

## CHAPTER 115

### STATE SUPERINTENDENT; GENERAL CLASSIFICATIONS AND DEFINITIONS; CHILDREN WITH DISABILITIES

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#### SUBCHAPTER I

##### GENERAL CLASSIFICATIONS AND DEFINITIONS

**115.001 Definitions.** In chs. 115 to 121:

**(1) CHARTER SCHOOL.** “Charter school” means a school under contract with a school board under s. 118.40 or with one of the entities under s. 118.40 (2r) (b), or a school established and operated by one of the entities under s. 118.40 (2r) (b).

**(2) DEPARTMENT.** “Department” means the department of public instruction.

**(3) ENERGY EMERGENCY.** “Energy emergency” means a period of disruption of energy supplies which poses a serious risk to the economic well-being, health or welfare of the citizens of this state, as certified by executive order of the governor.

**(3g) HOME–BASED PRIVATE EDUCATIONAL PROGRAM.** “Home–based private educational program” means a program of educational instruction provided to a child by the child’s parent or guardian or by a person designated by the parent or guardian. An instructional program provided to more than one family unit does not constitute a home–based private educational program.

**(3r) PRIVATE SCHOOL.** “Private school” means an institution with a private educational program that meets all of the criteria under s. 118.165 (1) or is determined to be a private school by the state superintendent under s. 118.167.

**(7) SCHOOL BOARD.** “School board” means the school board or board of school directors in charge of the schools of a school district.

**(8) SCHOOL DISTRICT ADMINISTRATOR.** “School district administrator” means the school district superintendent, supervising

principal or other person who acts as the administrative head of a school district.

**(10) SCHOOL DISTRICT CLERK.** “School district clerk” means the school district clerk of a 3–member school board elected by the electors in a common or union high school district, the school district clerk elected by the school board in a unified, common or union high school district having a school board of more than 3 members and the clerk designated by the school board in a 1st class city school district.

**(11) SCHOOL NURSE.** “School nurse” means a registered nurse licensed under ch. 441 or in a party state, as defined in s. 441.50 (2) (j), who is also certified by the department as being qualified to perform professional nursing services in a public school.

**(12) SCHOOL TERM.** “School term” means the time commencing with the first school day and ending with the last school day that the schools of a school district are in operation for attendance of pupils in a school year, other than for the operation of summer classes.

**(13) SCHOOL YEAR.** “School year” means the time commencing with July 1 and ending with the next succeeding June 30.

**(14) SESSION.** “Session” means the time during a school term that the schools of a school district are operated for the attendance of pupils.

**(15) STATE SUPERINTENDENT.** “State superintendent” means the state superintendent of public instruction.

**History:** 1983 a. 189 ss. 172, 173, 175 to 177; 1983 a. 512; 1985 a. 225; 1985 a. 332 s. 151; 1987 a. 264; 1989 a. 114; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 3846, 9145 (1); 1997 a. 27, 164; 1999 a. 22, 83.

#### 115.01 Classifications. In chs. 115 to 121:

**(1) PUBLIC SCHOOLS.** Public schools are the elementary and high schools supported by public taxation.

**(2) GRADES.** The educational work of the public schools is divided into 12 grades, besides kindergarten, which are numbered from one to 12 beginning with the lowest. The first 8 grades are the elementary grades. Where reference is made to “elementary grades”, the reference includes kindergarten, where applicable. Where reference is made to “kindergarten”, the reference includes both 4–year–old and 5–year–old kindergarten, except as otherwise specifically provided. The last 4 grades are the high school grades. A middle school is a school in which grades 5 to 8 are taught. A junior high school is a school in which grades 7 to 9 are taught. A senior high school is a school in which grades 10 to 12 are taught. This classification is not a limitation of the character of work or the studies that may be carried on in either the elementary or the high schools.

**(3) SCHOOL DISTRICTS.** The school district is the territorial unit for school administration. School districts are classified as common, union high, unified and 1st class city school districts. A joint school district is one the territory of which is not wholly in one municipality.

**(5) NAME.** (a) Except as provided under par. (b):

1. Each school district shall be known by the designation “School District of” followed by the name of the municipalities in which any high schools operated by the district lie.

2. A school district which does not operate a high school shall be known by number and by the name of the municipalities in which it lies.

(b) A school board may by resolution designate a different name for the school district if the revised name contains the words “school district”.

**(10) SCHOOL DAY.** (a) School days are days on which school is actually taught and the following days on which school is not taught:

1. Days on which school is closed by order of the school district administrator because of inclement weather and days on which parent–teacher conferences are held, not to exceed 5 days during the school term.

2. Days on which school is closed by order of a local health officer, as defined in s. 250.01 (5).

(b) Not to exceed 5 Saturdays may be counted as school days in any school year when school is taught thereon with the consent of the school board.

**(12) DISTANCE.** The distance between home and school shall be measured from building to building along the usually traveled route.

**(13) ELECTORS.** (a) Whenever an action may be taken by a percentage of electors in an area, that percentage shall be based on the number of electors who voted for governor at the last general election in that area.

(b) If the area does not coincide with a municipality or part thereof for which election statistics are kept, the number of electors shall be determined as follows:

1. The area of the school district in square miles shall be divided by the area of the municipality in square miles in which it lies.

2. The vote for governor at the last general election in the municipality within which the school district lies shall be multiplied by the quotient determined under subd. 1. to determine the required number of electors.

(c) If a school district is in more than one municipality, the method of determination under par. (b) shall be used for each part of the school district which constitutes only a fractional part of any area for which election statistics are kept.

**History:** 1973 c. 90; 1975 c. 115, 189; 1977 c. 29, 206; 1979 c. 89, 301; 1983 a. 27, 189; 1985 a. 29, 225, 332; 1987 a. 46; 1993 a. 27.

## SUBCHAPTER II

### STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

**Cross Reference:** See also [PI](#), Wis. adm. code.

#### 115.28 General duties. The state superintendent shall:

**(1) GENERAL SUPERVISION.** Ascertain the condition of the public schools, stimulate interest in education and spread as widely as possible a knowledge of the means and methods which may be employed to improve the schools.

**(2) SECTARIANISM.** Exclude all sectarian books and instruction from the public schools.

**(3) SUPERVISION OF SCHOOLS.** Supervise and inspect the public schools and day schools for children with disabilities, advise the principals and local authorities thereof and give assistance in organizing such schools.

**(3m) SUPERVISION OF COOPERATIVE EDUCATIONAL SERVICE AGENCIES; RULES.** (a) Supervise and audit the receipts and expenditures of the cooperative educational service agencies, conduct program review of the agencies, supervise boundary reorganization where necessary, advise the administrators of the agencies and provide assistance in organizing the agencies throughout the state.

(b) Promulgate rules establishing procedures for the reorganization of cooperative educational service agencies and boundary appeals.

(c) Every 3rd year as scheduled by the department, report to the appropriate standing committees of the legislature under s. 13.172 (3) on all cooperative educational service agency programs and services. The report shall include information on the efficiency and effectiveness of the programs and services.

**(4) PUBLIC INFORMATION.** By reports, bulletins, circulars, correspondence and public addresses, give the public information upon the different methods of school organization and management and the subject of education generally.

**(5) APPEALS.** Examine and determine all appeals which by law are made to the state superintendent and prescribe rules of practice in respect thereto, not inconsistent with law.

**Cross Reference:** See also ch. [PI 1](#), Wis. adm. code.

**(6) ANNUAL CONVENTIONS.** Annually, hold conventions of school district administrators, supervisors and agency coordinators.

**(7) LICENSING OF TEACHERS.** (a) License all teachers for the public schools of the state, make rules establishing standards of attainment and procedures for the examination and licensing of teachers within the limits prescribed in ss. 118.19 (2) and (3), 118.192 and 118.195, prescribe by rule standards and procedures for the approval of teacher preparatory programs leading to licensure, file in the state superintendent's office all papers relating to state teachers' licenses and register each such license.

(b) Subject to the same rules and laws concerning qualifications of applicants and granting and revocation of licenses or certificates under par. (a), the state superintendent shall grant certificates and licenses to teachers in private schools, except that teaching experience requirements for such certificates and licenses may be fulfilled by teaching experience in either public or private schools. An applicant is not eligible for a license or certificate unless the state superintendent finds that the private school in which the applicant taught offered an adequate educational program during the period of the applicant's teaching therein. Private schools are not obligated to employ only licensed or certified teachers.

(c) Subject to s. 118.19 (4m), license and make rules for the examination and licensing of persons, including teachers, employed to provide publicly funded special education and related services, as those terms are defined in s. 115.76 (14) and (15).

(d) Annually, establish fees for the certification or licensure of school and public library personnel sufficient to fund certification and licensing administrative costs.

(e) 1. In this paragraph, "alternative education program" means an instructional program, approved by the school board, that utilizes successful alternative or adaptive school structures and teaching techniques and that is incorporated into existing, traditional classrooms or regularly scheduled curricular programs or that is offered in place of regularly scheduled curricular programs. "Alternative educational program" does not include a private school or a home-based private educational program.

2. Promulgate rules establishing requirements for licensure as an alternative education program teacher and for the approval of teacher education programs leading to licensure as an alternative education program teacher. The rules shall encompass the teaching of multiple subjects or grade levels or both, as determined by the state superintendent. The rules may require teacher education programs to grant credit towards licensure as an alternative education program teacher for relevant experience or demonstrated proficiency in relevant skills and knowledge.

**Cross Reference:** See also chs. PI 3 and 34, Wis. adm. code.

**(7m) CERTIFICATION OF SCHOOL NURSES.** Certify school nurses, make rules for the examination and certification of school nurses and file in the state superintendent's office all papers relating to school nurses certification and register each such certification.

**(9) FEDERAL AIDS.** Accept federal funds for any function over which the state superintendent has jurisdiction and act as the agent for the receipt and disbursement of such funds.

**Cross Reference:** See also ch. PI 23, Wis. adm. code.

**(10) EDUCATIONAL ASSESSMENT.** Develop an educational assessment program to measure objectively the adequacy and efficiency of educational programs offered by public schools in this state. The program shall include methods by which pupil achievement in reading, mathematics, writing, science, social science and other areas of instruction commonly offered by public schools will be objectively measured each year. Assessment shall be undertaken at several grade levels on a uniform, statewide basis.

**(11) DRIVER EDUCATION COURSES.** Approve driver education courses offered by school districts, county children with disabilities education boards, and technical college districts for the pur-

poses of s. 343.16 (1) (c) 1. and establish minimum standards for driver education courses offered in private schools for the purposes of s. 343.16 (1) (c) 3. All driver education courses approved or for which standards are established under this subsection shall do all of the following:

(a) Acquaint each student with the hazards posed by farm machinery and animals on highways and by railroad grade crossings and provide instruction in safely dealing with such hazards.

(b) Provide at least 30 minutes of instruction relating to organ and tissue donation and organ and tissue donation procedures.

**(13) UNIFORM FINANCIAL FUND ACCOUNTING.** Prescribe a uniform financial fund accounting system, applicable to all school districts and county children with disabilities education boards, which provides for the recording of all financial transactions inherent in the management of schools and county children with disabilities education board programs and the administration of the state's school aid programs.

**(14) MINORITY GROUP PUPIL CENSUS.** Establish procedures under which school districts report annually the number of minority group pupils, as defined in s. 121.845 (2), residing in the school district and attending public schools in the district so as to be able to classify school districts under s. 121.85 (2).

**(15) BILINGUAL-BICULTURAL EDUCATION.** (a) Establish, by rule, standards for the approval of the abilities of certified teachers and counselors and their aides participating in bilingual-bicultural education programs under subch. VII to read, write and speak a non-English language and to possess knowledge of the culture of limited-English proficient pupils.

(b) Establish, by rule, minimum standards for bilingual-bicultural education programs under subch. VII.

**(17) AMERICAN INDIAN LANGUAGE AND CULTURE EDUCATION.** (a) Establish by rule standards for certifying the abilities of teachers participating in American Indian language and culture education programs under subch. IV to read and write or speak an American Indian language and to possess knowledge of American Indian history and culture.

(b) Establish by rule standards for certifying the abilities of home school coordinators, counselors and aides participating in American Indian language and culture education programs under subch. IV to possess knowledge of American Indian history and culture.

(c) Promulgate rules which further define "American Indian" under s. 115.71 (2) (d).

(d) Develop a curriculum for grades 4 to 12 on the Chippewa Indians' treaty-based, off-reservation rights to hunt, fish and gather.

**(18) PUPIL MEMBERSHIP AUDITS.** Annually require at least 25% of school boards to audit the number of pupils reported for membership purposes under s. 120.14 (1).

**(19) FEDERAL DISCRETIONARY FUNDS.** Ensure that federal aid received under 20 USC 1411 (c) (1) (A) is not used to supplant or replace funding available from other sources.

**(20) COUNCIL FOR MILWAUKEE PUBLIC SCHOOLS GRANT PROGRAMS.** Appoint a council under s. 15.04 (1) (c) composed of residents of the school district established under ch. 119 who are selected to reflect the pluralistic nature of the school district. The council shall:

(a) Advise the state superintendent on funding criteria and evaluation plans for grant programs for the school district operating under ch. 119.

(b) Advise the state superintendent on the programs that meet or do not meet the funding criteria.

(c) Assist the state superintendent in monitoring the progress of funded programs.

(d) Recommend to the state superintendent needed changes in statutes or rules relating to grant programs.

(e) Submit to the state superintendent an annual report detailing the council's activities, accomplishments and projected needs.

(f) Assist in ensuring that various grant programs operate compatibly.

**(22) INFORMATION FOR TAX BILLS.** By November 1, provide to the department of revenue the information about school aids distributed to each school district that will enable that department to furnish to taxation districts the information required under s. 73.03 (31).

**(23) WISCONSIN EDUCATIONAL OPPORTUNITY PROGRAMS.** Administer Wisconsin educational opportunity programs on a statewide basis to assist minority and economically disadvantaged youth and adults in pursuing higher education opportunities. The statewide programs shall consist of all of the following:

(a) A talent search program which shall provide information to youths and adults about postsecondary education and counseling to aid pupils in defining educational goals, applying and enrolling in postsecondary institutions and obtaining financial aid.

(b) A talent incentive program which shall provide supplemental aid to financially needy pupils to promote attendance at postsecondary institutions.

(c) An early identification program which shall provide services to pupils under s. 115.44.

(d) The minority group pupil scholarship program under s. 115.43.

**(24) PRIORITY IN AWARDING GRANTS.** Give priority in awarding grants to school boards under ss. 115.36 and 115.361, and in awarding grants from federal funds received under 20 USC 2301 to 2471, 20 USC 4601 to 4665 and 29 USC 2862 (b) (1) (B), to programs that provide more than one of the educational services specified under s. 115.36, 115.361, 115.915, 118.01 (2) (d) 7. or 8. or 118.153 or 20 USC 2301 to 2471, 20 USC 4601 to 4665 or 29 USC 2862 (b) (1) (B).

**(25) SCHOOL TECHNOLOGY RESOURCE GRANTS.** Consult with the department of administration before awarding school technology resource grants under 20 USC 6842.

**(26) PERIODICAL AND REFERENCE INFORMATION DATABASES.** Contract with one or more persons to provide statewide access, through the Internet, to periodical and reference information databases.

**(30) CAREER AND TECHNICAL STUDENT ORGANIZATIONS.** (a) Give priority to assisting school boards to operate career and technical student organizations and related career and technical education programs.

(b) Provide in the department administrative leadership for career and technical student organizations and the following career and technical student organization educational consultants:

1. One full-time consultant in agriculture education.
2. One full-time consultant in business education.
3. One full-time consultant in technology education.
4. One full-time consultant in family and consumer sciences education.
5. One full-time consultant in marketing education.
6. One half-time consultant in health science education.

(d) Provide in the department a career and technical education and career and technical student organizations team consisting of those educational consultants specified in par. (b).

**(31) ACCOMMODATION OF RELIGIOUS BELIEFS.** Promulgate rules providing for the reasonable accommodation of a pupil's sincerely held religious beliefs with regard to all examinations and other academic requirements.

**Cross Reference:** See also ch. PI 41, Wis. adm. code.

**(32) PUPIL TRANSCRIPT.** By July 1, 1993, develop a uniform pupil transcript that may be used by school districts beginning in the 1993–94 school year.

**(33) CONSOLIDATION PLANNING GRANT.** From the appropriation under s. 20.255 (1) (a), award a grant of \$25,000 in the

1991–92 school year to the school boards of any 2 school districts, for the purpose of supporting their consolidation planning efforts, if at least one of the school districts received no state aid under s. 121.08 in the 1990–91 school year and the 2 school boards established a committee to study the feasibility of consolidating the 2 school districts prior to June 1, 1991.

**(34) EXCHANGE TEACHERS.** Coordinate and publicize the exchange of teachers under s. 119.18 (13) and the exchange of teachers and administrators under s. 120.13 (7).

**(36) REPORT ON GOALS.** Report to the governor and to the appropriate standing committees of the legislature under s. 13.172 (3) the progress made by school districts toward attaining state educational goals and the state vision for education.

**(37) TRAINING OF HEALTH PROFESSIONALS.** Promote public awareness of, access to and training of health professionals for rural and underserved urban areas.

**(39) ALCOHOL AND OTHER DRUG ABUSE REPORT.** By July 1, 1998, and biennially by July 1 thereafter, evaluate the effectiveness of the programs under ss. 115.36 and 115.361 and submit a report to the legislature under s. 13.172 (2). To satisfy this reporting requirement as it pertains to s. 115.361, the department may incorporate into the report under this subsection the report required under s. 115.361 (2).

**(40) MILWAUKEE PUBLIC MUSEUM.** Annually distribute the amount appropriated under s. 20.255 (3) (eg) to the Milwaukee Public Museum to develop curricula and exhibits relating to African American history if the Milwaukee Public Museum provides an equal amount of money for that purpose.

**(41) ELKS AND EASTER SEALS CENTER FOR RESPITE AND RECREATION.** Annually distribute the amount appropriated under s. 20.255 (3) (d) to the Elks and Easter Seals Center for Respite and Recreation.

**(42) WISCONSIN GEOGRAPHIC EDUCATION PROGRAM.** Enter into an agreement with the National Geographic Society Education Foundation to establish a geographical education program in this state. The agreement shall require each of the following:

(a) That the National Geographic Society Education Foundation shall establish and manage a trust fund consisting of any grant made under 2001 Wisconsin Act 16, section 9101 (10) (b), and \$500,000 in matching funds provided by the Foundation.

(b) That, from the trust fund established under par. (a) and any income thereon, the National Geographic Society Education Foundation shall award grants and support programs for improving geographical education in this state, with an emphasis on improving student use of geographic information systems technology.

(c) That the National Geographic Society Education Foundation annually submit to the department an audited financial statement of the trust fund established under par. (a) that is prepared by an independent auditor and a report listing the names of grant recipients and the amounts and purposes of awards and other expenditures made from the trust fund.

(d) That, if the trust fund established under par. (a) is dissolved, the National Geographic Society Education Foundation shall return to the department the grant made under 2001 Wisconsin Act 16, section 9101 (10) (b), and unexpended income thereon.

(e) That the agreement is not effective unless the secretary of administration determines that the transfer between the appropriation accounts described under 2001 Wisconsin Act 16, section 9101 (10) (b), has occurred and that the National Geographic Society Education Foundation has provided the matching funds described in par. (a).

**(43) SCHOOL SAFETY FUNDING.** With the department of justice, seek and apply for federal funds relating to school safety and reducing violence and disruption in schools, including funds for alternative schools or programs. Each department shall make a report by January 1, 2001, and January 1, 2003, of its progress in applying for and obtaining funds under this subsection. The report

shall be provided to the legislature in the manner provided under s. 13.172 (2) to the cochairpersons of the joint committee on finance and to the governor.

**(44) DIRECT INSTRUCTION PROGRAM.** From the appropriation under s. 20.255 (1) (me), award a grant of \$80,000 annually in the 1999–2000, 2000–01, 2001–02 and 2002–03 fiscal years to the University of Wisconsin–Milwaukee to conduct a direct instruction pilot program. The purpose of the program shall be to determine the efficiency of direct instruction in improving the ability of children to read. By August 1 of 2000, 2001, 2002 and 2003, the University of Wisconsin–Milwaukee shall submit a report to the appropriate standing committees of the legislature under s. 13.172, and to the state superintendent, that describes the findings and conclusions of the study.

**(48) VETERANS.** Encourage school boards to invite armed forces veterans to school to discuss their experiences as veterans.

**(49) CHARTER SCHOOL REPORT.** Annually report to the legislature, in the manner provided under s. 13.172 (2), on the status of existing charter schools, the number of petitions for new charter schools, and school board and departmental action on petitions for new charter schools.

**(51) FUNERAL ASSISTANTS.** Encourage school boards to grant an excused absence to a pupil in grades 6 to 12 for the purpose of sounding “Taps” during a military honors funeral for a deceased veteran.

**History:** 1971 c. 40, 125; 1973 c. 89, 90; 1975 c. 39, 115, 199, 220, 224, 395, 422; 1977 c. 26, 29, 203, 418, 429; 1979 c. 28, 331; 1979 c. 346 ss. 10, 15; 1979 c. 355; 1981 c. 20, 241; 1983 a. 27, 412; 1985 a. 12; 1985 a. 29 ss. 1686m, 1689, 3202 (43); 1987 a. 27, 159; 1989 a. 31, 56, 297, 336, 359; 1991 a. 39, 93, 108, 164, 227, 250, 269, 315; 1993 a. 16, 27, 213, 223, 335, 339, 437, 455, 492; 1995 a. 27 ss. 3847g to 3858, 9126 (19), 9145 (1); 1995 a. 225; 1997 a. 27, 113, 114, 164, 240, 245, 252; 1999 a. 9, 19, 32, 124, 185, 186; 2001 a. 16; 2003 a. 33, 42.

