and nonprofessional employees. State reimbursement for the cost of the salary of the agency administrator shall be equal to the actual salary paid or the maximum of the salary range for public instruction supervisors under the state superintendent, whichever is less.

(12) Annually, make an inventory of agency property and file copies of it in the agency office.

(12m) Every 3rd year as scheduled by the department, provide to the school board of each school district in the agency an accountability plan that addresses both the efficiency and effectiveness of all agency programs and services.

NOTE: Sub. (12m) was created eff. 7–29–95 by 1995 Wis. Act 27. The treatment by act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA.

(13) Every 3rd year, as scheduled by the department, submit to the department for its approval an evaluation of agency programs and services.

NOTE: Sub. (13) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(13) Every 3rd year, as scheduled by the state superintendent, submit to the state superintendent for his or her approval an evaluation of agency programs and services.

(13m) If the county board of supervisors establishes an integrated service program for children with severe disabilities under s. 59.53 (7), participate in an integrated service program for children with severe disabilities under s. 59.53 (7) and may enter into written interagency agreements or contracts under the program.

(13s) Upon request of 2 or more school districts served by the board of control, apply for a state trust fund loan under s. 24.66 on behalf of the school districts to carry out a distance education project. The board of control shall expend the proceeds or transfer the proceeds to each school district in the amounts determined under s. 24.61 (7) as directed by each school district and shall accept from each school district repayments of principal and payments of interest and promptly remit such payments to the board of commissioners of public lands.

(14) Do all other things necessary to carry out this chapter.

History: 1977 c. 221 ss. 2, 6; 1979 c. 301; 1981 c. 96 s. 67; 1983 a. 27 ss. 1435 to 1439, 2200 (42); 1983 a. 368, 538; 1989 a. 31; 1991 a. 39; 1993 a. 184, 355, 399; 1995 a. 27, 201.

A CESA is governed by 118.22 in its renewal of teaching contracts. *Rawhouser v. CESA No. 4*, 75 W (2d) 52, 248 NW (2d) 442.

CESA may not purchase real estate. *Elroy–Kendall–Wilton Schs. v. Coop. Educ. Serv.* 102 W (2d) 274, 306 NW (2d) 89 (Ct. App. 1981).

Nothing in Ch. 116 prevents a CESA from entering into a financial assistance agreement with the federal government or from directly accepting federal funding. *Head Start Family Education Program, Inc. v. CESA No. 11*, 46 F (3d) 629 (1995).

116.032 Contracts for services. (1) Subject to subs. (2) to (5), for the purpose of providing services to pupils a board of control may contract with school districts, University of Wisconsin System institutions and centers, technical college district boards, private schools, and agencies or organizations that provide services to pupils.

(2) A board of control may not contract with any person for the purpose of providing services to any entity specified under sub.

(1) unless the entity specified under sub. (1) is authorized to contract directly with that person for those services.

(3) (a) A board of control may contract with a private school or private agency or organization to provide a service or program to that private school or private agency or organization only if all of the following apply:

1. The service or program was developed for and has been provided to public schools.

2. Providing the service or program will not have a negative effect on the agency's ability to serve school districts.

(b) Any contract with an entity specified under sub. (1) other than a school district shall require payment for at least the full cost of the service or program provided.

(5) No contract may be for a term that is longer than 20 years.

History: 1995 a. 27.

116.035 Designation of records custodian. The board of control may, on behalf of any agency authority as defined in s. 19.32 (1), including the agency, the agency administrator and any subunit of the agency, designate one or more individuals to be legal custodians of records.

History: 1981 c. 335.

116.04 Agency administrator. The board of control shall appoint an individual to serve as agency administrator. The agency administrator shall implement the policies of the board of control.

History: 1977 c. 221; 1983 a. 27; 1993 a. 355; 1995 a. 27.

116.045 Agency personnel. The agency is the sole employer of the personnel it employs. A recipient of personnel services is not deemed an employer because of the exercise of supervision or control over any personnel services provided.

History: 1977 c. 221.

116.05 Advisory committees. In each agency there shall be a professional advisory committee, composed of the school district administrator of each school district in the agency, which shall meet at the request of the board of control or the agency administrator to advise them. The board of control may appoint additional advisory committees that are representative of the users of the agency's services and programs.

History: 1977 c. 221 s. 6; 1995 a. 27.

116.055 Real property. The board of control may purchase, hold, encumber and dispose of real property, in the name of the agency, for use as its office or for any educational service provided by the agency if a resolution to do so is adopted by a two-thirds vote of the members of the board of control and then approved by three-fourths of the school boards in the agency by majority vote of each school board. Aid received under s. 116.08 may be used for the acquisition and maintenance of real property under this section.

History: 1983 a. 27.

School district members of CESA who unsuccessfully oppose real estate purchase are obliged to pay their share of the costs thereof, and may be sued by the CESA to enforce the obligation. 80 Atty. Gen. 296.

116.06 Revision of agency boundaries. (1) Upon the petition of a school board of a district operating high school grades, the department, after investigation of the proposal, may transfer by order the entire school district from one agency to another, effective the next succeeding July 1. Any school district so transferred shall pay its agreed share of all expenses incurred by the agency in its behalf, but shall not be required to fulfill any commitments in the agency from which transferred extending beyond the effective date of transfer. A transfer of the territory of a union high school district shall include and effect a transfer of that territory of underlying elementary school districts which lie within the boundaries of the union high school district.

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) Upon the petition of a school board of a district operating high school grades, the state superintendent, after investigation of the proposal, may transfer by order the entire school district from one agency to another, effective the next succeeding July 1. Any school district so transferred shall pay its agreed share of all expenses incurred by the agency in its behalf, but shall not be required to fulfill any commitments in the agency from which transferred extending beyond the effective date of transfer. A transfer of the territory of a union high school district shall include and effect a transfer of that territory of underlying elementary school districts which lie within the boundaries of the union high school district.