**NOTE:** 1993 Wis. Act 339, which created sub. (7) (e), contains explanatory notes.

The department of public instruction may, if so authorized under s. 16.54, implement the school lunch program and special food service plan for children in secular and sectarian private schools and child-care institutions without violating the U.S. or Wisconsin constitutions. 63 Atty. Gen. 473.

**115.29 General powers.** The state superintendent may:

**(1) DESIGNATE REPRESENTATIVE.** Designate the deputy state superintendent or another employee of the department as the state superintendent’s representative on any body on which the state superintendent is required to serve, except the board of regents of the University of Wisconsin System.

**(2) EDUCATIONAL MEETINGS.** Attend such educational meetings and make such investigations as the state superintendent deems important and as will acquaint the state superintendent with the different systems of public schools in the United States.

**(3) AUXILIARY INSTRUCTIONAL EMPLOYEES.** By order, establish classes of auxiliary instructional employees and authorize their employment in the instructional program of the elementary and high schools for specific purposes and their reimbursement from the instructional budget. Auxiliary instructional employees shall not be covered as teachers as defined in s. 40.02 (55) or under s. 118.21, 118.22 or 121.006 (2) but shall be eligible under the public employee trust fund as participating employees as defined in s. 40.02 (46), if it is made applicable, other than through s. 40.21 (3), to the school district employing them.

**(4) HIGH SCHOOL GRADUATION EQUIVALENCY.** (a) Grant declarations of equivalency of high school graduation to persons, if in the state superintendent’s judgment they have presented satisfactory evidence of having completed a recognized high school course of study or its equivalent. The state superintendent may establish the standards by which high school graduation equivalency is determined. Such standards may consist of evidence of high school courses completed in high schools recognized by the proper authorities as accredited, results of examinations given by or at the request of the state superintendent, successful completion of correspondence study courses given by acceptable correspondence study schools, a general educational development certificate of high school equivalency issued by an agency of the U.S.

government, course credits received in schools meeting the approval of the state superintendent or other standards established by the state superintendent.

(b) Promulgate rules establishing fees for issuing a declaration of equivalency of high school graduation or a general educational development certificate under par. (a). The rules may provide exemptions from the fees based on financial need.

**Cross Reference:** See also ch. PI 5, Wis. adm. code.

**(5) TEACHER SUPPLY, INFORMATION AND ANALYSIS.** Assist school boards, cooperative educational service agencies and county children with disabilities education boards to locate qualified professional school personnel, assist qualified professional school personnel to locate vacant positions and provide information and analysis of the professional school personnel supply.

**History:** 1971 c. 100 s. 23; 1971 c. 125, 211; 1977 c. 29; 1979 c. 32, 301; 1981 c. 96; 1983 a. 27; 1993 a. 492; 1995 a. 27, 111; 1997 a. 27, 35, 164; 2003 a. 33.

**115.295 Federal appropriations adjustments.** (1) In this section, “the schedule” means the schedule under s. 20.005 (3) as published in the biennial budget act for the first fiscal year of a fiscal biennium and as approved by the joint committee on finance under s. 20.004 (2) for the 2nd fiscal year of a fiscal biennium.

(2) (a) Subject to par. (b), annually by December 1 or within 30 days after the applicable federal appropriation bill for that federal fiscal year has been enacted, whichever is later, the state superintendent shall submit to the joint committee on finance a plan identifying how the state superintendent proposes to adjust the department’s federal appropriations for that state fiscal year to reflect the most recent estimate of the amount of federal funds that the department will be appropriated in that state fiscal year.

(b) The state superintendent is required to submit a plan under par. (a) only if the department’s most recent estimate of the amount of federal funds that the department will be appropriated under s. 20.255 in the current state fiscal year is less than 95% or more than 105% of the amount of federal revenue shown in the schedule for the appropriations under s. 20.255 in that fiscal year.

(3) After receiving a plan under sub. (2) (a), the cochairpersons of the joint committee on finance jointly shall determine whether the plan is complete. If the joint committee on finance meets and either approves or modifies and approves a plan submitted under sub. (2) (a) within 14 days after the cochairpersons determine that the plan is complete, the state superintendent shall implement the plan as approved by the committee. If the joint committee on finance does not meet and either approve or modify and approve a plan submitted under sub. (2) (a) within 14 days after the cochairpersons determine that the plan is complete, the state superintendent shall implement the proposed plan.

**History:** 1997 a. 86.

**115.30 Forms and reports.** (1) The department shall prepare for the use of school officers suitable forms for making reports, and suitable outlines as aids in conducting school meetings. With the exception of changes due to statute or rule revision, the department shall give school districts a one-year advance notice of any changes to be made to the forms and reports. School district officers and employees shall maintain a uniform recording of accounting as prescribed by the department and make such reports to the department as will enable it to distribute state school fund appropriations and state educational appropriations to the schools and persons entitled thereto, and to properly discharge the other duties of the department.

(2) The department may require all school boards to report to it, on forms provided, the name of the school and its location, the name and address of the teachers, the number of months of school maintained during the year, the opening and closing dates, the names and ages of all pupils enrolled between the ages of 6 and 18, the names and post-office addresses and places of residence of the parents of such pupils, the number of the school district and the distance such pupils reside from the schoolhouse, the number

of days each pupil was present during each month and any other information requested by it.

(3) On or before each October 15, each administrator of a public or private school system or a home-based private educational program shall submit, on forms provided by the department, a statement of the enrollment on the 3rd Friday of September in the elementary and high school grades under his or her jurisdiction to the department which shall prepare such reports as will enable the public and private schools and home-based private educational programs to make projections regarding school buildings, teacher supply and funds required. The administrator of each private school system and home-based private educational program shall indicate in his or her report whether the system or program meets all of the criteria under s. 118.165 (1).

(4) In the biennial report under s. 15.04 (1) (d), the state superintendent also shall report:

(a) The condition of all schools under the state superintendent's supervision.

(b) An abstract of the public school reports made to the state superintendent.

(c) The state superintendent's visits to educational institutions.

(d) The work done by the department in the performance of its duties.

(e) Plans for improving the schools and advancing education.

(f) A summary of the receipts and disbursements of all schools under the state superintendent's jurisdiction.

(g) Such other matters as the state superintendent deems appropriate.

(5) The department shall make certified copies, when required, of any papers deposited or filed or records kept in the department, and of any act or decision made by it. The fee therefor shall be 15 cents per page.

**History:** 1975 c. 224; 1977 c. 196 s. 131; 1977 c. 273; 1981 c. 314; 1983 a. 512; 1993 a. 492; 1995 a. 27 ss. 3864 to 3866, 9145 (1); 1997 a. 27.

### 115.31 License or permit revocation; reports; investigation. (1) In this section:

(a) "Administrator" means the chief administrative officer of an educational agency. If the chief administrative officer is the subject of a report under this section, "administrator" means the presiding officer of the governing board of the educational agency or the secretary of the department in which the educational agency is located.

(b) "Educational agency" means a school district, cooperative educational service agency, state correctional institution under s. 302.01, secured correctional facility, as defined in s. 938.02 (15m), secured child caring institution, as defined in s. 938.02 (15g), the Wisconsin Center for the Blind and Visually Impaired, the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, the Mendota Mental Health Institute, the Winnebago Mental Health Institute, a state center for the developmentally disabled, a private school, or a private, nonprofit, nonsectarian agency under contract with a school board under s. 118.153 (3) (c).

(c) "Immoral conduct" means conduct or behavior that is contrary to commonly accepted moral or ethical standards and that endangers the health, safety, welfare or education of any pupil.

(2) Except as provided under sub. (2g), after written notice of the charges and of an opportunity for defense, any license granted by the state superintendent may be revoked by the state superintendent for incompetency or immoral conduct on the part of the licensee.

(2g) Notwithstanding subch. II of ch. 111, the state superintendent shall revoke a license granted by the state superintendent, without a hearing, if the licensee is convicted of any Class A, B, C, or D felony under ch. 940 or 948, except ss. 940.08 and 940.205, for a violation that occurs on or after September 12, 1991, or any Class E, F, G, or H felony under ch. 940 or 948, except

ss. 940.08 and 940.205, for a violation that occurs on or after February 1, 2003.

(2r) (a) Except as provided under par. (b), the state superintendent may not reinstate a license revoked under sub. (2g) for 6 years following the date of the conviction, and may reinstate a license revoked under sub. (2g) only if the licensee establishes by clear and convincing evidence that he or she is entitled to reinstatement.

(b) The state superintendent shall reinstate a license revoked under sub. (2g), prior to the expiration of the 6-year period following the conviction, if he or she receives from the court in which the conviction occurred a certificate stating that the conviction has been reversed, set aside or vacated.

(3) An administrator shall do all of the following:

(a) Report to the state superintendent the name of any person employed by the educational agency and licensed by the state superintendent if any of the following occurs:

1. The person is charged with a crime under ch. 948, including a crime specified under s. 948.015, a felony with a maximum term of imprisonment of at least 5 years or a crime in which the victim was a child.

2. The person is convicted of a crime described under subd. 1. or of 4th degree sexual assault under s. 940.225 (3m).

3. The person is dismissed, or his or her contract is not renewed, by the employer based in whole or in part on evidence that the person engaged in immoral conduct.

4. The person resigns and the administrator has a reasonable suspicion that the resignation relates to the person having engaged in immoral conduct.

(b) Report to the state superintendent the name of any person employed by the educational agency who is not licensed by the state superintendent if the person is convicted of a crime described under par. (a) 1. or of 4th degree sexual assault under s. 940.225 (3m).

(c) Send a copy of any report that is made to the state superintendent under par. (a) or (b) to the person who is the subject of the report.

(4) If an administrator requests a person who is employed by an educational agency and licensed by the state superintendent to resign, and the administrator has a reasonable suspicion that the person engaged in immoral conduct, the administrator shall inform the person of the duty to report to the state superintendent under sub. (3) (a) 4.

(5) (a) A report under sub. (3) shall be made within 15 days after the administrator becomes aware of the charge, conviction, dismissal, nonrenewal or resignation.

(b) Any administrator who in good faith reports or fails to report information under sub. (3), and any other person who reports information under sub. (3) to the state superintendent, is immune from civil liability for such acts or omissions.

(6) (a) Upon receiving a report under sub. (3) (a) 2. or (b) indicating that a person was convicted of a crime, the state superintendent shall verify the conviction.

(b) Upon receiving a report under sub. (3) relating to a person licensed by the state superintendent, the state superintendent shall investigate to determine whether to initiate revocation proceedings. During the investigation, the state superintendent shall keep confidential all information pertaining to the investigation except the fact that an investigation is being conducted and the date of the revocation hearing.

(c) Notwithstanding s. 16.61 (4), the department shall destroy all information pertaining to an investigation or a revocation proceeding, other than the fact that a person was convicted of a crime described under sub. (3) (a) 1., 3 years from the date on which the investigation is terminated or a final decision denying revocation of the person's license is issued, whichever is later.

(6m) The department of public instruction shall, without a hearing, revoke a license or permit granted by the department of

public instruction if the department of revenue certifies under s. 73.0301 that the licensee or permit holder is liable for delinquent taxes.

(7) Any person who intentionally fails to report as required under this section may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(8) The state superintendent shall promulgate rules to implement and administer this section.

**History:** 1991 a. 42 ss. 1 to 3, 4r; 1993 a. 16, 98; 1995 a. 27 s. 9145 (1); 1995 a. 77; 1997 a. 27, 237; 1999 a. 9; 2001 a. 57, 103, 109.

A woman attempting to protect the lives of her daughter and granddaughters by shooting their potential attacker after issuing numerous warnings and taking actions in an apparent attempt to avoid shooting did not act contrary to commonly accepted moral or ethical standards. That she was convicted of carrying a concealed weapon did not necessarily show moral turpitude or bad purpose. *Epstein v. Benson*, 2000 WI App 195, 238 Wis. 2d 717, 618 N.W.2d 224.

**115.315 Memorandum of understanding; license restriction and suspension.** As provided in the memorandum of understanding under s. 49.857, the department shall restrict or suspend a license or permit granted by the department if the licensee or permit holder is delinquent in making court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or if the licensee or permit holder fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

**History:** 1997 a. 191.

**115.33 Inspection of school buildings.** (1) In this section:

(a) “In compliance” means in compliance with subchs. I and IV of ch. 101, ch. 145 and ss. 254.11 to 254.178 and the rules promulgated under subchs. I and IV of ch. 101, ch. 145 and ss. 254.11 to 254.178.

(b) “Proposed use” means a function that the school board has indicated by resolution that it intends to pursue within the current school year or the next 2 succeeding school years.

(2) (a) The state superintendent may request the department of commerce to inspect a public school if any of the following occurs:

1. Any elector in the school district complains in writing to the state superintendent that the school is inadequate or is otherwise unfit for school purposes.

2. The school board of the school district in which the school is located requests the state superintendent to do so. The school board may also request an opinion as to whether the school is adequate for a proposed use.

3. The state superintendent determines there is significant evidence that the school is not in compliance.

(b) The department of commerce shall inspect the school within 30 days after receiving a request from the state superintendent under par. (a).

(3) (a) If the state superintendent determines that a school is not in compliance, and the department of commerce, based on its inspection of the school, concurs in the determination, the state superintendent may order the school board to repair, improve, remodel or close the school by a stated date. An order issued under this paragraph constitutes a preliminary finding of noncompliance with the standard under s. 121.02 (1) (i).

(b) 1. If the state superintendent determines that a school is not in compliance and is not worth repairing, and the department of commerce, based on its inspection of the school, concurs in the determination, the state superintendent may order the school board to develop a plan that describes how the school board will achieve compliance with the standard under s. 121.02 (1) (i). The plan shall specify the time within which compliance with the standard under s. 121.02 (1) (i) shall be achieved. The state superintendent shall hold a public hearing on the plan in the school district

and may, as a result of the hearing, recommend changes to the plan. The state superintendent may withhold up to 25% of the school district’s state aid if the school district fails to achieve compliance with the standard under s. 121.02 (1) (i) within the period specified in the plan.

2. Section 121.02 (3) does not apply to determinations under subd. 1. or to orders issued under subd. 1.

(4) The state superintendent shall conduct a study of the physical condition and capacity of the public schools and their suitability for use as public schools. The state superintendent shall submit a report summarizing the results of the study to the appropriate standing committees of the legislature under s. 13.172 (3).

**History:** 1989 a. 31; 1993 a. 450; 1995 a. 27 ss. 3867 to 3870, 9116 (5) and 9145 (1); 1997 a. 27, 310.

**115.34 School lunch program.** (1) The department may contract for the operation and maintenance of school lunch programs and for the distribution, transportation, warehousing, processing and insuring of food products provided by the federal government. The form and specifications of such contracts shall be determined by the department. Amounts remaining unpaid for 60 days or more after they become payable under the terms of such contracts shall be deemed past due and shall be certified to the department of administration on October 1 of each year and included in the next apportionment of state special charges to local units of government as special charges against the school districts and municipalities charged therewith.

(2) The state superintendent shall make payments to school districts and to private schools for school lunches served to children in the prior year as determined by the state superintendent from the appropriation under s. 20.255 (2) (cn). Payments to school districts and to private schools shall equal the state’s matching obligation under 42 USC 1751 et seq. Payments in the current year shall be determined by prorating the state’s matching obligation based on the number of school lunches served to children in the prior year. In this subsection, “private school” means any school defined in s. 115.001 (3r) which complies with the requirements of 42 USC 2000d.

**History:** 1971 c. 125, 215; 1975 c. 39, 224; 1977 c. 29; 1979 c. 221 ss. 584m, 2200 (43); 1983 a. 27; 1983 a. 189 s. 329 (17m); 1983 a. 512 s. 8; 1995 a. 27 s. 9145 (1); 1997 a. 27.

The United States and Wisconsin constitutions do not prohibit the state from disbursing state matching funds under the National School Lunch Act to private as well as public schools. 69 Atty. Gen. 109.

**115.341 School breakfast program.** (1) From the appropriation under s. 20.255 (2) (cm), the state superintendent shall reimburse each school board 10 cents for each breakfast served at a school that meets the requirements of 7 CFR 220.8 or 220.8a, whichever is applicable, and shall reimburse each governing body of a private school 10 cents for each breakfast served at the private school that meets the requirements of 7 CFR 220.8 or 220.8a, whichever is applicable.

(2) If the appropriation under s. 20.255 (2) (cm) in any fiscal year is insufficient to pay the full amount of aid under this section, the state superintendent shall prorate state aid payments among the school boards and governing bodies of private schools entitled to the aid.

**History:** 1993 a. 168; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9.

**Cross Reference:** See also ch. PI 42, Wis. adm. code.

**115.343 Wisconsin school day milk program.** (1) The department shall establish a school day milk program. A school participating in the program shall offer each eligible child one half-pint of Wisconsin-produced whole milk, 2% milk, 1.5% milk, one percent milk, 0.5% milk, skim milk or chocolate milk on each day in which school is in session. If a child is allergic to milk or has metabolic disorders or other conditions which prohibit him or her from drinking milk, the child shall be offered juice as a substitute. Any school that participates in the program is encouraged to consider bids from local milk suppliers. The school shall keep all information related to the identity of the pupils who receive a beverage under the program confidential. In this subsec-

tion, “Wisconsin–produced” means that all or part of the raw milk used by the milk processor was produced in this state.

(2) A child who is enrolled in a school in prekindergarten classes to grade 5 is eligible to receive a beverage specified in sub. (1) if all of the following apply:

(a) The child does not receive the beverage through the federal special milk program under 42 USC 1772 (b).

(b) The child meets the income eligibility standard for a free or reduced–price lunch in the federal school lunch program under 42 USC 1758 (b).

(c) The child does not receive the beverage during the school’s breakfast or lunch period.

(3) The department shall pay each participating school the full cost of beverages under sub. (1) served to children eligible under sub. (2) in the prior school year from the appropriation under s. 20.255 (2) (cp).

(4) If the appropriation under s. 20.255 (2) (cp) in any fiscal year is insufficient to pay the full amount of aid under this section, state aid payments shall be prorated among the schools entitled to such aid.

(5) The department shall maintain a count of the number of children who are served beverages under this section.

**History:** 1987 a. 27, 399; 1991 a. 39; 2001 a. 16.

**115.345 Nutritional improvement for elderly.** (1) Any school district approved by the state superintendent may establish a system to provide the opportunity for authorized elderly persons to participate in its school lunch program. If a school board desires to establish such a service, it shall develop a plan for the provision of food services for elderly persons and submit the plan to the state superintendent. Upon petition of 5% of the voters in the school district who voted in the last school board election, the school board shall formulate a food services plan, provided that hot food service facilities are available to school children in the district.

(2) Each plan shall provide at least one meal per day for each day that school is in regular session. The school board may provide additional service at other times in its discretion, if the number of eligible persons in the district or adjacent districts is of sufficient size, in the opinion of the state superintendent, so that unwarranted production expense is not incurred.

(3) Any school board which operates a food services plan for elderly persons under this section shall make facilities available for service to elderly persons at every high school and junior high school in the district which provides hot food service to its students. Upon application, the state superintendent may grant exceptions from compliance with this subsection for reasons of safety, convenience or insufficient interest in a given neighborhood. The school board may, in addition, provide service at elementary schools if desired.

(4) Meals may be served at schools where they are served to students or at any site more convenient to the majority of authorized elderly persons interested in the service. Food may be transported to authorized elderly persons who are unable to leave their homes or distributed to nonprofit organizations for such purposes. However, no state funds under this section may be used for food delivery to individual homes. The state superintendent may require consolidation of programs between districts and between schools if such a procedure will be convenient and economical.

(5) The school board may file a claim with the department for reimbursement for reasonable expenses incurred, excluding capital equipment costs, but not to exceed 15% of the cost of the meal or 50 cents per meal, whichever is less. Any cost in excess of the lesser amount may be charged to participants. If the department approves the claim, it shall certify that payment is due and the secretary of administration shall pay the claim from the appropriation under s. 20.255 (2) (cn).

(6) All meals served must meet the approval of the state superintendent who shall establish minimum nutritional standards not inconsistent with federal standards and reasonable expenditure

limits such that the average cost per meal is not excessive. The state superintendent shall give special consideration to dietary problems of elderly persons in formulating a nutritional plan. However, no school board shall be required to provide special foods for individual persons with allergies or medical disorders.

(7) Participants in a program under this section may be required to document their Wisconsin residency in a manner approved by the department. The state superintendent may issue identification cards to such persons if necessary.

(7m) A private school may establish a food services plan for elderly persons. If the plan meets all of the requirements of this section and is approved by the state superintendent, the private school is eligible for reimbursement in the same manner as school districts under sub. (5).

(8) The state superintendent shall adopt reasonable rules necessary to implement this section.

(9) In this section, “authorized elderly person” means any resident of the state who is 60 years of age or more, or the spouse of any such person. A school board may admit nonresident persons who would otherwise qualify into its program except that no state funds under this section may be used to subsidize any portion of the meals served to such persons.

**History:** 1973 c. 190; 1987 a. 241; 1989 a. 269; 1995 a. 27; 1997 a. 27; 2003 a. 33.

**115.347 Direct certification of eligibility for school nutrition programs.** (1) Beginning in the 1994–95 school year, a school board may submit enrollment data to the department of workforce development for the purpose of directly certifying children as eligible for free or reduced–price meals under the federal school nutrition programs. The department of workforce development shall prescribe a format for the report.

(2) Whenever a school district that is located in whole or in part in a county that has converted to the client assistance for reemployment and economic support data system submits a report under sub. (1) in the prescribed format, the department of workforce development shall determine which children enrolled in the school district are members of Wisconsin works groups participating under s. 49.147 (3) to (5) or of families receiving aid to families with dependent children or food stamps and shall provide the information to the school board as soon thereafter as possible. The school board shall use the information to directly certify children as eligible for free or reduced–price meals served by the school district under federal school nutrition programs, pursuant to 42 USC 1758 (b) (2) (C) (ii) and (iii).

(3) The state superintendent shall assist school boards in developing a method for submitting enrollment data to the department of workforce development under sub. (1).

**History:** 1993 a. 168; 1995 a. 27 ss. 3872, 9130 (4), 9145 (1); 1995 a. 289; 1997 a. 3, 27.

**115.35 Health problems education program.** (1) A critical health problems education program is established in the department. The program shall be a systematic and integrated program designed to provide appropriate learning experiences based on scientific knowledge of the human organism as it functions within its environment and designed to favorably influence the health, understanding, attitudes and practices of the individual child which will enable him or her to adapt to changing health problems of our society. The program shall be designed to educate youth with regard to critical health problems and shall include, but not be limited to, the following topics as the basis for comprehensive education curricula in all elementary and secondary schools: controlled substances, as defined in s. 961.01 (4); controlled substance analogs, as defined in s. 961.01 (4m); alcohol; tobacco; mental health; sexually transmitted diseases, including acquired immunodeficiency syndrome; human growth and development; and related health and safety topics. Participation in the human growth and development topic of the curricula shall be entirely voluntary. The department may not require a school board to use a specific human growth and development curriculum.



(2) In carrying out this section, the state superintendent may, without limitation because of enumeration:

(a) Establish guidelines to help school districts develop comprehensive health education programs.

(b) Establish special in–service programs to provide professional preparation in health education for teachers throughout the state.

(c) Provide leadership institutions of higher education to develop and extend curricula in health education for professional preparation in both in–service and preservice programs.

(d) Develop cooperative programs between school districts and institutions of higher education whereby the appropriate health personnel of such institutions would be available to guide the continuing professional preparation of teachers and the development of curricula for local programs.

(e) Assist in the development of plans and procedures for the evaluation of health education curricula.

(3) The department may appoint a council consisting of representatives from universities and colleges, law enforcement, the various fields of education, the voluntary health agencies, the department of health and family services, the professional health associations and other groups or agencies it deems appropriate to advise it on the implementation of this section, including teachers, administrators and local school boards.

(4) The department shall cooperate with agencies of the federal government and receive and use federal funds for the purposes of this section.

(5) In each report under s. 15.04 (1) (d), the state superintendent shall include information:

(a) As to the scope and nature of programs undertaken under this section.

(b) As to the degree and nature of cooperation being maintained with other state and local agencies.

(c) As to the state superintendent's recommendations to improve such programs and cooperation.

**History:** 1971 c. 219; 1977 c. 196 s. 131; 1977 c. 418; 1981 c. 291; 1985 a. 56; 1989 a. 203; 1993 a. 492; 1995 a. 27 ss. 3873, 9126 (19), 9145 (1); 1995 a. 448; 1997 a. 27.

**115.355 Assistance to schools for instruction on adoption.** The department shall annually and upon request disseminate to appropriate public school staff information about materials and services available through the state adoption center under s. 48.55 which may serve as resources for instruction on adoption for pupils in grades kindergarten through 12.

**History:** 1997 a. 104; 1999 a. 9.

**115.36 Assistance to schools for alcohol and other drug abuse programs.** (1) The purpose of this section is to enable and encourage public and private schools to develop comprehensive programs to prevent or ameliorate alcohol and other drug abuse among minors.

(2) The department shall:

(a) Develop and conduct training programs for the professional staff of public and private schools in alcohol and other drug abuse prevention, intervention and instruction programs.

(b) Provide consultation and technical assistance to public and private schools for the development and implementation of alcohol and other drug abuse prevention, intervention and instruction programs.

(c) Provide fellowship grants to support advanced training or education in comprehensive school health and alcohol and other drug abuse education.

(d) Provide access to informational resources for alcohol and other drug abuse education programs and services including, but not limited to:

1. The screening, revision and evaluation of available information resources.

2. The establishment of a central depository and loan program for high cost informational resources.

3. The systematic dissemination of information concerning available resources to appropriate public and private school staff.

(e) Create a council under s. 15.04 (1) (c) to advise the department concerning the administration of this section.

(3) (a) The department shall, from the appropriation under s. 20.255 (2) (kd), fund school district projects designed to assist minors experiencing problems resulting from the use of alcohol or other drugs or to prevent alcohol or other drug abuse by minors. The department shall:

1. Administer grant application and disbursement of funds.

2. Monitor program implementation.

3. Assist in and ensure evaluation of projects.

4. Report biennially in its report under s. 15.04 (1) (d) on program progress and project evaluation.

5. Promulgate necessary rules for the implementation of this subsection.

(b) Grants under this subsection may not be used to replace funding available from other sources.

(c) Grants under this subsection may be made only where there is a matching fund contribution from the local area in which a program is designed to operate of 20% of the amount of the grant obtained under this subsection. Private funds and in–kind contribution may be applied to meet the requirement of this paragraph.

(d) A school district applying for aid under this subsection shall submit a copy of the application to the county department under s. 51.42 for its advisory review. The county department under s. 51.42 may, and the council established under sub. (2) (e) shall, submit an advisory recommendation with respect to the application to the department prior to the approval or denial of the application.

**History:** 1979 c. 331; 1981 c. 20 s. 2202 (42) (b); 1983 a. 27 s. 2202 (42); 1983 a. 524; 1985 a. 176; 1989 a. 31, 122; 1999 a. 9.

**Cross Reference:** See also ch. PI 32, Wis. adm. code.

**115.361 Alcohol and other drug abuse prevention and intervention programs.** (1) A school board may apply to the department for a grant to fund an alcohol and other drug abuse prevention and intervention program. The department shall pay grants awarded under this section from the appropriation under s. 20.255 (2) (dm) and shall promulgate rules to implement and administer this section.

(2) The department shall collect and analyze information about the programs funded under this section, evaluate their effectiveness and submit a report of the evaluation to the appropriate standing committees of the legislature under s. 13.172 (3) and to the governor by July 1, 2000, and biennially by July 1 thereafter.

**History:** 1989 a. 122 ss. 53c to 53e; 1991 a. 39, 269 s. 614g; 1993 a. 16, 98; 1995 a. 27 ss. 3874, 9145 (1); 1997 a. 27; 1999 a. 9.

**115.3615 Head start supplement.** From the appropriations under s. 20.255 (2) (eh) and (kh), the state superintendent shall distribute funds to agencies determined by the state superintendent to be eligible for designation as head start agencies under 42 USC 9836 to provide comprehensive health, educational, nutritional, social and other services to economically disadvantaged children and their families. The state superintendent shall distribute the funds in a manner consistent with 42 USC 9831 to 9852 except that there is no matching fund requirement. The state superintendent shall give preference in funding under this section to agencies that are receiving federal funds under 42 USC 9831 to 9852 and to agencies that operate full–time or early head start programs. Funds distributed under this section may be used to match available federal funds under 42 USC 9831 to 9852 only if the funds are used to secure additional federal funds for the purposes under this section.

**History:** 1989 a. 122 ss. 53c to 53e; 1991 a. 39, 269 s. 614g; Stats. 1991 s. 115.3615; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9.

**115.365 Assistance to schools for suicide prevention programs.** (1) The purpose of this section is to enable and encourage public and private schools to develop programs designed to prevent suicide among minors.

(2) The department, in conjunction with the department of health and family services, shall:

(a) Develop and conduct training programs in suicide prevention for the professional staff of public and private schools and county departments under ss. 46.215, 46.22 and 51.42. The programs shall include information on how to assist minors in the positive emotional development which will help prevent suicidal tendencies; the detection, by minors, school staff and parents, of conditions which indicate suicidal tendencies; the proper action to take when there is reason to believe that a minor has suicidal tendencies or is contemplating suicide; and the coordination of school suicide prevention programs and activities with the suicide prevention and intervention programs and activities of other state and local agencies. Persons other than the professional staff of public and private schools and county departments under ss. 46.215, 46.22 and 51.42 may attend the training programs. The department may charge such persons a fee sufficient to cover the increased costs to the department of their participation in the programs.

(b) Provide consultation and technical assistance to public and private schools for the development and implementation of suicide prevention programs and the coordination of those programs with the suicide prevention and intervention programs of other state and local agencies.

**History:** 1985 a. 29, 176; 1987 a. 403; 1995 a. 27 s. 9126 (19).

**115.366 Alternative education grants.** (1) From the appropriation under s. 20.255 (2) (cf), the department shall award grants to school districts and consortia of school districts for alternative education programs, as defined by the department by rule. The department shall encourage rural school districts and consortia of school districts to apply for grants under this section.

(2) The department shall promulgate rules to implement and administer this section.

**History:** 1999 a. 9.

**Cross Reference:** See also ch. PI 44, Wis. adm. code.

**115.368 Assistance to schools for protective behaviors programs.** (1) The purpose of this section is to enable and encourage public and private schools to develop protective behaviors programs and anti-offender behavior programs designed to assist minors and their parents or guardians in recognizing, avoiding, preventing and halting physically or psychologically intrusive or abusive situations that may be harmful to minors.

(2) The department, in conjunction with the department of health and family services, and after consulting with established organizations providing services with a focus on children of risk, shall:

(a) Develop and conduct protective behaviors training programs for the professional staff of public and private schools and counties under ss. 46.034, 46.215, 46.22, 46.23, 51.42 and 51.437. The training programs shall include information on how to assist a minor and his or her parent or guardian in recognizing, avoiding, preventing and halting physically or psychologically intrusive or abusive situations that may be harmful to the minor, including child abuse, sexual abuse and child enticement. The training programs shall emphasize how to help minors to develop positive psychological, emotional and problem-solving responses to such situations, and to avoid relying on negative, fearful or solely reactive methods of dealing with such situations. The training programs shall also include information on the detection, by other minors, their parents or guardians and school staff, of conditions that indicate that a minor is being or has been subjected to such situations; the proper action to take when there is reason to believe that a minor is being or has been subjected to such situations; and the coordination of school protective behaviors programs and

activities with programs and activities of other state and local agencies. Persons other than the professional staff of public and private schools and counties under ss. 46.034, 46.215, 46.22, 46.23, 51.42 and 51.437 may attend the training programs. The department may charge such persons a fee sufficient to cover the increased costs of materials, but not personnel cost, to the department of their participation in the programs. The department may not deny any resident of Wisconsin the opportunity to participate in a program if the person is unable to pay any fee.

(b) Provide consultation and technical assistance to public and private schools for the development and implementation of protective behaviors programs and the coordination of those programs with programs of other state and local agencies.

**History:** 1985 a. 213; 1985 a. 332 ss. 153, 253; 1995 a. 27 s. 9126 (19).

**115.37 Blind and visual impairment education council.**

(1) In this section:

(a) "Council" means the blind and visual impairment education council.

(b) "Visually impaired" has the meaning given in s. 115.51 (4).

(2) The state superintendent shall seek the advice of and consult with the council on issues related to persons who are visually impaired. The state superintendent and the director of the Wisconsin Center for the Blind and Visually Impaired, or their designees, shall attend meetings of the council.

(3) The council shall do all of the following:

(a) Meet at least twice each year.

(b) Advise the state superintendent on such statewide services, activities, programs, investigations and research as in its judgment will benefit pupils who are visually impaired.

(c) Make recommendations for the improvement of services provided by the Wisconsin Center for the Blind and Visually Impaired.

(d) Review the level and quality of services available to pupils in the state who are visually impaired and make recommendations about those services.

(e) Propose to the state superintendent ways to improve the preparation of teachers and other staff who provide services to pupils who are visually impaired.

(f) Propose to the state superintendent ways to improve coordination between the department and other agencies in providing services to persons who are visually impaired.

(4) The council may initiate consultations with the department.

(5) The council shall have access to public files, public records and statistics kept in the department that relate to matters concerning children who are visually impaired.

**History:** 1971 c. 292; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164; 1999 a. 9.

**115.372 Deaf and hard-of-hearing education council.**

(1) In this section:

(a) "Council" means the deaf and hard-of-hearing education council.

(b) "Hearing impaired" has the meaning given in s. 115.51 (2).

(2) The state superintendent shall seek the advice of and consult with the council on issues related to persons who are hearing impaired. The state superintendent and the director of the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, or their designees, shall attend meetings of the council.

(3) The council shall do all of the following:

(a) Meet at least twice each year.

(b) Advise the state superintendent on such statewide services, activities, programs, investigations, and research as in its judgment will benefit pupils who are hearing impaired.

(c) Make recommendations for the improvement of services provided by the Wisconsin Educational Services Program for the Deaf and Hard of Hearing.

(d) Review the level and quality of services available to pupils in the state who are hearing impaired and make recommendations about those services.

(e) Propose to the state superintendent ways to improve the preparation of teachers and other staff who provide services to pupils who are hearing impaired.

(f) Propose to the state superintendent ways to improve coordination between the department and other agencies in providing services to persons who are hearing impaired.

(4) The council may initiate consultations with the department.

(5) The council shall have access to public files, public records, and statistics kept in the department that relate to matters concerning children who are hearing impaired.

**History:** 2001 a. 57.

**115.38 School performance report; educational program review.** (1) The state superintendent shall develop a school and school district performance report for use by school districts under sub. (2). The report shall include all of the following by school and by school district:

(a) Indicators of academic achievement, including the performance of pupils on the tests administered under s. 121.02 (1) (r) and the performance of pupils, by subject area, on the statewide assessment examinations administered under s. 118.30.

(b) 1. Other indicators of school and school district performance, including dropout, attendance, retention in grade and graduation rates; percentage of habitual truants, as defined in s. 118.16 (1) (a); percentage of pupils participating in extracurricular and community activities and advanced placement courses; percentage of graduates enrolled in postsecondary educational programs; and percentage of graduates entering the workforce.

2. The numbers of suspensions and expulsions; the reasons for which pupils are suspended or expelled, reported according to categories specified by the state superintendent; the length of time for which pupils are expelled, reported according to categories specified by the state superintendent; whether pupils return to school after their expulsion; the educational programs and services, if any, provided to pupils during their expulsions, reported according to categories specified by the state superintendent; the schools attended by pupils who are suspended or expelled; and the grade, sex and ethnicity of pupils who are suspended or expelled and whether the pupils are children with disabilities, as defined in s. 115.76 (5).

(c) Staffing and financial data information, as determined by the state superintendent, not to exceed 10 items. The state superintendent may not request a school board to provide information solely for the purpose of including the information in the report under this paragraph.

(d) The number and percentage of resident pupils attending a course in a nonresident school district under s. 118.52, the number of nonresident pupils attending a course in the school district under s. 118.52, and the courses taken by those pupils.

(e) The method of reading instruction used in the school district and the textbook series used to teach reading in the school district.

(2) Annually by January 1, each school board shall distribute to the parent or guardian of each pupil enrolled in the school district, including pupils enrolled in charter schools located in the school district, or give to each pupil to bring home to his or her parent or guardian, a school and school district performance report that includes the information specified by the state superintendent under sub. (1). The report shall also include a comparison of the school district's performance under sub. (1) (a) and (b) with the performance of other school districts in the same athletic conference under sub. (1) (a) and (b).

(3) Annually, the state superintendent shall publish and distribute to the legislature under s. 13.172 (2) a summary of the reports under sub. (2).

(4) Beginning in the 1993–94 school year and annually thereafter, the state superintendent shall identify those school districts that are low in performance and those schools in which there are pupils enrolled who do not meet the state minimum performance standards on the examinations administered under s. 118.30. The state superintendent shall make recommendations regarding how the programs and operations of the identified school districts and schools may be improved and periodically assess school district implementation of the recommendations.

**History:** 1991 a. 39, 269; 1993 a. 16; 1995 a. 27 s. 9145 (1); 1997 a. 27, 244; 1999 a. 9; 2001 a. 16.

**115.39 Administrative leadership academy.** The department may establish and maintain an administrative leadership academy to enhance the knowledge and skills of mid-career school district administrators and principals. The department shall establish and charge a fee for participation in the administrative leadership academy. The moneys from the fee payments shall be credited to the appropriation under s. 20.255 (1) (hf).

**History:** 1987 a. 27.

**115.405 Grant program for peer review and mentoring.**

(1) A cooperative educational service agency or a consortium consisting of 2 or more school districts or cooperative educational service agencies, or a combination thereof, may apply to the department for a grant to provide technical assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28 (7) and 118.192 to implement peer review and mentoring programs. An applicant for a grant under this section shall submit to the department a plan identifying the school districts and cooperative educational service agencies that will participate in the peer review and mentoring program and describing how the grant funds will be allocated. As a condition of receiving a grant under this section, a cooperative educational service agency or a consortium shall provide matching funds in an amount equal to at least 20% of the amount of the grant awarded. The matching funds may be in the form of money or in-kind services or both.

(2) The department shall award grants from the appropriation under s. 20.255 (2) (fk). The department may not award more than \$25,000 to an applicant in a fiscal year.

(3) The department shall promulgate rules to implement and administer this section.

**History:** 1997 a. 237.

**Cross Reference:** See also ch. PI 38, Wis. adm. code.

**115.41 Teacher improvement program.** The state superintendent shall operate a program to provide prospective teachers with one-semester internships under the supervision of licensed teachers. The program may also fund in-service activities and professional staff development research projects. The state superintendent shall charge school districts fees for participation in the program. Program costs shall be paid from the appropriation under s. 20.255 (1) (hg).

**History:** 1987 a. 27; 1995 a. 27 s. 9145 (1); 1997 a. 27.

**115.42 National teacher certification.** (1) (a) The department shall award a grant to any person who satisfies all of the following requirements:

1. The person is certified by the National Board for Professional Teaching Standards.

2. The person is licensed as a teacher by the state superintendent or employed as a teacher in a private school located in this state.

4. The person is employed as a teacher in this state.

(b) The grant under this subsection shall be an amount equal to the costs of obtaining certification under par. (a) 1. that are borne by the person, not to exceed \$2,000. The department shall award the grant under this subsection in the first school year in which the person meets the requirements under par. (a).

(2) (a) The department shall award 9 grants of \$2,500 each to each person who received a grant under sub. (1) if the person satisfies all of the following requirements:

1. The person maintains his or her certification by the National Board for Professional Teaching Standards.

2. The person maintains his or her license as a teacher by the state superintendent or remains employed in a private school located in this state.

4. The person remains employed as a teacher in this state.

(bL) The department shall award the grants under this subsection annually, one grant in each of the school years following the school year in which the grant under sub. (1) was awarded and in which the person satisfies the requirements under par. (a).

(3) The department may not require, as a condition for renewing a person's teaching license, that the person have earned continuing professional education credits or their equivalent in the 5 years immediately preceding his or her application for renewal if he or she has been initially certified by the National Board for Professional Teaching Standards during those 5 years.

(4) The department shall promulgate rules to implement and administer this section, including rules relating to all of the following:

(a) The application process, including necessary documentation.

(b) The selection process for grant recipients.

(c) The number of times that a teacher may be exempt from continuing professional education requirements under sub. (3).

**History:** 1997 a. 237; 1999 a. 9; 2001 a. 16.

**Cross Reference:** See also ch. PI 37, Wis. adm. code.

#### 115.425 Professional standards council for teachers.

The professional standards council for teachers shall do all of the following:

(1) Advise the state superintendent on standards for the licensure of teachers, including initial licensure and maintenance and renewal of licenses, to ensure the effective teaching of a relevant curriculum in Wisconsin schools.

(2) Propose to the state superintendent standards for evaluating and approving teacher education programs, including continuing education programs.

(3) Provide to the state superintendent an ongoing assessment of the complexities of teaching and the status of the teaching profession in this state.

(4) Propose to the state superintendent policies and practices for school boards and state and local teacher organizations to use in developing effective teaching.

(5) Propose to the state superintendent standards and procedures for revoking a teaching license.

(6) Propose to the state superintendent ways to recognize excellence in teaching, including the assessment administered by the National Board for Professional Teaching Standards and master educator licensure, and to assist teachers to achieve excellence in teaching.

(7) Propose to the state superintendent effective peer assistance and peer mentoring models, including evaluation systems, and alternative teacher dismissal procedures for consideration by school boards and labor organizations.

(8) Review and make recommendations regarding administrative rules proposed by the department that relate to teacher preparation, licensure and regulation.

(9) Propose to the state superintendent alternative procedures for the preparation and licensure of teachers.

(11) Report annually to the standing committees in each house of the legislature that deal with education matters on the activities and effectiveness of the council.

**History:** 1997 a. 298; 1999 a. 32 s. 176.

**115.43 Minority group pupil scholarships. (1) DEFINITION.** In this section, "minority group pupil" means a pupil who is Black or African American, Hispanic, American Indian, an Alaskan native, or a person of Asian or Pacific Island origin.