(2) When a new school district is created, it becomes a part of the agency in which the greatest portion of its equalized valuation lies, effective the next succeeding July 1. When territory is detached from a school district operating high school grades and attached to a school district that is in another agency, such transferred territory shall become a part of the agency of the school district to which it is attached, effective the next succeeding July 1.

History: 1995 a. 27 s. 9145 (1).

116.065 Withdrawal from agency. (1) The school board of a school district in cooperative educational service agency no. 1, as designated on April 1, 1985, may adopt a resolution to withdraw from the agency. The school board shall immediately notify the board of control and the department of its intention.

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) The school board of a school district in cooperative educational service agency no. 1, as designated on April 1, 1985, may adopt a resolution to withdraw from the agency. The school board shall immediately notify the board of control and the state superintendent of its intention.

(2) A resolution adopted under sub. (1) prior to January 15 in any school year shall be effective the next succeeding July 1. A resolution adopted under sub. (1) on or after January 15 in any school year shall be effective on the 2nd succeeding July 1.

(3) A school district that has withdrawn from the agency described under sub. (1) may rejoin the agency. The procedures under subs. (1) and (2) apply to readmissions.

History: 1985 a. 29; 1995 a. 27 s. 9145 (1).

116.07 Consolidation of agencies. (1) A board of control may on its own motion or shall on the petition of 100 electors of the agency territory approach an adjoining board of control regarding the feasibility of the consolidation of their agencies. Unless within 60 days of the filing of the petition each board of control passes a resolution to explore the feasibility of consolidation and to hold a separate public hearing, the resolution or petition is denied without further action.

(2) Upon completion of a plan of consolidation, the affected boards of control shall give 30 days' notice in writing to those school boards affected of a public hearing on the proposed consolidation. Notice of such hearing also shall be published as a class 2 notice, under ch. 985, the last insertion to be at least 20 days prior to the date of the hearing.

(3) Following the hearing on the proposed consolidation the affected boards of control shall vote on the consolidation. A majority vote of the members present and voting from each board of control shall be necessary to approve the proposed consolidation. The consolidation shall become effective the next succeeding July 1. The boards of control acting jointly shall devise a plan for the equitable distribution of the assets and liabilities of the existing agencies and provide for the transfer of existing contracts and programs.

(4) No such plan is valid if it permits any territory of this state to be outside an agency area.

History: 1977 c. 221.

116.08 State and local aid. (1) An amount not to exceed \$25,000 annually shall be paid to each agency for the maintenance and operation of the office of the board of control and agency

administrator and to match any federal funds received by the agency for vocational education administration. No state aid may be paid unless the agency submits by August 1 an annual report which includes a detailed certified statement of its expenses for the prior year to the department, and such statement reveals that the state aid was expended as provided by this section. In no case may the state aid exceed the actual expenditures for the prior year as certified in such statement.

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) An amount not to exceed \$25,000 annually shall be paid to each agency for the maintenance and operation of the office of the board of control and agency administrator and to match any federal funds received by the agency for vocational education administration. No state aid may be paid unless the agency submits by August 1 an annual report which includes a detailed certified statement of its expenses for the prior year to the state superintendent, and such statement reveals that the state aid was expended as provided by this section. In no case may the state aid exceed the actual expenditures for the prior year as certified in such statement.

(2) Agencies may incur short term loans, but the outstanding amount of such loans at any one time shall not exceed 50% of the agency's receipts for the prior fiscal year.

(3) No school district shall ever lose any state aid because of refusal of the school district to subscribe to any services provided by an agency.

(3m) The school board of a school district that has withdrawn from cooperative educational service agency no. 1 under s. 116.065 and is not in any other agency may contract with the department for other programs and services the school district would be receiving if it were in an agency.

(4) Whenever an agency performs any service or function under chs. 115 to 121 by contract with a county board or any agency thereof, with a school board or with a county handicapped children's education board, the contract may authorize the agency to make claim for and receive the state aid for performing the service or function. The agency shall transmit a certified copy of the contract containing the authority to collect state aid to the department. When an agency receives the state aid, it shall pay over or credit the amount of state aid received to the proper county or agency thereof, school district or county handicapped children's education board for which the service or function was performed according to the contract therefor.

(5) (a) In this subsection:

1. "Agency average daily membership" means the sum of the average daily memberships of the school districts in the agency.

2. "Average daily membership" has the meaning specified in s. 121.004 (1).

(b) Beginning in the 1984–85 school year and annually thereafter, each school board shall pay to the board of control of the agency of which it is a part an amount equal to the amount of state aid paid to the agency in that year under sub. (1) multiplied by a fraction consisting of the school district average daily membership as the numerator and the agency average daily membership as the denominator. This paragraph does not apply to any school district that has withdrawn from cooperative educational service agency no. 1 and is not in any other agency.

History: 1971 c. 125; 1973 c. 90, 333; 1975 c. 39; 1977 c. 29; 1977 c. 221 s. 6; 1979 c. 34, 89; 1981 c. 20; 1983 a. 27; 1985 a. 29, 120; 1985 a. 135 s. 85; 1985 a. 218 s. 22, 1985 a. 332; 1995 a. 27 ss. 3924r, 3924t, 9145 (1).

116.09 State and federal grants. (1) Except as provided under sub. (2), the board of control is eligible for and may apply for any state or federal grant for which a school district is eligible.

(2) If a school district in the agency applies for a grant the board of control is eligible for that grant only on behalf of one or more school districts in the agency.

History: 1995 a. 27.