(2) **SCHOLARSHIPS.** The state superintendent shall:

(a) Annually set goals relating to increasing the percentages of minority group pupils who graduate from high school and are prepared for postsecondary school education.

(b) From the appropriation under s. 20.255 (3) (fz), award pre-college scholarships, on a competitive basis, to minority group pupils who enroll in a technical college or in college or university classes or programs designed to improve academic skills that are essential for success in postsecondary school education. The state superintendent shall give preference to minority group pupils who are inadequately represented in the technical college and University of Wisconsin Systems.

(c) In consultation with postsecondary educational institutions, promulgate rules establishing criteria for the review and approval of applications for scholarships under par. (b).

**History:** 1985 a. 29; 1991 a. 39; 1993 a. 399; 1995 a. 27 ss. 3885, 9145 (1); 1997 a. 27; 2001 a. 48.

**Cross Reference:** See also ch. PI 22, Wis. adm. code.

**115.435 Supplemental aid. (1)** A school district that satisfies all of the following criteria may apply to the department by October 15 of each school year for a grant to supplement aid under s. 121.08:

(a) The school district had an enrollment in the previous school year of fewer than 500 pupils.

(b) The school district is at least 200 square miles in area.

(c) At least 80% of the real property in the school district is exempt from taxation under s. 70.11, taxed as forest croplands under subch. I of ch. 77, owned by or held in trust for a federally recognized American Indian tribe, or owned by the federal government.

(2) No later than June 30 of the current school year, the department shall, from the appropriation under s. 20.255 (2) (ad), pay each school district that satisfies the criteria under sub. (1) \$350 for each pupil enrolled in the school district in the previous school year. If the appropriation under s. 20.255 (2) (ad) is insufficient to pay the full amount under this subsection, the funds shall be prorated among the entitled school districts.

(3) The department shall promulgate rules to implement and administer this section.

**History:** 1999 a. 9, 185; 2001 a. 16.

**Cross Reference:** See also ch. PI 10, Wis. adm. code.

**115.44 Early identification program. (1)** The state superintendent shall establish an early identification program as part of the Wisconsin educational opportunity program under s. 115.28 (23). Early identification program costs shall be paid from the appropriation under s. 20.255 (1) (a). The early identification program shall assist minority and economically disadvantaged pupils in grades 8 to 12 in pursuing higher educational opportunities by providing direction toward attainment of career goals.

(2) Biennially, the state superintendent shall provide the governor and any appropriate standing committee of the legislature information on the performance of the early identification program and the postsecondary educational progress of the pupils who were enrolled in the program. The information shall include the number and ethnic backgrounds of the pupils who were enrolled in the program and college acceptance, retention and graduation rates of the pupils.

**History:** 1987 a. 27; 1991 a. 39; 1995 a. 27 s. 9145 (1); 1997 a. 27.

#### 115.45 Grants for preschool to grade 5 programs. (2)

(a) Annually by September 15, the school board, on its own initiative or upon receipt of an application from the principal of an elementary school located in the school district, may apply to the state superintendent for a grant under this section. The application shall include a plan specifying how the school board intends to meet the requirements under sub. (4), explaining the school board's selection process for individual schools and private service providers and identifying the schools in the school district, or the private service providers certified by the school board as pro-

viding the services under sub. (4) (b), to which the grant funds will be applied.

(b) The council for Milwaukee public schools grant programs under s. 115.28 (20) shall review the applications submitted under par. (a) and make recommendations to the state superintendent regarding the schools to be selected and amounts of the grants to be awarded. The council's recommendations shall be based upon and include information regarding the degree to which the proposed projects will effectively meet the requirements under sub. (4).

(3) The state superintendent shall determine the amount of the grant, if any, to be awarded a school board submitting an application under sub. (2) (a). Amounts awarded shall be paid from the appropriation under s. 20.255 (2) (do). Amounts awarded shall be used by the school board to supplement existing elementary school programs and not to supplant or replace funds otherwise available for such programs.

(3m) (a) In this subsection:

1. "Dropout" has the meaning given in s. 118.153 (1) (b).
2. "Low-income pupil" means a pupil for whom aid to families with dependent children is being received under s. 49.19 or a pupil who is a member of a Wisconsin works group, as defined in s. 49.141 (1) (s), with a member who is participating in Wisconsin works under s. 49.147 (3) to (5).

(b) The state superintendent shall give priority in awarding grants under this section to all of the following programs:

1. Programs in existence on August 9, 1989, that have proven successful.
2. Programs established in school districts with a high number of dropouts and low-income pupils.
3. Programs in existence on July 1, 1991.

(4) The school board receiving an award under this section shall ensure that the schools or private service providers identified under sub. (2) (a) comply with all of the following requirements:

(a) Each identified school or private service provider shall provide structured educational experiences for 4-year-old pupils. The structured educational experiences shall focus on the needs of low-income pupils and shall include activities that encourage early skill development.

(b) Each identified school or private service provider shall annually test the pupils enrolled in grades 1 to 5 in reading, language arts and mathematics using tests approved by the department.

(c) Each identified school or private service provider shall implement a multidisciplinary team approach to the identification and remediation of problems of pupils with significant needs.

(d) Each identified school or private service provider shall restrict class size in all grades below the 6th grade to no more than 25 pupils for each teacher.

(e) The principal of each identified school and the administrator of each identified private service provider shall annually prepare a written performance evaluation of each staff member providing services under this subsection.

(f) All administrative and instructional staff in the elementary grades of each identified school or private service provider shall participate in in-service training that focuses on educational practices and policies identified by the department as effective in improving pupil achievement.

(g) Each identified school shall:

1. Establish a council composed of teachers, parents of pupils enrolled in the school district, school board members and community leaders to monitor and make recommendations to the school board concerning the school's educational programs.

2. Develop plans to encourage and increase parental involvement in efforts to improve the quality of education.

(h) Annually, each identified school or private service provider shall report to the state superintendent all of the following:

1. The results of the tests under par. (b).
2. The number and content of in-service training activities under par. (f).

3. The number and content of parental involvement activities and the number of parents attending each activity.

(5) Beginning in the 1987–88 school year, amounts awarded under this section should be awarded on the basis of improvements in academic performance.

(6) The state superintendent shall:

(a) Establish criteria for measuring and evaluating improvements in academic performance for the purpose of sub. (5).

(b) By March 1, 1986, and annually thereafter, submit to the joint committee on finance and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), a budget report detailing the grants he or she intends to award under this section in the next fiscal year. The report shall provide summary data on the results of the annual testing required under sub. (4) (b) and include a description of the guidelines used to determine the individual schools and private service providers that will receive funds under this section and the types of expenditures eligible for such funds.

(c) Annually submit to the legislature under s. 13.172 (2) a report on the academic progress made by pupils enrolled in pre-school to grade 5 programs under this section.

(7) The joint committee on finance may review the budget report.

(9) (a) If a pupil attending a school receiving a grant under this section moves from the attendance area for that school to another attendance area after the 3rd Friday in September during any school term, the school board may offer the pupil the opportunity to continue to attend school for the remainder of the school term at the school he or she was originally attending.

(b) The state superintendent may authorize a school district to use up to 8% of a grant to pay the costs of transporting pupils under par. (a).

(c) The school districts receiving funds under par. (b) shall give first priority under par. (a) to first grade students.

(10) Grants under this section shall be awarded for a 3-year period. The state superintendent and the grant recipient shall jointly establish performance objectives for each proposed project and criteria for evaluating whether the project meets the objectives. At the end of the 3-year period, the state superintendent shall determine whether the project met its objectives. A grant may not be renewed unless the state superintendent determines that the project met its objectives.

**History:** 1985 a. 29, 120, 224; 1987 a. 27 s. 1762m; Stats. 1987 s. 115.45; 1987 a. 186; 1989 a. 31; 1991 a. 39, 157, 269; 1995 a. 27 ss. 3886, 3887, 9145 (1); 1995 a. 289; 1997 a. 27.

**Cross Reference:** See also ch. PI 29, Wis. adm. code.

**115.46 Interstate agreement on qualification of educational personnel.** The interstate agreement on qualification of educational personnel is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

#### INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

(1) ARTICLE I – PURPOSE, FINDINGS, AND POLICY. (a) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational person-

nel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(b) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

**(2) ARTICLE II – DEFINITIONS.** As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

(a) “Accept”, or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(b) “Designated state official” means the education official of a state selected by that state to negotiate and enter into, on behalf of that state, contracts pursuant to this agreement.

(c) “Educational personnel” means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(d) “Originating state” means a state, and the subdivisions of the state, if any, whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to sub. (3).

(e) “Receiving state” means a state, and the subdivisions of the state, that accepts educational personnel in accordance with the terms of a contract made pursuant to sub. (3).

(f) “State” means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

**(3) ARTICLE III – INTERSTATE EDUCATIONAL PERSONNEL CONTRACTS.** (a) The designated state official of a party state may make one or more contracts on behalf of the official’s state with one or more party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this subsection only with states in which the official finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in the official’s own state.

(b) Any such contract shall provide for:

1. Its duration.
2. The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.
3. Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.
4. Any other necessary matters.

(c) No contract made pursuant to this agreement shall be for a term longer than 5 years but any such contract may be renewed for like or lesser periods.

(d) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating

state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(e) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(f) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

**(4) ARTICLE IV – APPROVED AND ACCEPTED PROGRAMS.** (a) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(b) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

**(5) ARTICLE V – INTERSTATE COOPERATION.** The party states agree that:

(a) They will, so far as practicable, prefer the making of multi-lateral contracts under sub. (3).

(b) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

**(6) ARTICLE VI – AGREEMENT EVALUATION.** The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes.

**(7) ARTICLE VII – OTHER ARRANGEMENTS.** Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

**(8) ARTICLE VIII – EFFECT AND WITHDRAWAL.** (a) This agreement shall become effective when enacted into law by 2 states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(b) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(c) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

**(9) ARTICLE IX – CONSTRUCTION AND SEVERABILITY.** This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected

thereby. If this agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

**History:** 1981 c. 390; 1983 a. 189; 1993 a. 492; 1999 a. 83.

**115.47 Designated state official under agreement.** The “designated state official” for this state under s. 115.46 shall be the state superintendent.

**History:** 1995 a. 27 s. 9145; 1997 a. 27.

**115.48 Contracts under agreement.** True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the department and in the office of the secretary of state. The department shall publish all such contracts in convenient form.

**History:** 1995 a. 27; 1997 a. 27.

### SUBCHAPTER III

#### WISCONSIN EDUCATIONAL SERVICES PROGRAM FOR THE DEAF AND HARD OF HEARING AND WISCONSIN CENTER FOR THE BLIND AND VISUALLY IMPAIRED

**115.51 Definitions.** In this subchapter:

(2) “Hearing impaired” has the meaning given in the rules promulgated by the state superintendent to define “hearing impairments” under s. 115.76 (5) (a) 2.

(3) “Local educational agency” has the meaning given in s. 115.76 (10).

(4) “Visually impaired” means loss of vision, or blindness, as described in the rule promulgated by the state superintendent to define “visual impairments” for the purposes of s. 115.76 (5) (a) 4.

**History:** 1995 a. 27 s. 9145 (1); 1997 a. 27, 164; 1999 a. 9, 185; 2001 a. 57.

**115.52 Wisconsin Educational Services Program for the Deaf and Hard of Hearing.** (1) **DEFINITION.** In this section, “program” means the Wisconsin Educational Services Program for the Deaf and Hard of Hearing.

(1m) **PURPOSE.** The purpose of the program is to serve as a statewide educational resource relating to hearing impairments to benefit all Wisconsin children who are hearing impaired.

(2) **GOVERNANCE.** The state superintendent shall maintain and govern the program’s facilities. The state superintendent shall appoint an individual who has training and experience in educating pupils who are hearing impaired to serve as the director of the program.

(3) **SERVICES.** The program shall provide services that benefit children throughout the state who are hearing impaired.

(a) *School.* 1. ‘Residents 3 to 20 years old.’ The program shall operate a school at which any resident of this state 3 to 20 years old who is hearing impaired, and for the duration of a school term any resident of this state who is hearing impaired and becomes 21 years old during that school term, shall be received and taught free of charge if the individualized education program for the resident under s. 115.787 and the educational placement under s. 115.79 specify the school operated by the program as the appropriate placement.

2. ‘Residents 21 years old or older.’ The state superintendent may admit to the school operated by the program a resident of the state who is hearing impaired and is 21 years of age or older prior to the beginning of a school term upon the payment of fees fixed by the state superintendent and upon the recommendation of the secretary of health and family services, the director of the technical college system, or the director of the program.

3. ‘Nonresidents.’ A nonresident of this state, who is hearing impaired, who either is 3 to 20 years old or becomes 21 years old during a school term, whose individualized education program

under 20 USC 1414 (d) and educational placement specify the school operated by the program as the appropriate placement, and who is capable of receiving instruction may be received at the school upon payment in advance of the fees fixed by the state superintendent, but no nonresident may be received to the exclusion of a resident pupil.

4. ‘Pupil use of residential facilities.’ Except as provided in sub. (4), the director of the program shall make the residential facilities of the program available to all pupils received at the school operated by the program.

5. ‘School term.’ The state superintendent shall fix the period of the school term at the school operated by the program at not less than 38 weeks, prescribe the school sessions, and confer diplomas upon meritorious pupils who have completed the prescribed curriculum. Pursuant to a pupil’s individualized education program under s. 115.787, a pupil may be placed at the school for less than a school term.

6. ‘Transportation.’ The program may provide transportation for resident pupils at the school operated by the program.

(b) *Other statewide services.* The program may do any of the following:

1. Provide evaluation services to assist local educational agencies, cooperative educational service agencies, county children with disabilities education boards, private schools, and others.

2. Provide technical assistance and consultation services to local educational agencies, cooperative educational service agencies, county children with disabilities education boards, private schools, and others.

3. Develop and disseminate curriculum and instructional materials.

4. Provide in-service and other training to teachers and other staff serving pupils who are hearing impaired.

5. Provide training, technical assistance, and consultation services for parents of children who are hearing impaired and for professionals who work with children who are hearing impaired.

6. Provide access to educational materials to children who are hearing impaired.

7. Loan books and other materials from the library described in par. (c) 2.

8. Serve as a clearinghouse for information about children who are hearing impaired.

9. Teach American sign language, and teach other subjects using American sign language, through the use of distance education technology.

10. Rent or lease technological materials and assistive technology devices, as defined in s. 115.76 (1), to local educational agencies, cooperative educational service agencies, county children with disabilities education boards, and private schools.

11. Facilitate the preparation of teachers of pupils who are hearing impaired by providing assistance to teacher preparation programs.

12. Provide other statewide services that relate to the education of children who are hearing impaired.

(c) *Additional services.* 1. ‘Birth to 3 services.’ The program may provide instruction or services, or both, for children who are under the age of 3 and are hearing impaired and their parents. The instruction or services are subject to the approval of, and shall comply with requirements established by, the department.

2. ‘Library.’ Educational media and materials acquired by the program constitute a circulating collection for persons who are hearing impaired. The collection shall be kept at the program’s facility and be under the supervision of its director. All school age children of the state who are hearing impaired may use the media and materials upon compliance with criteria established by the director of the program and approved by the state superintendent.

3. ‘Summer programs.’ The program shall provide summer programs each year for children who are hearing impaired.

4. 'Independent living skills.' With the approval of the state superintendent, the program may allow individuals to receive instruction in and practice independent living skills in state-owned housing at the program's facility in Delavan.

(d) *Provision of services.* In addition to providing services at the program's facility in Delavan, the program may provide services at any location in the state and may operate regional satellite facilities throughout the state to provide services.

(4) **NONDISCRIMINATION.** All pupils in the program may equally and freely enjoy the benefits and privileges of the program, have the use of the library and books of instruction, and receive board, lodging, and linens, without discrimination, except that the director of the program may determine that board, lodging, and linens may not be provided to an individual because appropriate services are not available for that individual at the program's residential facilities.

(5) **CHARGES.** The state superintendent may charge for meals, living quarters, laundry, and other services furnished to employees of the program and their families. The state superintendent may charge for services furnished to visitors to the program's facilities and participants in training programs and institutes.

(6) **LEASING OF SPACE.** The state superintendent may lease space at the program's facilities in Delavan that is not required by the program to any person if the state superintendent determines that the use will not be inconsistent with the operation of the program.

(7) **AUDIT.** In the 2005–06 fiscal year, the legislative audit bureau shall perform a performance evaluation audit of the program. The bureau shall submit copies of the audit report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3) by June 30, 2006.

**History:** 1971 c. 164; 1973 c. 89; 1977 c. 29; 1983 a. 27; 1993 a. 399, 492; 1995 a. 27 ss. 3890, 9126 (19), 9145 (1); 1997 a. 27, 164; 1999 a. 9; 2001 a. 57.

**115.525 Wisconsin Center for the Blind and Visually Impaired. (1) DEFINITION.** In this section, "center" means the Wisconsin Center for the Blind and Visually Impaired.

(1m) **PURPOSE.** The purpose of the center is to serve as a statewide educational resource relating to visual impairments to benefit all Wisconsin children who are visually impaired.

(2) **GOVERNANCE.** The state superintendent shall maintain and govern the center. The state superintendent shall appoint an individual who has training and experience in educating pupils who are visually impaired to serve as the director of the center.

(3) **SERVICES.** The center shall provide services that benefit children throughout the state who are visually impaired.

(a) *School.* 1. 'Residents 3 to 20 years old.' The center shall operate a school at which any resident of this state 3 to 20 years old who is visually impaired, and for the duration of a school term any resident of this state who is visually impaired and becomes 21 years old during that school term, shall be received and taught free of charge if the individualized education program for the resident under s. 115.787 and the educational placement under s. 115.79 specify the school operated by the center as the appropriate placement.

2. 'Residents 21 years old or older.' The state superintendent may admit to the school operated by the center a resident of the state who is visually impaired and is 21 years of age or older prior to the beginning of a school term upon the payment of fees fixed by the state superintendent and upon the recommendation of the secretary of health and family services, the director of the technical college system or the director of the center.

3. 'Nonresidents.' A nonresident of this state, who is visually impaired, who either is 3 to 20 years old or becomes 21 years old during a school term, whose individualized education program under 20 USC 1414 (d) and educational placement specify the school operated by the center as the appropriate placement and who is capable of receiving instruction may be received at the school upon payment in advance of the fees fixed by the state

superintendent, but no nonresident may be received to the exclusion of a resident pupil.

4. 'Pupil use of residential facilities.' Except as provided in sub. (4), the director of the center shall make the residential facilities at the center available to all pupils received at the school operated by the center.

5. 'School term.' The state superintendent shall fix the period of the school term at the school operated by the center at not less than 38 weeks, prescribe the school sessions and confer diplomas upon meritorious pupils who have completed the prescribed curriculum. Pursuant to a pupil's individualized education program under s. 115.787, a pupil may be placed at the school for less than a school term.

6. 'Transportation.' The center may provide transportation for resident pupils at the school operated by the center.

(b) *Other statewide services.* The center may do any of the following:

1. Provide testing, evaluation and assessment services to assist local educational agencies, cooperative educational service agencies and county children with disabilities education boards.

2. Provide technical assistance and consultation services to entities such as local educational agencies, cooperative educational service agencies, county children with disabilities education boards and private schools.

3. Develop and disseminate curriculum and instructional materials.

4. Provide in service and other training to teachers and other staff serving pupils who are visually impaired.

5. Provide training, technical assistance and consultation services for parents of children who are visually impaired and for professionals who work with children who are visually impaired.

6. Provide materials in braille, large print and other appropriate formats to children who are visually impaired.

7. Train teachers and braillists about braille codes and formats used by individuals who are visually impaired.

8. Loan books and other materials from the library described in par. (c) 2.

9. Serve as a clearinghouse for information about children who are visually impaired, including information related to library resources, adapted materials and current research.

10. Assist in providing assistive technology services, as defined in s. 115.76 (2), for pupils who are visually impaired.

11. Lend, rent or lease technological materials and assistive technology devices, as defined in s. 115.76 (1), to local educational agencies, cooperative educational service agencies and county children with disabilities education boards.

12. Facilitate the preparation of teachers of pupils who are visually impaired by providing assistance to teacher preparation programs.

13. Coordinate and collaborate with public and private agencies and organizations that provide services to individuals who are visually impaired, including the development of employment skills and opportunities.

14. Provide other statewide services that relate to the education of children who are visually impaired.

(c) *Additional services.* 1. 'Birth to 2 services.' The center may provide instruction or services, or both, for children who are under the age of 2 and are visually impaired and their parents. The instruction or services are subject to the approval of, and shall comply with requirements established by, the department.

2. 'Library.' Embossed, clear type or large type books acquired by the center constitute a circulating collection for persons who are visually impaired. The collection shall be kept at the center and be under the supervision of its director. All school age children of the state who are visually impaired may use such books upon compliance with criteria established by the director of the center and approved by the state superintendent.



3. ‘Summer programs.’ The center shall provide summer programs each year for children who are visually impaired.

4. ‘Adult summer program.’ The center shall provide a summer program each year for adults who are visually impaired. The state superintendent may contract with other entities to provide this program.

5. ‘Independent living skills.’ With the approval of the state superintendent, the center may use state-owned housing on the grounds of the center in Janesville as a facility in which individuals receive instruction in and practice independent living skills.

(d) *Provision of services.* In addition to providing services at the center’s facility in Janesville, the center may provide services at any location in the state and may operate regional satellite facilities throughout the state to provide services.

(4) **NONDISCRIMINATION.** All pupils at the center may equally and freely enjoy the benefits and privileges of the center, have the use of the library and books of instruction and receive board, lodging and laundry, without discrimination, except that the director of the center may determine that board, lodging and laundry may not be provided to an individual because appropriate services are not available for that individual at the center’s residential facilities.

(5) **CHARGES.** The state superintendent may charge for meals, living quarters, laundry and other services furnished to employees of the center and their families. The state superintendent may charge for services furnished to visitors at the center and participants in training programs and institutes.

(6) **LEASING OF SPACE.** The state superintendent may lease space at the center in Janesville that is not required by the center to any person if the state superintendent determines that the use will not be inconsistent with the operation of the center.

(7) **AUDIT.** In the 2002–03 fiscal year, the legislative audit bureau shall perform a performance evaluation audit of the center. The bureau shall submit copies of the audit report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3) by June 30, 2003.

**History:** 1999 a. 9.

**115.53 State superintendent; powers.** The state superintendent may:

(2) Arrange for vocational, trade or academic training for any pupil in either the school operated by the Wisconsin Center for the Blind and Visually Impaired or the Wisconsin Educational Services Program for the Deaf and Hard of Hearing qualified to take such training advantageously, in either a public school or technical college or a private business establishment in Janesville or Delavan. The public school and the technical college shall be paid the regular tuition for full-time attendance and proportionally for part-time attendance by the school district responsible for the provision of a free appropriate public education under subch. V.

(3) (a) Arrange for otological or ophthalmic examination of any pupil or prospective pupil of the Wisconsin Educational Services Program for the Deaf and Hard of Hearing. The examination shall be paid for from the appropriation in s. 20.255 (1) (b), (gh) or (gs).

(b) Arrange for ophthalmic or otological examination of any pupil or prospective pupil of the school operated by the Wisconsin Center for the Blind and Visually Impaired. The examination shall be paid from the appropriation in s. 20.255 (1) (b), (gh), (gL) or (gs).

(4) Apply to the board of directors of the University of Wisconsin Hospitals and Clinics Authority for admission to the University of Wisconsin Hospitals and Clinics of any pupil at the school operated by the Wisconsin Educational Services Program for the Deaf and Hard of Hearing or the school operated by the Wisconsin Center for the Blind and Visually Impaired.

(a) The application shall be accompanied by the report of a physician approved by the director of the Wisconsin Educational Services Program for the Deaf and Hard of Hearing or the director

of the Wisconsin Center for the Blind and Visually Impaired and shall be in the same form as reports of other physicians for admission of patients to such hospital.

(b) The net cost of hospital treatment shall be at the rate established under s. 233.40 (1) and shall be paid from the appropriation under s. 20.255 (1) (b), (gh) or (gs) if the patient is a pupil at the school operated by the Wisconsin Educational Services Program for the Deaf and Hard of Hearing or from the appropriation under s. 20.255 (1) (b), (gh), (gL) or (gs) if the patient is a pupil at the school operated by the Wisconsin Center for the Blind and Visually Impaired. The state superintendent likewise may authorize payment for the expense of transporting patients to and from the hospital. The state superintendent shall make payments for the treatment to the University of Wisconsin Hospitals and Clinics Authority. Funds collected by the state superintendent on account of the hospitalization shall be credited to the appropriation under s. 20.255 (1) (gh) for the school or center concerned.

(5) Arrange for visits by members of the staff of either the Wisconsin Educational Services Program for the Deaf and Hard of Hearing or the Wisconsin Center for the Blind and Visually Impaired to other public schools or to families of children who are hearing impaired or children who are visually impaired, whenever it appears to the state superintendent that such visits will be of advantage to such children.

(6) Charge the school district responsible for a pupil’s placement in a school under this subchapter for the costs of transporting the pupil to and from the pupil’s home on weekends. All fees received under this subsection shall be deposited in the appropriation under s. 20.255 (1) (gt).

**History:** 1971 c. 100 s. 23; 1971 c. 125 s. 522 (1); 1973 c. 90; 1973 c. 243 ss. 50, 82; 1977 c. 29; 1977 c. 418 s. 924 (50); 1977 c. 447 s. 206; 1979 c. 34 s. 2102 (43) (a); 1979 c. 110 s. 60 (12); 1981 c. 20; 1983 a. 27 ss. 1424, 2202 (42); 1985 a. 29; 1987 a. 27; 1993 a. 399, 492; 1995 a. 27 ss. 3891, 3892, 9145 (1); 1997 a. 27, 164; 1999 a. 9; 2001 a. 57.

**Cross Reference:** See also ch. PI 12, Wis. adm. code.

The state superintendent does not have the authority to determine whether public schools are segregated or the authority to take enforceable action to desegregate public schools. 65 Atty. Gen. 282.

**115.54 Compulsory education.** If it appears, by affidavit, to any circuit judge that any child who is either hearing impaired or visually impaired and who is between the ages of 6 and 21 is deprived of a suitable education by the failure of the person having the care and custody of the child to provide a suitable education, the judge shall order the person to bring the child before the judge. If the material allegations of the affidavit are denied, the judge shall subpoena witnesses and hear testimony. If the allegations are admitted or established, the judge may order the child sent to the school operated by the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, the school operated by the Wisconsin Center for the Blind and Visually Impaired or to some class or other school for instruction, but the order may not make a direct charge for the class or school against any county.

**History:** 1977 c. 449; 1999 a. 9; 2001 a. 57.

**115.58 Park grounds.** The state superintendent may permit the city of Janesville to use portions of the grounds of the Wisconsin Center for the Blind and Visually Impaired at Janesville, which abut on the Rock river, for purposes of operating a city park. Any construction on such grounds is subject to prior approval by the state superintendent. Any agreement pursuant hereto shall be cancelable at the option of either party without liability. Any such grounds so used by the city of Janesville shall be supervised by the city and shall be subject to the ordinances of the city of Janesville applicable to city parks.

**History:** 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9.

#### SUBCHAPTER IV

#### AMERICAN INDIAN LANGUAGE AND CULTURE EDUCATION PROGRAM

**115.71 Definitions.** In this subchapter:

(1) “Alternative school” means any nonsectarian private school or tribally operated school in this state which complies with the requirements of 42 USC 2000d and in which at least 75% of the pupils enrolled are American Indians.

(2) “American Indian” means any person who is:

(a) A member of a tribe, band or other organized group of Indians, including those tribes, bands or groups terminated since 1940, or who is a descendant in the first or 2nd degree of any such member;

(b) Considered by the federal government, on May 22, 1980, to be an Indian for any purpose;

(c) An Eskimo, Aleut or other Alaska native; or

(d) Determined to be an Indian under rules promulgated by the state superintendent under s. 115.28 (17) (c).

(4) “Home school coordinator” means a person employed by the school district to promote communication between the school and the American Indian community.

(5) “Tribal education authority” means the educational authority of a tribe, band or other organized group of American Indians, which may be vested in a tribal department or division of education, a tribal school board, a tribal education committee or any similar body.

History: 1979 c. 346; 1981 c. 314 s. 146; 1995 a. 27 s. 9145 (1); 1997 a. 27.

**115.72 Establishment of programs.** (1) Any school district enrolling American Indian pupils, or alternative school, may establish, on a voluntary basis, an American Indian language and culture education program. The program shall be designed to:

(a) Make the school curriculum more relevant to the needs, interests and cultural heritage of American Indian pupils.

(b) Provide reinforcement of the positive self-image of American Indian pupils.

(c) Develop intercultural awareness among pupils, parents and staff.

(2) The American Indian language and culture education program may include:

(a) Instruction in American Indian language, literature, history and culture.

(b) In-service training and technical assistance for staff in regard to methods of teaching American Indian pupils.

(c) Vocational education and counseling for American Indian pupils.

(d) Modification of curriculum, instructional methods and administrative procedures to meet the needs of American Indian pupils.

(e) Tests of the academic achievement of the American Indian pupils enrolled.

(f) Identification of the educational needs of the American Indian pupils enrolled.

(g) Classification of American Indian pupils enrolled by grade, level of education, age and achievement.

(3) The school board of a district establishing an American Indian language and culture education program may designate the school or schools in which the program shall be offered. The parent or guardian of an American Indian pupil may transfer the pupil to the school in which the program is offered, if it is in the same district, in order for the pupil to participate in the program.

(4) American Indian language and culture education programs established under this subchapter shall be located in school facilities in which regular classes in a variety of subjects are offered on a daily basis.

History: 1979 c. 346.

**115.73 Program requirements.** (1) Each school district and alternative school, before establishing a program under this subchapter, shall develop a plan which:

(a) Identifies the activities, methods and programs to be used to meet the identified educational needs of the pupils to be enrolled in the program.

(b) Describes how the program will be organized, staffed, coordinated and evaluated.

(c) Estimates the costs of the program.

(2) Each school district and alternative school operating a program under this subchapter shall maintain records concerning the number of American Indian pupils enrolled in the program and of all sums expended in connection with the program. The school district or alternative school shall make affirmative efforts to encourage participation of American Indian pupils in the program by providing for meetings with parents and guardians of American Indian pupils to explain the nature of the program.

History: 1979 c. 346.

**115.735 Parent advisory committee.** (1) Each school district and alternative school which establishes a program under this subchapter shall establish an American Indian parent advisory committee, appointed by the school board, to afford parents and educators of American Indian pupils the opportunity to advise the school board of their views and to ensure that a program is planned, operated and evaluated with their involvement and consultation. If there is a local tribal education authority, the school board shall appoint committee members from recommendations submitted by the authority.

(2) The committee shall be composed of parents or guardians of American Indian pupils enrolled in the program, teachers, aides and counselors involved in the program and representatives of local tribal education authorities, but a majority of the members of each committee shall be parents or guardians of American Indian pupils enrolled in the program.

(3) If an advisory committee exists which meets the requirements of sub. (2), it may serve as the parent advisory committee. If the school board consists solely of parents or guardians of American Indian pupils, it may serve as the parent advisory committee.

History: 1979 c. 346.

**115.74 Assessment of needs and evaluation of resources.** (1) On or before July 1 in every even-numbered year, the state superintendent shall:

(a) Conduct a statewide assessment of the need for American Indian language and culture education programs. The assessment shall include information on:

1. Numbers, ages, location and tribal affiliation of American Indian pupils.

2. Concentration of American Indian pupils in attendance areas, as defined in s. 121.845 (1), within each school district by tribal affiliation.

3. Rates of American Indian children receiving special education and related services under subch. V of ch. 115 in comparison with statewide and district-wide rates.

4. Advancement, achievement levels and dropout rates of American Indian pupils in comparison with average advancement and dropout rates.

5. Participant response to the program.

(b) Evaluate the American Indian language and culture education programs established under this subchapter. Alternative school programs shall be evaluated under this paragraph only with the permission of the school.

(2) Annually, on or before July 1, the state superintendent shall evaluate all available resources and programs which are or could be directed toward meeting the educational needs of American Indian pupils. The evaluation shall include information on:

(a) Numbers, locations and qualifications of teachers, administrators, counselors and others from American Indian back-

grounds who are interested in working in American Indian language and culture education programs.

(b) Programs in this state designed for the preparation of American Indian language and culture education teachers.

(c) The effectiveness of programs for American Indian pupils in this state other than programs established under this subchapter.

(d) The effectiveness of preservice and in–service programs for staffs of American Indian language and culture education programs.

(e) The tests, criteria, procedures and methods used to identify, test, assess and classify American Indian pupils.

(3) The assessment of needs under sub. (1) (a) and the evaluation of resources under sub. (2) shall be performed on Indian reservations and in other Indian communities recognized by the federal government only in conjunction with, or with the permission of, the respective tribal governments.

(4) The state superintendent shall prepare a biennial report which shall be included as an addendum to the department's biennial report under s. 15.04 (1) (d). The report shall include the results of the most recent assessment of needs and evaluation of programs under sub. (1), the evaluation of resources under sub. (2) and recommendations for legislation in the area of American Indian language and culture education.

**History:** 1979 c. 346; 1983 a. 189 s. 329 (17m); 1983 a. 524; 1985 a. 29 s. 3202 (43); 1989 a. 56; 1997 a. 27, 164.

## SUBCHAPTER V

### CHILDREN WITH DISABILITIES

**Cross Reference:** See also ch. PI 11, Wis. adm. code.

**115.758 Construction.** To the extent possible, this subchapter shall be construed in a manner that is consistent with 20 USC 1400 to 1487.

**History:** 1997 a. 164.

**115.76 Definitions.** In this subchapter:

(1) “Assistive technology device” means any item, piece of equipment or product system that is used to increase, maintain or improve the functional capabilities of a child with a disability.

(2) “Assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition or use of an assistive technology device, including all of the following:

(a) The evaluation of the needs of the child, including a functional evaluation of the child in the child's customary environment.

(b) Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by the child.

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices.

(d) Coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitative plans and programs.

(e) Training or technical assistance for the child or, where appropriate, the child's family.

(f) Training or technical assistance for professionals, including individuals providing education and rehabilitative services, employers or other individuals who provide services to, employ or are otherwise substantially involved in the major life functions of the child.

(3) “Child” means any person who is at least 3 years old but not yet 21 years old and who has not graduated from high school and, for the duration of a school term, any person who becomes 21 years old during that school term and who has not graduated from high school.

(5) (a) “Child with a disability” means a child who, by reason of any of the following, needs special education and related services:

1. Cognitive disabilities.
2. Hearing impairments.
3. Speech or language impairments.
4. Visual impairments.
5. Emotional disturbance.
6. Orthopedic impairments.
7. Autism.
8. Traumatic brain injury.
9. Other health impairments.
10. Learning disabilities.

(b) “Child with a disability” may, at the discretion of the local educational agency and consistent with department rules, include a child who, by reason of his or her significant developmental delay, needs special education and related services.

**Cross Reference:** See also s. PI 11.36, Wis. adm. code.

(6) “Division” means the division for learning support, equity and advocacy in the department.

(7) “Free appropriate public education” means special education and related services that are provided at public expense and under public supervision and direction, meet the standards of the department, include an appropriate preschool, elementary or secondary school education and are provided in conformity with an individualized education program.

(8) “Hearing officer” means an independent examiner appointed to conduct hearings under s. 115.80.

(9) “Individualized education program” means a written statement for a child with a disability that is developed, reviewed and revised in accordance with s. 115.787.

(10) “Local educational agency”, except as otherwise provided, means the school district in which the child with a disability resides, the department of health and family services if the child with a disability resides in an institution or facility operated by the department of health and family services, or the department of corrections if the child with a disability resides in a Type 1 secured correctional facility, as defined in s. 938.02 (19), or a Type 1 prison, as defined in s. 301.01 (5).

(11) “Native language”, when used with reference to an individual of limited English proficiency, means the language normally used by the individual.

(12) (a) “Parent” means any of the following:

1. A biological parent.
2. A husband who has consented to the artificial insemination of his wife under s. 891.40.
3. A male who is presumed to be the child's father under s. 891.41.
4. A male who has been adjudicated the child's father under subch. VIII of ch. 48, under ss. 767.45 to 767.51, by final order or judgment of an Indian tribal court of competent jurisdiction or by final order or judgment of a court of competent jurisdiction in another state.
5. An adoptive parent.
6. A legal guardian.
7. A person acting as a parent of a child.
8. A person appointed as a sustaining parent under s. 48.428.
9. A person assigned as a surrogate parent under s. 115.792 (1) (a) 2.

10. A foster parent, if the right and the responsibility of all of the persons specified in subds. 1. to 5. to make educational decisions concerning a child have been extinguished by termination of parental rights, by transfer of guardianship or legal custody or by other court order, and if the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions that are required of a parent under this sub-

chapter and has no interests that would conflict with the interests of the child.

(b) “Parent” does not include any of the following:

1. A person whose parental rights have been terminated.
2. The state, a county or a child welfare agency, if a child was made a ward of the state, county or child welfare agency under ch. 880 or if a child has been placed in the legal custody or guardianship of the state, county or child welfare agency under ch. 48 or ch. 767.

3. An American Indian tribal agency if the child was made a ward of the agency or placed in the legal custody or guardianship of the agency.

(13) “Person acting as a parent of a child” means a relative of the child or a private individual allowed to act as a parent of a child by the child’s biological or adoptive parents or guardian, and includes the child’s grandparent, neighbor, friend or private individual caring for the child with the explicit or tacit approval of the child’s biological or adoptive parents or guardian. “Person acting as a parent of a child” does not include any person that receives public funds to care for the child if such funds exceed the cost of such care.

(14) “Related services” means transportation and such developmental, corrective and other supportive services as may be required to assist a child with a disability to benefit from special education, including speech–language pathology and audiology services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services; counseling services, including rehabilitative counseling; orientation and mobility services; medical services for diagnostic and evaluative purposes only; and the early identification and assessment of disabling conditions in children.

(14g) “Residential care center for children and youth” means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(15) “Special education” means specially designed instruction, regardless of where the instruction is conducted, that is provided at no cost to the child or the child’s parents, to meet the unique needs of a child with a disability, including instruction in physical education.

(16) “Supplementary aids and services” means aids, services and other supports that are provided in regular education classes or other education–related settings to enable a child with a disability to be educated with nondisabled children to the maximum extent appropriate.

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

**History:** 1997 a. 164, 237; 1999 a. 116, 161; 2001 a. 59.

**115.762 Division for learning support, equity and advocacy.** (1) APPOINTMENT OF ADMINISTRATOR. The state superintendent shall appoint the administrator of the division.

(2) STAFF. Subject to the approval of the state superintendent, the administrator of the division shall appoint qualified staff necessary to perform the duties required of the division.

(3) DIVISION DUTIES. The division is responsible for all of the following:

(a) Ensuring that all children with disabilities, including children who are not yet 3 years of age, who reside in this state and who are in need of special education and related services are identified, located and evaluated.

(am) Ensuring that a free appropriate public education is available to all children with disabilities who reside in this state, including such children who are suspended or expelled from school.

(b) Developing and implementing a practical method to determine which children with disabilities are receiving special education and related services.

(c) Complying with the requirements of this subchapter and applicable federal law, including 20 USC 1415 (k).

(d) Coordinating and supervising the provision of all publicly funded special education and related services for children with disabilities in this state and ensuring that such education and services meet the educational standards of the department, including any criteria established by the department relating to enrollment.

(e) Pursuant to s. 115.77 (4), approving the plan for the provision of all special education and related services provided by a local educational agency.

(g) Monitoring and enforcing local educational agency and residential care center for children and youth compliance with this subchapter and applicable federal law, including 20 USC 1415 (k).

(h) Maintaining current information on all publicly funded special education and related services within this state and making this information public.

(i) Coordinating a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education and related services personnel and that meets the requirements of applicable federal law, including participation, as appropriate, by institutions of higher education, state and local agencies and other public and private organizations.

(j) Examining data to determine if significant discrepancies are occurring in the rate of long–term suspensions and expulsions of children with disabilities among local educational agencies or compared to such rates for nondisabled children within such agencies. If such discrepancies are occurring, the division shall review and, if appropriate, revise or require the affected local educational agency to revise its policies, procedures and practices relating to the development and implementation of individualized education programs, the use of behavioral interventions and procedural safeguards to ensure that such policies, procedures and practices comply with this subchapter.

(4) LIMITATION. Nothing in this subchapter requires that special education and related services be provided to a child with a disability who is at least 18 years old and who, in the child’s educational placement before his or her incarceration in a state prison, was not identified as a child with a disability or for whom an individualized education program was not developed.

**History:** 1997 a. 164; 1999 a. 161; 2001 a. 59.

**115.77 Local educational agency duties.** (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.

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

(a) Identifies, locates and evaluates all children with disabilities who are in need of special education and related services, including such children who are not yet 3 years of age. A local educational agency may provide special education and related services to children with disabilities who are not yet 3 years of age under an interagency agreement with a county agency responsible for the early intervention program under s. 51.44.

(b) Makes available a free appropriate public education to children with disabilities as required by this subchapter and applicable state and federal law.

(bg) Includes children with disabilities in statewide and local educational agency–wide assessments, with appropriate modifications where necessary, or in alternative assessments for those children who cannot participate in statewide or local educational agency–wide assessments.

(c) Ensures that children participating in early intervention programs under s. 51.44 who will participate in preschool pro-

grams assisted under this subchapter experience a smooth and effective transition to those preschool programs and that, by the 3rd birthday of such a child, an individualized education program has been developed and is being implemented for the child. The local educational agency shall participate in transition planning conferences arranged by the county administrative agency, as defined in s. [HFS 90.03 \(10\)](#), Wis. adm. code.

(d) Ensures that children with disabilities who are enrolled in private schools and facilities are provided special education and related services, in accordance with individualized education programs, at no cost to them or to their parents, if such children are placed in, or referred to, such schools or facilities by a local educational agency to satisfy the requirements of this subchapter or applicable federal law.

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

(f) Establishes written policies and procedures for implementing this subchapter and applicable federal law.

(g) Makes available to any person, upon request, all documents relating to the agency's eligibility for funds under this subchapter.

(h) Regularly publicizes information regarding its special education procedures and services.

**(2)** The local educational agency shall provide the division with information necessary to enable the division to carry out its duties under this subchapter and applicable federal law.

**(3)** Any state or federal aid that is made available to a local educational agency for special education and related services shall be used by the local educational agency to comply with this subchapter.

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

(a) The extent to which special education and related services is or is not organized around particular disabilities.

(b) The licensure and other preparation or experience of special education staff.

(c) The age ranges of pupils who are children with disabilities.

(d) The range of severity of disability among children with disabilities.

(e) The ratio of pupils to full-time equivalent staff, including both the ratio of pupils assigned to special education instructional and related services staff and to total special education instructional, support and administrative staff.

(f) The way parents participate in the development and review of the plan.

(g) The extent to which children with disabilities receive special education or related services beyond the school term.

(h) The way the local educational agency provides for a continuum of alternative placements that addresses the unique needs of children with disabilities and ensures that such children receive their educational programming in the least restrictive environment, including the agency's use of placements out of the agency and out of the state and private placements.

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

(j) The local educational agency's plan for evaluating its system for the design and delivery of special education and related

services and for addressing any needs that are identified by the evaluation, including all of the following:

1. The local educational agency's graduation rate for children with disabilities and how the rate compares to the agency's graduation rate for nondisabled children.

2. The local educational agency's rate of suspension and expulsion of children with disabilities and how the rate compares to the agency's rate of suspension and expulsion of nondisabled children.

3. The local educational agency's overall incidence rate of children with disabilities and the agency's incidence rates of particular disabilities.

4. The rate of participation of the local educational agency's children with disabilities in statewide and local educational agency-wide assessments and the results of those assessments.

5. The rate of participation of the local educational agency's children with disabilities in alternative assessments and the results of those assessments.

6. The number of referrals under s. [115.777](#) and the percentage of those referrals resulting in the provision of special education and related services.

7. The number of children with disabilities placed in appropriate, interim, alternative educational settings under [20 USC 1415 \(k\) \(1\) \(A\) \(ii\)](#).

8. General information about the satisfaction of parents of children with disabilities and adult pupils who are receiving special education and related services with special education and related services.

9. General information about persons who no longer attend high school and who received special education and related services provided by the local educational agency, such as whether they are employed, are living independently and are enrolled in postsecondary education.

10. If the local educational agency is a school district, the number of children with disabilities who attend the school district under 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.

(k) A roster of all of the agency's special education and related services staff, their function, their social security numbers and their special education licensure.

(L) Statements of assurance as required by applicable federal law.

(m) Information relating to access of private school pupils to the local educational agency's special education and related services.

(n) Any other information the division requires to permit its review and approval of the plan.

**(7)** Annually, the local educational agency shall provide a special education performance report to all parents of children enrolled in the local educational agency and to the division that includes the local educational agency's performance with regard to the factors referenced in the agency's evaluation of its plan under sub. [\(4\) \(j\)](#) as well as the statewide average with regard to factors in sub. [\(4\) \(j\) 1. to 5.](#)

**(8)** The local educational agency shall serve children with disabilities who are attending a charter school under contract with the local educational agency under s. [118.40](#) in the same manner as it serves children with disabilities attending schools of the local educational agency, and shall provide funds under this subchapter to such charter schools in the same manner as it provides funds under this subchapter to schools of the local educational agency.

**(9)** The local educational agency shall exercise its authority in compliance with [20 USC 1415 \(k\)](#).

**History:** 1997 a. 164; 1999 a. 117.

When there was no reasonable cause to believe that a student was emotionally disturbed and required special education, there was no obligation to submit an exceptional needs referral on the student's behalf. *Hoffman v. East Troy Community School District*. [38 F. Supp. 2d 750 \(1999\)](#).

**115.775 Duties of operators of certain charter schools.**

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

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

**History:** 1999 a. 9.

**115.777 Special education referrals.** (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 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.

(2) (a) All referrals shall be in writing and shall include the name of the child and the reasons why the person believes that the child is a child with a disability.

(b) Before submitting a referral to a local educational agency under sub. (1) (a) or (b), a person required to make a referral under sub. (1) (a) or (b) shall inform the child's parent that he or she is going to submit the referral.

(3) A local educational agency shall do all of the following:

(a) Establish written procedures for accepting and processing referrals.

(b) Document and date the receipt of each referral.

(c) Provide information and in-service opportunities to all of its licensed staff to familiarize them with the agency's referral procedures.

(d) At least annually, inform parents and persons required to make referrals under sub. (1) (a) about the agency's referral and evaluation procedures.

**History:** 1997 a. 164; 1999 a. 117.

**115.78 Individualized education program team; timeline.**

(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.

(1m) **APPOINTMENT OF TEAM.** The local educational agency shall appoint an individualized education program team for each child referred to it under s. 115.777. Each team shall consist of all of the following:

(a) The parents of the child.

(b) At least one regular education teacher of the child if the child is, or may be, participating in a regular educational environment.

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

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

(e) An individual who can interpret the instructional implications of evaluation results, who may be a team participant under pars. (b) to (d) or (f).

(f) At the discretion of the parent or the local educational agency, other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate.

(g) Whenever appropriate, the child.

(2) **DUTIES OF TEAM.** The individualized education program team shall do all of the following:

(a) Evaluate the child under s. 115.782 to determine the child's eligibility or continued eligibility for special education and related services and the educational needs of the child.

(b) Develop an individualized education program for the child under s. 115.787.

(c) Determine the special education placement for the child under s. 115.79.

(3) **TIMELINE.** (a) The local educational agency shall notify the parents of the educational placement of their child within 90 days after the local educational agency receives a special education referral for the child under s. 115.777 or initiates a reevaluation of the child under s. 115.782 (4).

(b) Before the expiration of the 90-day period, if a local educational agency needs an extension, it shall inform the child's parent of the need and reasons for an extension and request the child's parent to agree in writing to a specific extension of time beyond the 90-day period.

(c) If the parent does not agree to an extension, the local educational agency may request an extension from the division. The local educational agency shall inform the division of the reasons for the request. The division may grant a specific extension of time beyond the 90-day period if the local educational agency shows that it has acted in good faith and that there is good cause to grant the extension. If the division grants an extension, it shall notify the parent of the extension and the reasons for granting it.

(d) Subject to pars. (a) to (c), if the parents of the child or the local educational agency staff determines at any point during the process of the evaluation, development of the individualized education program or placement of the child that additional time is needed to permit meaningful parental participation, the local educational agency shall provide it.

(4) **INFORMATION.** At the beginning of any meeting to address the evaluation, individualized education program or placement of a child, the local educational agency staff shall inform the child's parents of their right to be provided with additional time under sub. (3) (d) and their right to a copy of the evaluation report under s. 115.782 (3) (b) or (c).

**History:** 1997 a. 164; 1999 a. 117.

**115.782 Evaluations.** (1) **NOTICE; CONSENT.** (a) The local educational agency shall notify the parents of the child, in accordance with s. 115.792, of any evaluation procedures the agency proposes to conduct, the qualifications of the individuals who will conduct the evaluation and their names, if known.

(b) The local educational agency proposing to conduct an initial evaluation shall obtain informed consent from the child's par-

ent before the evaluation is conducted. Parental consent for the evaluation does not constitute consent for placement for receipt of special education and related services. If the child's parents do not consent to the evaluation, the local educational agency may continue to pursue an evaluation by using the procedures under s. 115.797 or 115.80.

**(2) CONDUCT OF EVALUATION.** (a) In conducting the evaluation, the individualized education program team shall not use any single procedure as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child. The individualized education program team shall do all of the following:

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

2. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

3. Ensure all of the following:

- a. That tests and other evaluation materials used to assess a child under this section are selected and administered so as not to be racially or culturally discriminatory and are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.

- b. That any standardized tests that are given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel and are administered in accordance with any instructions provided by the producer of such tests.

- c. That the child is assessed in all areas of suspected disability.

- d. That assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are used.

(b) As part of an initial evaluation of a child and as part of any reevaluation of a child under sub. (4), the individualized education program team and other qualified professionals, as determined by the local educational agency, shall do all of the following:

1. Review existing evaluation data on the child, including evaluations and information provided by the child's parents, previous interventions and the effects of those interventions, current classroom-based assessments and observations, and observations by teachers and related services providers.

2. On the basis of that review and information provided by the child's parents, identify the additional data, if any, that are needed, and the qualifications of the evaluators that are needed, to determine all of the following:

- a. Whether the child has a particular category of disability or, in case of a reevaluation of a child, whether the child continues to have such a disability.

- b. The present levels of performance and educational needs of the child.

- c. Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services.

- d. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable, annual goals specified in the child's individualized education program and to participate, as appropriate, in the general curriculum.

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

(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 conducts its initial evaluation of the child or any reevaluation of the child under sub. (4), the team shall 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.

(e) Each individualized education program team participant who administers tests, assessments or other evaluation materials as part of an evaluation or reevaluation of a child under this section shall prepare and make available to all team participants at a team meeting a written summary of the participant's findings that will assist with program planning.

**(3) DETERMINATION OF ELIGIBILITY FOR SPECIAL EDUCATION.** (a) Upon the completion of the administration of tests and other evaluation materials, the individualized education program team shall determine whether the child is a child with a disability. The individualized education program team may not determine that a child is a child with a disability solely because the child has received insufficient instruction in reading or math or because the child has limited proficiency in English.

(b) If the individualized education program team determines that a child is a child with a disability, the team shall prepare an evaluation report that includes documentation of determination of eligibility. The local educational agency shall ask each individualized education program team participant if he or she wants a copy of the evaluation report or additional time before the individualized education program team develops the child's individualized education program. If any individualized education program team participant requests a copy of the evaluation report at any point in the process of developing the child's individualized education program or considering the child's educational placement, the local educational agency shall give a copy of the report to each individualized education program team participant before continuing with the process. If no individualized education program team participant requests a copy of the evaluation report, the local educational agency shall give a copy to the child's parents with the notice of placement under s. 115.792 (2).

(c) If the individualized education program team determines that a child is not a child with a disability, the team shall prepare an evaluation report. The report shall identify any educational needs of the child and any services offered by the local educational agency from which the child may benefit and shall include information about any programs and services, other than those offered by the local educational agency, that may benefit the child. The local educational agency shall give a copy of the evaluation report to the child's parents with the notice under s. 115.792 (1) (b).

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

1. Evaluates a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

2. Reevaluates a child with a disability in accordance with this section if the local educational agency determines that conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years.

(b) The local educational agency shall obtain informed consent from the child's parent before reevaluating a child with a disability, except that such consent need not be obtained if the local educational agency has taken reasonable measures to obtain such consent and the child's parents have failed to respond.

(c) If the individualized education program team and other qualified professionals, as determined by the local educational agency, find under sub. (2) (b) 2. that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency shall notify the child's parents of that finding and the reasons for it and the right of the child's par-

ents to request an assessment to determine whether the child continues to be a child with a disability. The local educational agency is not required to conduct such an assessment unless the child's parents request it.

**History:** 1997 a. 164; 1999 a. 117.

**Cross Reference:** See also s. PI 11.35, Wis. adm. code.

### 115.787 Individualized education programs.

**(1) REQUIREMENT THAT PROGRAM BE IN EFFECT.** At the beginning of each school year, each local educational agency shall have in effect, for each child with a disability, an individualized education program.

**(2) REQUIRED COMPONENTS.** An individualized education program shall include all of the following:

(a) A statement of the child's present level of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for a pre-school child, as appropriate, how the disability affects the child's participation in appropriate activities.

(b) A statement of measurable annual goals for the child, including benchmarks or short-term objectives, related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, and to meeting each of the child's other educational needs that result from the child's disability.

(c) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to do all of the following:

1. Advance appropriately toward the annual goals.

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

3. Be educated and participate with other children with disabilities and nondisabled children in the activities described in this subsection.

(d) An explanation of the extent to which the child will not participate with nondisabled children in regular classes, in the general curriculum and in extracurricular and other nonacademic activities.

(e) 1. A statement of any individual modifications in the administration of any statewide or local educational agency-wide assessment of pupil achievement that are needed for the child to participate in the assessment.

2. If the individualized education program team determines that a child will not participate in a particular statewide or local educational agency-wide assessment of pupil achievement, or part of such an assessment, a statement of why that assessment is not appropriate for the child and how the child will be assessed through alternative means.

(f) The projected date for the beginning of the services and modifications described in par. (c) and the anticipated frequency, location and duration of those services and modifications.

(g) 1. Beginning when the child attains the age of 14, and annually thereafter until the child is no longer eligible for special education and related services, a statement identifying the courses of study needed to prepare the child for a successful transition to his or her goals for life after secondary school, such as participation in advanced placement courses or a vocational education program.

2. Beginning when the child attains the age of 16, or earlier if that is determined to be appropriate by the individualized education program team, and annually thereafter until the child is no longer eligible for special education and related services, a statement of the needed transition services of the child, including, when appropriate, a statement of the interagency responsibilities or any cooperative arrangements between and among persons.

3. Beginning at least one year before the child attains the age of 18, and annually thereafter until the child is no longer eligible for special education and related services, a statement that the child has been informed of the parental rights that will transfer to the child on reaching the age of 18 under s. 115.807.

(h) A statement of all of the following:

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

2. How the child's parents will be regularly informed, at least as often as parents are informed of their nondisabled children's progress, of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the effective period of the individualized education program.

**(3) DEVELOPMENT.** (a) In developing each child's individualized education program, the individualized education program team shall consider the strengths of the child, the concerns of the child's parents for enhancing the education of their child and the results of the initial evaluation or most recent reevaluation of the child.

(b) The individualized education program team shall do all of the following:

1. In the case of a child whose behavior impedes his or her learning or that of others consider, when appropriate, strategies, including positive behavioral interventions, and supports to address that behavior.

2. In the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's individualized education program.

3. In the case of a child who is visually impaired, provide for instruction in Braille and the use of Braille unless the individualized education program team determines, after an evaluation of the child's reading and writing skills, needs and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child.

4. Consider the communicative needs of the child, and, in the case of a child who is hearing impaired, consider the child's language and communicative needs, opportunities for direct communications with peers and professional personnel in the child's language and communicative mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communicative mode.

5. Consider whether the child requires assistive technology devices and services.

(c) The regular education teacher of the child, as a participant on the individualized education program team, shall, to the extent appropriate, participate in the development of the individualized education program of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications and support for school personnel.

(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 develops the child's individualized education program, 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.

(e) The local educational agency shall give a copy of the child's individualized education program to the child's parents with the notice of placement under s. 115.792 (2).

**(4) REVIEW AND REVISION.** (a) The individualized education program team shall do all of the following:

1. Review the child's individualized education program periodically, but at least annually, to determine whether the annual goals for the child are being achieved.



2. Revise the individualized education program as appropriate to address all of the following:

- a. Any lack of expected progress toward the annual goals and in the general curriculum.
- b. The results of any reevaluation conducted under s. 115.782.
- c. Information about the child provided to or by the child's parents, as described in s. 115.782.
- d. The child's anticipated needs.
- e. Other matters.

(b) The regular education teacher of the child, as a participant on the individualized education program team, shall, to the extent appropriate, participate in the review and revision of the individualized education program of the child.

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

(6) CHILDREN WITH DISABILITIES IN STATE PRISONS. (a) 1. The requirements relating to participation of children with disabilities in general assessments under sub. (2) (e) do not apply to a child with a disability who is convicted of a crime under state law and incarcerated in a state prison.

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

(b) If a child with a disability is convicted of a crime and incarcerated in a state prison, the child's individualized education program team may modify the child's individualized education program or placement notwithstanding the requirements of sub. (1) and s. 115.79 (1) if the department of corrections has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(7) CONSTRUCTION. Nothing in this section requires the individualized education program team to include information under one component of a child's individualized education program that is already contained under another component of the individualized education program.

*History:* 1997 a. 164; 1999 a. 117.

**115.79 Educational placements.** Each local educational agency shall ensure that all of the following occur:

(1) An evaluation is conducted under s. 115.782 before special education and related services are provided to a child with a disability.

(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.

(3) To the maximum extent appropriate, a child with a disability, including a child receiving publicly funded special education in a public or private institution or other care facility, is educated with nondisabled children.

(4) Special classes, separate schooling or other removal of a child with a disability from the regular educational environment occurs only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

*History:* 1997 a. 164; 1999 a. 117.

**115.791 Reimbursement for private school placement.**

(1) If the parents of a child with a disability who previously received special education and related services under the authority of a local educational agency enroll the child in a private elementary or secondary school without the consent of or referral by the local educational agency, a court or a hearing officer may require the local educational agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the local educational agency had not made a free appropriate public education available to the child in a timely manner before that enrollment.

(2) The cost of reimbursement described in sub. (1) may be reduced or denied if any of the following applies:

(a) At the most recent individualized education program meeting that the parents attended before removal of the child from the local educational agency, the parents did not inform the individualized education program team of their concerns, their rejection of the placement proposed by the local educational agency to provide a free appropriate public education to their child and their intent to enroll the child in a private school at public expense; or at least 10 business days, including any holidays that occur on a business day, before the removal of the child from the local educational agency, the parents did not give written notice to the local educational agency of their concerns, their rejection of the placement and their intent to enroll the child in a private school at public expense.

(b) If, before the parents' removal of the child from the local educational agency, the local educational agency notified the parents under s. 115.792 of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation.

(c) A court finds the parents' actions unreasonable.

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

(a) The parent is illiterate and cannot write in English.

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

(c) The local educational agency prevented the parent from providing such notice.

(d) The parents had not received notice, pursuant to s. 115.792, of the notice requirement in sub. (2) (a).

(4) Subject to s. 115.77 (1m) (d) and (e), this section does not require a local educational agency to pay the cost of education, including special education and related services, of a child with a disability at a private school or facility if the local educational agency made a free appropriate public education available to the child and the child's parents elected to place the child in a private school or facility.

*History:* 1997 a. 164.

**115.792 Procedural safeguards.** (1) SAFEGUARDS

ENSURED. (a) The local educational agency shall establish and maintain procedures to ensure all of the following:

1. That the parents of a child may examine all records relating to the child and may participate in meetings about the identification, evaluation and educational placement of the child, and the provision of a free appropriate public education to the child, and may obtain an independent educational evaluation of the child.

2. That a child's rights are protected by the assignment of an individual, who shall not be an employee of the department, the local educational agency or any other agency that is involved in the education or care of the child, to act as a surrogate for the child's parents whenever the child's parents are not known; the local educational agency cannot, after reasonable efforts, locate the child's parents; or the child is a ward of the state.

3. That a child's parents are offered an opportunity to use mediation under s. 115.797.

(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).

(2) NOTICE. The notice required under sub. (1) (b) shall be in the native language of the child's parents unless the local educational agency determines that it clearly is not feasible to do so and shall include all of the following:

(a) A description of the action proposed or refused by the local educational agency.

(b) An explanation of why the local educational agency proposes or refuses to take the action.

(c) A description of any other options that the local educational agency considered and the reasons why it rejected those options.

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

(e) If the notice proposes to evaluate or reevaluate the child, the qualifications of the evaluators and their names, if known.

(f) A description of any other factors that are relevant to the local educational agency's proposal or refusal.

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

(h) Sources for parents to contact to obtain assistance in understanding this subchapter.

(i) The rights specified in s. 115.78 (4).

(3) PROCEDURAL SAFEGUARDS NOTICE. (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).

(b) The local educational agency shall give to the parents of a child with a disability, upon the child's initial referral for evaluation, upon each notification of an individualized education program meeting and upon reevaluation of the child, a full explanation written so as to be easily understood by the general public, and in the native language of the child's parents unless it clearly is not feasible to do so, of the procedural safeguards available under this section and under applicable federal law relating to all of the following:

1. Independent educational evaluation.
2. Prior written notice.
3. Parental consent.
4. Access to educational records.
5. Opportunity to present complaints.
6. The child's placement during pendency of due process proceedings.
7. Procedures for pupils who are subject to placement in interim alternative educational settings under 20 USC 1415 (k).
8. Requirements for the unilateral placement by parents of pupils in private schools at public expense.
9. Mediation.
10. Hearings under s. 115.80.
11. Civil actions.
12. Attorney fees.

History: 1997 a. 164; 1999 a. 117.

**115.797 Mediation. (1) DEFINITIONS.** In this section:

(a) "Dispute" means any disagreement between parties concerning the proposal or refusal to initiate or change the evaluation, individualized education program or educational placement of a child with a disability or the provision of a free appropriate public education to such a child. "Dispute" includes any such disagreement between parties in which other processes, including a hearing under s. 115.80 or litigation, have been requested or commenced.

(b) "Mediation" has the meaning given in s. 802.12 (1) (e).

(c) "Party" means a competent adult pupil or the parent of a child or incompetent adult pupil who is the subject of a dispute, and the local educational agency.

(2) REQUEST FOR MEDIATION, CONSENT OF PARTIES. (a) The division shall establish a program for the mediation of disputes between parties. A party may request the division to arrange for mediation of a dispute at any time. The request shall be in writing, shall briefly describe the dispute and shall identify both parties. Both parties may jointly request mediation.

(b) If only one of the parties requests mediation, within 5 business days after receiving the request the division shall notify the other party in writing of the request for mediation. The notice shall include all of the following:

1. An explanation of mediation and its advantages.

2. A statement that participation in mediation is voluntary and that agreement or refusal to participate will not affect the resolution of the dispute in any pending or potential adjudicative process, or the timing of that process, unless the parties agree otherwise.

3. A request that the party notify the division within 5 business days after receiving the notice regarding the party's consent or refusal to participate in mediation.

(c) If the division does not receive timely response under par. (b) 3. or if the other party notifies the division under par. (b) 3. of its refusal to participate in mediation, the division shall so notify the party that requested mediation.

(3) APPOINTMENT OF MEDIATOR. (a) A party that requests mediation may nominate a mediator from the roster under sub. (4). If a party nominates a mediator, the division shall include in the notice under sub. (2) (b) the name of the nominated mediator.

(b) 1. If both parties nominate the same person as mediator, the division shall appoint that person as mediator if he or she is on the roster under sub. (4) and available to mediate.

2. If both parties request mediation but neither party nominates a mediator, the division shall propose a mediator from the roster under sub. (4).

3. If both parties consent to mediation but the party that requests mediation does not nominate a mediator, the nominated mediator is not available or the other party does not consent to the appointment of the nominated mediator, the division shall propose a mediator from the roster under sub. (4).

(c) Whenever the division proposes a mediator under par. (b) 2. or 3., it shall send information about the mediator's training and experience to both parties. Within 3 business days after receiving the information, either party may request the division to propose a different mediator from the roster under sub. (4).

(4) ROSTER OF MEDIATORS. (a) In consultation with the council on special education, the division shall maintain a roster of mediators qualified to resolve disputes. The division may include a person on the roster if all of the following apply:

1. The division determines that the person has the appropriate skills and knowledge to act as a mediator under this section.

2. The person participates in a training program of at least 5 days' duration that has been approved by the division.

3. The person agrees to mediate, at the rate of compensation established by the division, the number of disputes required by the division each year.

4. The person consents to be observed by a division representative at any mediation session if the parties consent.

(b) The division may not maintain a person on the roster unless he or she participates in at least one day of additional training approved by the division each year.

(c) Subject to subch. II of ch. 111, the division may remove from the roster any person whom it believes cannot serve effectively as a mediator.

**(5) MEDIATION.** (a) Unless both parties agree otherwise, mediation shall commence within 21 days after the mediator is appointed and shall not delay hearings or appeals related to the dispute. All mediation sessions shall be held in a location that is convenient to the parties.

(b) The parents of the child or adult pupil and 2 representatives of the local educational agency may participate in mediation. With the consent of both parties, other persons may participate in mediation. With the consent of both parties, a division representative may observe the mediation sessions.

(c) At the commencement of mediation, the mediator shall inform the parties of the information that is required to be reported to the division for the purpose of administering the mediation program. The division may not require a mediator to disclose the substance of any matter discussed or communication made during mediation.

(d) Either party may recess a mediation session to consult advisors, whether or not present, or to consult privately with the mediator. The mediator may recess a mediation session to consult privately with a party. If the mediator does so, he or she shall disclose the general purpose of the consultation but may not reveal other information about the consultation without the consent of the party consulted.

(e) Unless both parties and the mediator agree otherwise, no person may record a mediation session.

(f) Discussions that occur during mediation are confidential and may not be used as evidence in any subsequent hearing or civil proceeding. The mediator may require the parties to sign a confidentiality pledge before the commencement of mediation.

(g) The mediator and either party may withdraw from mediation at any time.

(h) No adverse inference may be drawn by any hearing officer or adjudicative body from the fact that a party did not consent to mediation, that a mediator or party withdrew from mediation or that mediation did not result in settlement of the dispute.

**(6) AGREEMENTS.** If the parties resolve the dispute or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is reduced to writing, that it is signed by the parties and that a copy is given to each party. The resolution or agreement is legally binding upon the parties.

**(7) MEDIATOR COMPENSATION.** (a) The division shall establish a schedule for the compensation of mediators and the reimbursement of their expenses. The department shall pay mediators from the appropriation under s. 20.255 (1) (me).

(b) If the parties agree that the amount of compensation paid to a mediator should be greater than the schedule under par. (a) allows, the additional compensation is the responsibility of the parties.

(c) If the parties have agreed to mediation by a mediator who is not on the roster under sub. (4), the mediator's compensation is the responsibility of the parties.

**(8) PROGRAM EVALUATION.** The division may require that mediators, and may request that parties, participate in the evaluation of the mediation program. The division shall ensure that mediators and parties may participate in evaluating the program without being required to identify themselves or the other mediation participants. The division may not disclose a party's or mediator's evaluation to any other mediation participant without the party's or mediator's consent.

**(9) CONTRACT FOR SERVICES.** The department may contract with a private, nonprofit agency to administer the mediation program under this section or for mediator training or other services, including outreach and promotion, related to the administration of the program.

History: 1997 a. 164.

**115.80 Due process hearings. (1)** (a) 1. A parent, or the attorney representing the child, may file a written request with the division for a hearing within one year after the refusal or proposal of the local educational agency to initiate or change his or her child's evaluation, individualized education program, educational placement or the provision of a free appropriate public education, except that, if the local educational agency has not previously provided the parent or the attorney representing the child with notice of the right to request a hearing under this subdivision, he or she may file a request under this subdivision within one year after the local educational agency provides the notice. The division shall develop a model form to assist parents in filing a request under this subdivision.

2. The parent, or the attorney representing the child, shall include in the request under subd. 1. the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time.

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

(c) A parent, the attorney representing the child or a local educational agency may file a written request for a hearing as provided in 20 USC 1415 (k).

(d) Upon receiving a request for a hearing, the division shall give to the child's parents a copy of the procedural safeguards available to the parents under s. 115.792 and under federal regulations.

**(2)** The division shall maintain a list of qualified hearing officers who are not employed by or under contract with the department or the local educational agency, other than being appointed under this subsection, to serve as hearing officers in hearings under this section. Upon receipt of a written request for a hearing under sub. (1), the division shall appoint a hearing officer from the list.

**(3)** Any party to a hearing conducted under this section may be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities and may present evidence and confront, cross-examine and compel the attendance of witnesses. A party shall be provided with written or, at the option of the child's parents, electronic findings of facts and decisions, and, upon request, a written or, at the option of the child's parents, an electronic, verbatim record of the hearing.

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

**(5)** A hearing officer may administer oaths and affirmations, issue subpoenas and enforce subpoenas under ss. 885.01 (4) and 885.12, regulate the course of the hearing and hold conferences for the settlement or simplification of the issues. The hearing officer is not bound by common law or statutory rules of evidence.

The hearing officer shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The hearing officer shall give effect to the rules of privilege recognized by law. A hearing officer has the authority to issue an order consistent with this subchapter and [20 USC 1415](#) (k) and to order whatever remedy is reasonably necessary to bring the parties into compliance with this subchapter. The hearing officer's decision shall consist of findings of fact and conclusions of law and shall be based upon a preponderance of the evidence. The findings of fact shall be based solely upon the evidence received at the hearing.

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

(7) Any party aggrieved by the decision of the hearing officer may bring a civil action in the circuit court for the county in which the child resides or in a U.S. district court. An action filed in circuit court shall be commenced within 45 days after service of the decision of the hearing officer. In any action brought under this subsection, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate. Sections [227.52](#) to [227.58](#) do not apply to actions under this subsection.

(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).

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

(b) 1. Fees and costs may not be awarded under par. (a) for services performed after a written offer of settlement to a parent if all of the following apply:

a. The offer is made within the time prescribed by s. [807.01](#) for actions in circuit court and at least 11 days before the hearing begins for administrative hearings.

b. The offer is not accepted within 10 days.

c. The court or hearing officer finds that the relief granted to the parents is not more favorable to the parents than the offer of settlement.

2. Fees and costs may not be awarded under par. (a) if they relate to any meeting of the individualized education program team unless the meeting is convened as a result of an administrative hearing or judicial action, or for mediation under s. [115.797](#) that is conducted before filing a request for a hearing under sub. (1).

(c) Notwithstanding par. (b), fees and costs may be awarded under par. (a) to a parent who is the prevailing party and whose rejection of a settlement offer was substantially justified.

(d) 1. Except as provided in subd. 2., whenever the court finds any of the following it shall reduce the amount of the fees awarded under par. (a):

a. During the course of the action, the parent unreasonably protracted the final resolution of the controversy.

b. The attorney representing the parent did not provide to the division the information specified in sub. (1) (a) 2.

2. A court may not reduce the amount of the fees awarded under par. (a) if it finds that the state or a local educational agency unreasonably protracted the final resolution of the controversy or violated this subchapter.

(10) Sections [227.44](#) to [227.50](#) do not apply to hearings conducted under this section.

**History:** 1997 a. 164, 251; 1999 a. 117.

The "continuing violation" doctrine did not apply to defeat the one-year statute of limitations in sub. (1) (a) 1. for filing a due process hearing request. *Vandenberg v. Appleton Area School District*, 252 F. Supp. 2d 786 (2003).

### 115.807 Transfer of parental rights at age of majority.

When a child with a disability, other than a child with a disability who has been determined to be incompetent under ch. [880](#), reaches the age of 18, all of the following apply:

(1) The local educational agency shall provide any notice required by this subchapter to both the individual and the individual's parents.

(2) All other rights accorded to the individual's parents under this subchapter transfer to the individual.

(3) The local educational agency shall notify the individual and the individual's parents of the transfer of rights.

**History:** 1997 a. 164.

### 115.81 Children in child caring institutions. (1) DEFINITIONS.

In this section:

(a) "County department" means a county department under s. [46.215](#), [46.22](#) or [46.23](#).

(b) "Responsible local educational agency" means the local educational agency that was responsible for providing a free, appropriate public education to the child before the placement of the child in a residential care center for children and youth except that if the child resided in an institution or facility operated by the department of health and family services, a Type 1 secured correctional facility, as defined in s. [938.02](#) (19), or a Type 1 prison, as defined in s. [301.01](#) (5), before the placement of the child in a residential care center for children and youth, "responsible local educational agency" means the school district in which the residential care center for children and youth is located.

(2) ESTABLISHMENT OF PROGRAM. Subject to the approval of the division, a residential care center for children and youth may establish and maintain special education and related services for children with disabilities.

(3) REFERRAL. (a) Whenever a county department recommends to a court that a child be placed in a residential care center for children and youth or whenever a state agency anticipates placing a child in a residential care center for children and youth, the county department or state agency shall notify the responsible local educational agency.

(b) For each child identified in a notice under par. (a), the responsible local educational agency shall do all of the following:

1. If the child is a child with a disability, as soon as reasonably possible and after consulting with a county department or a state agency, as appropriate, appoint an individualized education program team to review and revise, if necessary, the child's individualized education program and develop an educational placement offer.

2. If the child has not been identified as a child with a disability:

a. Appoint staff to review the child's education records and develop a status report for the child and send a copy of the report to the county department or state agency, as appropriate, within 30 days after receiving the notice under par. (a).

b. If the responsible local educational agency has reasonable cause to believe that the child is a child with a disability, appoint an individualized education program team to conduct an evaluation of the child under s. 115.782. The responsible local educational agency may include appropriately licensed staff of the residential care center for children and youth in the team if that staff is available. The individualized education program team shall conduct the evaluation. If the individualized education program team determines that the child is a child with a disability, the individualized education program team, in consultation with a county department or a state agency, as appropriate, shall develop an individualized education program and an educational placement offer.

(4) RESPONSIBILITY FOR EDUCATIONAL PLACEMENT. Whenever the responsible local educational agency offers an educational placement in a residential care center for children and youth under sub. (3) (b) 1. or 2. b., all of the following apply:

(a) The responsible local educational agency shall do all of the following:

1. Ensure that the child receives a free appropriate public education.

2. Ensure that the child's treatment and security needs are considered when determining the least restrictive environment for the child.

3. While the child resides at a residential care center for children and youth, appoint an individualized education program team to conduct reevaluations of the child in the manner provided under s. 115.782 (4).

4. While the child resides at a residential care center for children and youth, after consulting with the residential care center for children and youth and a county department or a state agency, as appropriate, refer the child to another local educational agency if the responsible local educational agency determines that the child's special education needs may be appropriately served in a less restrictive setting in the other local educational agency.

5. If the child is leaving the residential care center for children and youth, assign staff or an individualized education program team to develop a reintegration plan for the child in cooperation with a county department and staff of the residential care center for children and youth.

(b) The county department or state agency, as appropriate, shall do all of the following:

1. Consider the child's educational needs when selecting a residential care center for children and youth for the child.

2. In cooperation with the responsible local educational agency and staff of the residential care center for children and youth, participate in the individualized education program team evaluation of the child and the development of the individualized education program for the child.

3. Notify the local educational agency that will be responsible for providing a free, appropriate public education to the child whenever the county department or state agency anticipates removing the child from the residential care center for children and youth.

4. In cooperation with the responsible local educational agency and staff of the residential care center for children and youth, develop a reintegration plan for the child if the child is leaving the residential care center for children and youth.

5. Pay all of the residential care center for children and youth related costs of educating the child while the child resides in the residential care center for children and youth.

(c) Whenever a local educational agency receives a referral under par. (a) 4., the local educational agency shall assign staff to determine whether the child can appropriately receive special education and related services provided in the local educational agency. If the assigned staff determine that the child can appropriately receive special education and related services in the local educational agency, the local educational agency shall provide such services for the child and is eligible for state tuition payments

under s. 121.79 (1) (a). If the assigned staff determine that the child cannot appropriately receive special education and related services in the local educational agency, the local educational agency shall keep a written record of the reasons for that determination.

History: 1997 a. 164, 237, 252; 2001 a. 59.

#### 115.812 Placement disputes; school board referrals; interagency cooperation. (1) PLACEMENT DISPUTES.

If a dispute arises between a local educational agency and the department of health and family services, the department of corrections or a county department under s. 46.215, 46.22 or 46.23, or between local educational agencies under s. 115.81 (4) (c), over the placement of a child, the state superintendent shall resolve the dispute. This subsection applies only to placements in nonresidential educational programs made under s. 48.57 (1) (c) and to placements in child caring institutions made under s. 115.81.

(2) SCHOOL BOARD REFERRALS. Annually on or before August 15, each local educational agency shall report to the appropriate county departments under ss. 51.42 and 51.437 the names of children who reside in the local educational agency, are at least 16 years of age, are not expected to be enrolled in an educational program 2 years from the date of the report and may require services described under s. 51.42 or 51.437 (1). This subsection does not affect a local educational agency's responsibility to make services available to children with disabilities.

(3) INTERAGENCY COOPERATION. (a) A school board, cooperative educational service agency and county children with disabilities education board may enter into an agreement with a county administrative agency, as defined in s. HFS 90.03 (10), Wis. adm. code, to allow the employees of the school board, agency or county children with disabilities education board to participate in the performance of evaluations and the development of individualized family service plans under s. 51.44.

(b) 1. In this paragraph, "public agency" has the meaning given in s. 166.20 (1) (i), except that it excludes a local educational agency.

2. If a public agency that is required by federal or state law or by an interagency agreement to provide or pay for the location, identification or evaluation of a child with a disability, including a child with a disability who is not yet 3 years of age, or for assistive technology devices or services, supplementary aids or services, transition services or special education or related services for a child with a disability, and fails to do so, the local educational agency shall provide or pay for the services. The public agency shall reimburse the local educational agency for the cost of providing the services.

History: 1997 a. 164.

#### 115.817 Children with disabilities education board.

(1) DEFINITIONS. In this section "board" means the county children with disabilities education board.

(2) ESTABLISHMENT. (a) A county board of supervisors may determine to establish a special education program, including the provision of related services for children with disabilities, for school districts in the county.

(b) The program may provide for one or more special schools, classes, treatment or instruction centers for children with one or more types of disabilities.

(c) A school district shall be included under the county program only to the extent approved by formal action of the school board.

(3) ORGANIZATION. (a) The board shall consist of 3 or more persons, as determined by the county board of supervisors, elected by the county board or appointed by the chairperson 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, members of the county board of supervisors and other electors. Board mem-

bers 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 of supervisors, but not more than that of county board members.

(b) The board annually shall select one member as chairperson 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, the board shall apply to the division for the establishment of a program or part of a program to provide special education and related services. 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. (a) 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 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 unless a resolution is adopted under sub. (9) (c), and shall include funds for the hiring of staff, the purchase of materials, supplies and equipment and the operation and maintenance of buildings or classrooms.

(b) 1. At the close of each fiscal year, the board shall employ a certified public accountant licensed or certified under ch. 442 to audit its accounts and certify the audit. The cost of the audit shall be paid from board funds.

3. The department shall establish by rule a standard contract and minimum standards for audits performed under this paragraph.

(c) If the county board of supervisors establishes an integrated service program for children with severe disabilities under s. 59.53 (7), the county children with disabilities education board shall 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.

(d) Annually by October 1, the board and the school boards of the school districts participating in the county program shall submit a report to the state superintendent that specifies the portion of each school day that each pupil enrolled in the county program who is also enrolled in the school district of the pupil's residence spent in county program classes in the previous school year and the portion of the school day that the pupil spent in school district classes in the previous school year. The state superintendent shall develop guidelines for a full-time equivalency methodology. The state superintendent is not required to promulgate the guidelines as rules.

(6) ASSIGNMENT OF FUNCTIONS. (a) The board may not assign by resolution or by contract the full administrative or instructional services of the board.

(b) The ability of the board to contract with the board of control of a cooperative educational service agency, a school board or other public agency in the county for a portion of administrative or instructional services is not prohibited by par. (a). The board shall be responsible for all programs contracted under this paragraph.

(7) WITHDRAWAL AND DISSOLUTION. (a) The school board of any school district that 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 estab-

lish an equivalent part of a program. Such withdrawal shall be effective either December 31 or June 30 provided that 12 months' notice has been given to the board. 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. 66.0235 to all units which participated in the program, except as provided in sub. (9m).

(8) TRANSPORTATION. The board may promulgate a plan for the transportation at county expense of children who are receiving special education and related services under this section, special education and related services provided at day care centers or special education and related services provided 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. (a) 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. The tax for the costs associated with the dissolution of the program operated by the Racine County children with disabilities education board that are specified under sub. (9m) shall continue to be levied only against the area of Racine County that participated in the program before its dissolution.

(b) Beginning July 1, 1981, no board, except a board that has constructed or acquired building facilities, may continue to operate under this section if the area taxed under par. (a) constitutes less than 50% of the full value of taxable property within the county.

(c) Upon the adoption of a resolution by a majority of the school boards that are located in whole or in part in the county and are participating in the county program under sub. (2) (c), this subsection shall not apply commencing on the effective date of the resolution. A resolution adopted under this paragraph between January 1 and June 30 in any year shall be effective on January 1 of the year commencing after its adoption. A resolution adopted under this paragraph between July 1 and December 31 in any year shall be effective on January 1 of the 2nd year commencing after its adoption. In the year in which the resolution is effective, the county budget under s. 59.60 or 65.90 shall include a line item for the special education program.

(9m) RACINE COUNTY. If the program operated by the Racine County children with disabilities education board is dissolved by the Racine County board of supervisors under sub. (7) (b), all assets and liabilities shall be distributed as provided under sub. (7) (b), except that Racine County shall continue to be responsible for paying the costs associated with the postretirement health benefits of former employees of the Racine County children with disabilities education board and the costs incurred under s. 40.05 (2) (b) before dissolution for the unfunded prior service liability for former employees of the Racine County children with disabilities education board.

(10) STATE AIDS. (a) The board may apply for and receive the state aid under s. 115.88 for the transportation, board and lodging, treatment, and instruction of children participating in programs under this section.

(b) The board may apply for and receive the state aid under ss. 121.135 and 121.14. This paragraph does not apply beginning on the effective date of a resolution adopted under sub. (9) (c).

(c) All state aid shall be paid to the county treasurer and credited to the fund of the board.

**(11) VIOLATIONS.** The state superintendent shall withhold aid from any board that violates this section.

**History:** 1997 a. 164; 1999 a. 150 s. 672; 2001 a. 16; 2001 a. 30 s. 108; 2003 a. 33, 180.

### 115.82 Admission and transportation of nonresidents.

**(1)** A cooperative educational service agency, county children with disabilities education board or school district that provides special education and related services shall admit a nonresident if the program is appropriate for the child's disability. Refusal to admit a child does not relieve the local educational agency that is responsible for providing a free, appropriate public education to the child under this subchapter from that responsibility.

**(2)** In addition to the requirements of s. 121.54 (3), when board and lodging are not furnished to a nonresident child with a disability, the school district in which the child resides shall provide transportation, except as follows:

(a) If there is a plan of transportation under s. 115.817 (8), the county children with disabilities education board shall provide transportation.

(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.

**History:** 1997 a. 164; 1999 a. 117.

**115.88 State aid. (1) PERSONNEL.** A school board, board of control of a cooperative educational service agency or, upon authorization of the county board, a county children with disabilities education board may employ, for a special education program, either full- or part-time licensed teachers, licensed coordinators of special education, licensed school social workers, licensed school psychologists, paraprofessionals, licensed consulting teachers to work with any teacher of regular education programs who has a child with a disability in a class and any other personnel approved by the department. The board may contract with private or public agencies for physical or occupational therapy services on the basis of demonstrated need.

**(1m) PROGRAM AID.** (a) If, upon receipt of the plan under s. 115.77 (4), the state superintendent is satisfied that the special education program has been maintained during the preceding school year in accordance with law, the state superintendent 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 the amount expended by the county, agency and school district during the preceding year for salaries of personnel enumerated in sub. (1), including the salary portion of any authorized contract for physical or occupational therapy services, and other expenses approved by the state superintendent as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b).

(am) If the operator of a charter school established under s. 118.40 (2r) operates a special education program and the state superintendent is satisfied that the operator of the charter school is complying with 20 USC 1400 to 1491o, the state superintendent shall certify to the department of administration in favor of the operator of the charter school a sum equal to the amount that the operator of the charter school expended during the previous school year for salaries of full-time or part-time licensed teachers, licensed coordinators of special education, licensed school social workers, licensed school psychologists, paraprofessionals, licensed consulting teachers to work with any teacher of regular education programs who has a child with a disability in a class and any other personnel, as determined by the state superintendent. Certified costs under this paragraph are eligible for reimbursement from the appropriation under s. 20.255 (2) (b). The state superintendent may audit costs under this paragraph and adjust reimbursement to cover only actual, eligible costs.

**(2) TRANSPORTATION AID.** If upon receipt of the plan under s. 115.77 (4) the state superintendent is satisfied that the transportation of children with disabilities has been maintained during the preceding year in accordance with the law, the state superintendent shall certify to the department of administration in favor of each county, cooperative educational service agency, or school district transporting such pupils an amount equal to the amount expended for such transportation as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b). Pupils for whom aid is paid under this subsection shall not be eligible for aid under s. 121.58 (2) or (4). This subsection applies to any child with a disability who requires special assistance in transportation, including any such child attending regular classes who requires special or additional transportation. This subsection does not apply to any child with a disability attending regular or special classes who does not require any special or additional transportation.

**(2m) OTHER TRANSPORTATION AID.** If the operator of a charter school established under s. 118.40 (2r) transports children with disabilities and the state superintendent is satisfied that the operator of the charter school is complying with 20 USC 1400 to 1491o, the state superintendent shall certify to the department of administration in favor of the operator of the charter school a sum equal to the amount that the operator of the charter school expended during the previous school year for transportation under this subsection as costs eligible for reimbursement from the appropriations under s. 20.255 (2) (b). The state superintendent may audit costs under this subsection and adjust reimbursement to cover only actual, eligible costs.

**(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. 115.82 (1) in the special education program. The department shall certify to the department of administration in favor of each school district, cooperative educational service agency, county children with disabilities 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 an amount equal to the amount expended for such board and lodging and transportation as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b).

**(4) HOSPITALS AND CONVALESCENT HOME AID.** The full cost of special education for children in hospitals and convalescent homes for orthopedically disabled children shall be paid from the appropriation under s. 20.255 (2) (b). 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 revenues and expenditures for the actual cost of such instruction and any other information it requires.

**(6) AID FOR INSTRUCTION OUTSIDE OF DISTRICT.** The department shall certify to the department of administration, in favor of each school district, an amount equal to the amount expended for salaries and travel expenses, as determined in advance by the state superintendent, for providing special education outside the school district of employment, as eligible for reimbursement from the appropriation under s. 20.255 (2) (b).

**(7) OFFSETTING RECEIPTS.** In any school year, the following revenues shall be deducted from costs aidable under this section before aids are calculated under this section:

(a) Any federal operational revenues expended on costs aidable under this section.

(b) That portion of state tuition payments attributable to the special annual tuition rate under s. 121.83 (1) (c), regardless of the school year in which the services were provided. The tuition revenues shall be allocated to the most appropriate part of a program.

**(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 amount expended by the school district during the preceding year for the additional costs associated with the child's special education program as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b).

**(9) DISTRIBUTION SCHEDULE.** Each county, cooperative educational service agency, operator of a charter school established under s. 118.40 (2r) and school district entitled to state aid under this section shall receive 15% of its total aid entitlement in each month from November to March and 25% of its total entitlement in June.

**History:** 1997 a. 164; 1999 a. 9, 117; 2001 a. 16; 2003 a. 321.

**115.882 Payment of state aid.** Funds appropriated under s. 20.255 (2) (b) shall be used first for the purpose of s. 115.88 (4). Costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b) under ss. 115.88 (1m) to (3), (6) and (8), 115.93, and 118.255 (4) shall be reimbursed at a rate set to distribute the full amount appropriated for reimbursement for the costs, less the amount paid by the department of health and family services under s. 20.435 (4) (b) and (o) under s. 49.45 (39) (b) 1m., not to exceed 100%.

**History:** 1997 a. 164; 1999 a. 9; 2001 a. 104; 2003 a. 33.

**115.897 Exhaustion of remedies.** Before the filing of a civil action under any federal law seeking any relief that is also available under this subchapter, the procedures under s. 115.80 shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

**History:** 1997 a. 164.

**115.898 Rule making.** Section 227.16 (2) (b) does not apply to a proposed rule if the proposed rule brings ch. PI 11, Wis. Adm. Code, into conformity with 1997 Wisconsin Act 164.

**History:** 1997 a. 164.

**115.90 Noncompliance; remedies. (1)** If, as the result of a monitoring procedure or a complaint investigation, the state superintendent finds that a local educational agency has violated this subchapter, the state superintendent may require the local educational agency to submit a corrective plan addressing the violation.

**(2)** If the state superintendent, after reasonable notice and an opportunity for a hearing, finds that a local educational agency has failed to comply with any requirement in this subchapter, the state superintendent shall reduce or eliminate special education aid to the local educational agency until he or she is satisfied that the local educational agency is complying with that requirement.

**(3)** If the state superintendent finds that a corrective plan under sub. (1) has not been implemented, or that withholding aid under sub. (2) has been inadequate to ensure compliance with this subchapter, the state superintendent shall request the attorney general to proceed against the local educational agency for injunctive or other appropriate relief.

**History:** 1997 a. 164.

## SUBCHAPTER VI

### EDUCATION FOR SCHOOL AGE PARENTS

**115.91 Definition.** In this subchapter, "school age parent" means any person under the age of 21 who is not a high school graduate and is a parent, an expectant parent or a person who has been pregnant within the immediately preceding 120 days.

**History:** 1983 a. 374; 1985 a. 29, 56; 1991 a. 269.

**115.915 Availability of program services and modifications.** Each school board shall make available to any school age parent who is a resident of the school district program modifications and services that will enable the pupil to continue his or her education.

**History:** 1985 a. 29 s. 1712; 1985 a. 56; Stats. 1985 s. 115.915.

**115.92 Establishment of programs; rules. (1)** Any school board may establish a program for school age parents who are residents of the school district. The program shall be designed to provide services and instruction to meet the needs of school age parents, including education on the skills required of a parent; family planning, as defined in s. 253.07 (1) (a), including natural family planning; and instruction on adoption and adoption services. The instruction provided on adoption and adoption services shall include instruction on the options available and the procedures followed in independent and agency adoptions, including current practices regarding a birth parent's involvement in the selection of an adoptive home and the sharing of information between birth parents and adoptive parents, instruction on the impact of adoption on birth parents and children who have been adopted and an explanation that the adoption process may be initiated even after a child has been born and has left the hospital. The program shall be coordinated with existing vocational and job training programs in the school district.

**(2) (a)** Annually, and at such other times as the department requires, every school board that establishes a program under this subchapter shall submit a written report to the department. The report shall specify the number of school age parents instructed or provided service.

**(b)** Annually, on or before September 15, each school board maintaining a program under this subchapter shall submit to the department an itemized statement on oath of all revenues and expenditures related to the program during the preceding school year.

**(3)** The state superintendent shall by rule establish criteria for the approval of programs established under this subchapter for the purpose of determining those programs eligible for aid under s. 115.93.

**History:** 1983 a. 374; 1985 a. 56; 1987 a. 158; 1991 a. 39; 1995 a. 27 s. 9145 (1); 1997 a. 27, 104, 240, 252; 1999 a. 19.

**Cross Reference:** See also ch. PI 19, Wis. adm. code.

**115.93 State aid.** If upon receipt of the reports under s. 115.92 (2) the state superintendent is satisfied that the school age parents program has been maintained during the preceding school year in accordance with the rules under s. 115.92 (3), the state superintendent shall certify to the department of administration in favor of each school district maintaining the program a sum equal to the amount expended by the school district during the preceding school year for salaries of teachers and instructional aides, special transportation and other expenses approved by the state superintendent as costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b).

**History:** 1983 a. 374; 1985 a. 29 ss. 1707s, 3202 (43); 1985 a. 56; 1987 a. 27, 338; 1989 a. 31; 1991 a. 269; 1995 a. 27; 1997 a. 27; 1999 a. 9.

## SUBCHAPTER VII

### BILINGUAL–BICULTURAL EDUCATION

**Cross Reference:** See also ch. PI 13, Wis. adm. code.

**115.95 Legislative findings and declaration of policy. (1)** The legislature finds that:

**(a)** There are pupils in this state who enter elementary and secondary school with limited or nonexistent English speaking ability due to the use of another language in their family or in their daily, nonschool environment.

**(b)** Classes conducted in English do not always provide adequate instruction for children whose English language abilities are limited or nonexistent.



(c) It is beneficial to pupils from bicultural and monocultural backgrounds to participate in bilingual–bicultural programs where such programs are available in order to instill respect for non–English languages and cultures in all pupils.

(2) It is the policy of this state to provide equal educational opportunities by ensuring that necessary programs are available for limited–English proficient pupils while allowing each school district maximum flexibility in establishing programs suited to its particular needs. To this end, this subchapter establishes bilingual–bicultural education programs for pupils in school districts with specified concentrations of limited–English proficient pupils in the attendance areas of particular schools.

(3) It is the policy of this state to reimburse school districts, in substantial part, for the added costs of providing the programs established under this subchapter.

(4) It is the policy of this state that a limited–English proficient pupil participate in a bilingual–bicultural education program only until such time as the pupil is able to perform ordinary classwork in English.

(5) It is the policy of this state that fundamental courses may be taught in the pupil’s non–English language to support the understanding of concepts, while the ultimate objective shall be to provide a proficiency in those courses in the English language in order that the pupil will be able to participate fully in a society whose language is English.

(6) Furthermore, it is the policy of this state to encourage reform, innovation and improvement in graduate education, in the structure of the academic profession and in the recruitment and retention of higher education and graduate school faculties, as related to bilingual–bicultural education, and to give special recognition to persons who possess a reading ability and speaking fluency in a non–English language and an understanding of another culture.

**History:** 1975 c. 395; 1987 a. 159; 1999 a. 19.

**115.955 Definitions.** In this subchapter:

(2) “Bilingual–bicultural education program” means a program designed to improve the comprehension and the speaking, reading and writing ability of a limited–English proficient pupil in the English language, so that the pupil will be able to perform ordinary classwork in English.

(3) “Bilingual counselor” means a certified school counselor approved by the state superintendent under s. 115.28 (15) (a).

(4) “Bilingual counselor’s aide” means a person who is employed to assist a counselor and who is approved by the state superintendent under s. 115.28 (15) (a).

(5) “Bilingual teacher” means a certified teacher approved by the state superintendent under s. 115.28 (15) (a).

(6) “Bilingual teacher’s aide” means a person who is employed to assist a teacher and who is approved by the state superintendent under s. 115.28 (15) (a).

(7) “Limited–English proficient pupil” means a pupil whose ability to use the English language is limited because of the use of a non–English language in his or her family or in his or her daily, nonschool surroundings, and who has difficulty, as defined by rule by the state superintendent, in performing ordinary classwork in English as a result of such limited English language proficiency.

**History:** 1975 c. 395; 1977 c. 203 s. 106; 1983 a. 189; 1987 a. 159; 1995 a. 27 s. 9145 (1); 1995 a. 27; 1999 a. 19.

**115.96 Establishment of programs.** (1) COUNT OF LIMITED–ENGLISH PROFICIENT PUPILS. Annually, on or before March 1, each school board shall conduct a count of the limited–English proficient pupils in the public schools of the district, assess the language proficiency of such pupils and classify such pupils by language group, grade level, age and English language proficiency.

(2) NOTIFICATION. Annually, on or before April 1, a school board which may be required to offer a bilingual–bicultural education program shall send to the parent, legal custodian or

guardian of every limited–English proficient pupil identified under sub. (1) who is eligible for participation in such a program, a notice which states that a bilingual–bicultural education program may be instituted, contains information on the procedures for registering a pupil in such a program, and provides notice of the consent required under sub. (3). The notice shall be in English and in the non–English language of the limited–English proficient pupil.

(3) PARENTAL CONSENT. On or before May 1, any parent or legal custodian desiring that their child be placed in a bilingual–bicultural education program shall give written consent to such child’s placement.

(4) PROGRAM ESTABLISHED. Annually, on or before July 1, the school board shall establish a bilingual–bicultural education program, if required under s. 115.97. A bilingual–bicultural education program established under this subchapter shall provide all of the following:

(a) Instruction in reading, writing and speaking the English language.

(b) Through the use of the native language of the limited–English proficient pupil, instruction in the subjects necessary to permit the pupil to progress effectively through the educational system.

(5) PLACEMENT; APPEAL. (a) By the commencement of the school term, the school board shall place, with the parent’s or legal custodian’s written consent, each limited–English proficient pupil in the appropriate bilingual–bicultural education program established under this subchapter. If a limited–English proficient pupil is identified after March 1 or the parent or legal custodian of such child gives consent after May 1, the school board shall place the pupil, with the written consent of the pupil’s parent or legal custodian, in an appropriate program where feasible.

(b) A parent or legal custodian may appeal the school board’s failure to place the pupil in the bilingual–bicultural education program established for the pupil in the pupil’s language group by filing a notice of appeal with the clerk of the school district within 10 days after the commencement of the school term. The school board shall provide for a hearing on the question of placement within 20 days after receipt of the notice of appeal and shall take a written record of the proceedings. The cost of taking the record shall be the responsibility of the school board. The parent or legal custodian may request a public or private hearing. Within 10 days after the hearing, the school board shall make a decision on the question of placement. If the parent or legal custodian is not satisfied with the decision of the school board, the parent or legal custodian may, within 10 days after the school board’s decision, file a notice of appeal with the state superintendent. If the parent or legal custodian appeals, the parent or legal custodian shall assume the cost of transcribing the record. Within 10 days after receipt of the notice of appeal from the determination of the school board, the state superintendent shall issue a decision based on the hearing record. If the parent or legal custodian prevails, the school board shall reimburse the parent or legal custodian for the cost of transcribing the record.

**History:** 1975 c. 395; 1979 c. 301; 1987 a. 159; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 19.

**Cross Reference:** See also s. PI 13.03, Wis. adm. code.

**115.97 Bilingual–bicultural education programs required.** (1) A school board may combine pupils in attendance at separate schools in its bilingual–bicultural education program. The school board shall be eligible for state aids under s. 115.995 if the number of limited–English proficient pupils served from the combined schools meets the requirements under sub. (2), (3) or (4). A pupil shall be eligible for a bilingual–bicultural education program only until he or she is able to perform ordinary classwork in English. The bilingual–bicultural education program shall be designed to provide intensive instruction to meet this objective. Nothing in this subchapter shall be construed to authorize isolation of children of limited–English proficient ability or ethnic background for a substantial portion of the school day. Pupils who

are not limited—English proficient pupils may participate in a bilingual—bicultural education program, except that a school board shall give preference to limited—English proficient pupils in admitting pupils to such a program.

(2) If, in a language group under s. 115.96 (1), there are 10 or more limited—English proficient pupils in kindergarten to grade 3 in attendance at a particular elementary school and whose parents or legal custodians give written consent to such pupils' placement under s. 115.96 (3), the school board shall establish a bilingual—bicultural education program for such pupils during the school term. Such program shall be taught by a bilingual teacher.

(3) If, in a language group under s. 115.96 (1), there are 20 or more limited—English proficient pupils in grades 4 to 8 in attendance at a particular elementary, middle or junior high school and whose parents or legal custodians give written consent to such pupils' placement under s. 115.96 (3), the school board shall establish a bilingual—bicultural education program for such pupils during the school term. Such program shall be taught by a bilingual teacher.

(4) If, in a language group under s. 115.96 (1), there are 20 or more limited—English proficient pupils in grades 9 to 12 in attendance at a particular high school and whose parents or legal custodians give written consent to the pupils' placement under s. 115.96 (3), the school board shall establish a bilingual—bicultural education program. The program shall be taught by a bilingual teacher. Bilingual counselors shall be made available.

(5) (a) Except as provided under par. (b), if a school board is required to establish a bilingual—bicultural education program under sub. (2), (3) or (4), but bilingual teachers for the language groups are unavailable, the program may be taught by certified teachers of English as a 2nd language upon receipt of approval of the state superintendent. The state superintendent may approve a program under this paragraph only if the school board demonstrates all of the following:

1. Compliance with all other requirements of this subchapter.
2. A good faith, continuing effort to recruit bilingual teachers for the language group.
3. Employment of at least one bilingual teacher's aide in the program.

(b) Paragraph (a) does not apply to a program for Spanish-speaking pupils.

History: 1975 c. 395; 1987 a. 159; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 19.

**115.977 Contracting; continued eligibility.** (2) A school district may establish bilingual—bicultural education programs by contracting with other school districts or with a cooperative educational service agency. If 10 or more pupils in kindergarten to grade 3, 20 or more in grades 4 to 8 or 20 or more in a high school program are enrolled in a program under a contract pursuant to this subsection, the school district offering the program is eligible for reimbursement under s. 115.995.

(3) The school board shall give any limited—English proficient pupil who has begun a bilingual—bicultural education program in the 3rd grade the opportunity to continue his or her bilingual—bicultural education program in the 4th grade regardless of the number of limited—English proficient pupils in grades 4 to 8. However, if there are not a sufficient number of limited—English proficient pupils in grades 4 to 8 to require a bilingual—bicultural education program under sub. (2), the school board may offer such pupil the opportunity to continue a bilingual—bicultural education program with a program established for limited—English proficient pupils in kindergarten to grade 3. A 4th grade pupil so enrolled may be counted for purposes of determining if there are a sufficient number of pupils for a kindergarten to grade 3 bilingual—bicultural education program.

History: 1975 c. 395; 1999 a. 19.

**115.98 Bilingual—bicultural advisory committee.** In each school district which establishes a bilingual—bicultural education program under this subchapter, the school board may

appoint a bilingual—bicultural advisory committee to afford parents and educators of limited—English proficient pupils the opportunity to advise the school board of their views and to ensure that a program is planned, operated and evaluated with their involvement and consultation. The committee shall assist the school board in informing educators, parents and legal custodians of limited—English proficient pupils that a program exists. The committee shall be composed of parents of limited—English proficient pupils enrolled in the bilingual—bicultural education program, bilingual and other teachers, bilingual teacher's aides, bilingual and other counselors and bilingual counselor's aides in the district, at least one representative from the community and a representative of the school district administration.

History: 1975 c. 395; 1999 a. 19.

**115.99 Preschool and summer school programs.** A school board may establish a full-time or part-time preschool or summer bilingual—bicultural education program according to rules established by the state superintendent.

History: 1975 c. 395; 1995 a. 27 s. 9145 (1); 1997 a. 27.

**115.991 Training programs.** The school board may institute preservice or in-service programs designed to improve the skills of bilingual teachers, bilingual teacher's aides, bilingual counselors, bilingual counselor's aides or other personnel participating in, or preparing to participate in, a bilingual—bicultural education program.

History: 1975 c. 395.

**115.993 Report on bilingual—bicultural education.**

Annually, on or before August 15, the school board of a district operating a bilingual—bicultural education program under this subchapter shall report to the state superintendent the number of pupils, including both limited—English proficient pupils and other pupils, instructed the previous school year in bilingual—bicultural education programs, an itemized statement on oath of all disbursements on account of the bilingual—bicultural education program operated during the previous school year and a copy of the estimated budget for that program for the current school year.

History: 1975 c. 395; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 19.

Cross Reference: See also s. PI 13.06, Wis. adm. code.

**115.995 State aids.** Upon receipt of the report under s. 115.993, if the state superintendent is satisfied that the bilingual—bicultural education program for the previous school year was maintained in accordance with this subchapter, the state superintendent shall do all of the following:

(1) From the appropriation under s. 20.255 (2) (cc), divide proportionally, based upon costs reported under s. 115.993, an annual payment of \$250,000 among school districts whose enrollments in the previous school year were at least 15% limited—English proficient pupils. Aid paid under this subsection does not reduce aid paid under sub. (2).

(2) Certify to the department of administration in favor of the school district a sum equal to a percentage of the amount expended on limited—English proficient pupils by the school district during the preceding year for salaries of personnel participating in and attributable to bilingual—bicultural education programs under this subchapter, special books and equipment used in the bilingual—bicultural programs and other expenses approved by the state superintendent. The percentage shall be determined by dividing the amount in the appropriation under s. 20.255 (2) (cc) in the current school year less \$250,000 by the total amount of aidable costs in the previous school year.

History: 1975 c. 395; 1985 a. 29; 1991 a. 39; 1995 a. 27 s. 9145 (1); 1997 a. 27; 1999 a. 9, 19, 185.

Cross Reference: See also s. PI 13.07, Wis. adm. code.

**115.996 Report to the legislature.** Annually, on or before December 31, the state superintendent shall submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), on the status of bilingual—bicultural education programs established under this subchapter.

The report shall include the number of pupils served in bilingual–bicultural education programs for each language group in each school district in which such programs are offered and the cost of the program per pupil for each school district, language group and program type. The department shall also provide the number of pupils in each school district and language group who as a result of participation in a bilingual–bicultural education program improved their English language ability to such an extent that the program is no longer necessary for such pupils.

**History:** 1975 c. 395; 1987 a. 159, 186, 403; 1995 a. 27 s. 9145 (1); 1997 a. 27.