

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 927  
Education/Higher Education Committee Substitute Adopted 4/23/01

Short Title: Modify Laws Re: Students With Disabilities.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE LAWS CONCERNING CHILDREN WITH  
DISABILITIES AND TO MAKE AN APPROPRIATION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 9 of Chapter 115C of the General Statutes reads as  
rewritten:

"Article 9.

"Special Education.

"Part 1. State Policy.

**§ 115C-106. Policy.**

(a) The General Assembly of North Carolina hereby declares that the policy of the State is to ensure every child a fair and full opportunity to reach his full potential and that no child as defined in ~~this section~~ G.S. 115C-109 and in G.S. 115C-122 shall be excluded from service or education for any reason whatsoever. This policy shall be the practice of the State for children from birth through age 21 and the State requires compliance by all local ~~education~~ educational agencies and local school administrative units, all charter schools, all local human services agencies including, but not limited to, local health departments, local social service departments, community mental health centers and all State departments, agencies, institutions except institutions of higher education, and private providers which are recipients of general funds as these funds are defined in G.S. 143-1.

(b) The policy of the State is to provide a free appropriate publicly supported education to every child with ~~special-needs-disabilities~~. The purpose of this Article is to (i) provide for a system of special educational opportunities for all children requiring special education, hereinafter called children with ~~special-needs-disabilities~~; (ii) provide a system for identifying and evaluating the educational needs of all children with ~~special-needs-disabilities~~; (iii) require evaluation of the needs of such children and the adequacy of special education programs before placing children in the programs; (iv) require periodic evaluation of the benefits of the programs to the children and of the nature of

1 the children's needs after placement; (v) prevent denials of equal educational  
2 opportunity on the basis of physical, emotional, or mental ~~handicap; disability~~; (vi)  
3 assure that the rights of children with ~~special-needs disabilities~~ and their parents or  
4 guardians are protected; (vii) ensure that there be no inadequacies, inequities, and  
5 discrimination with respect to children with ~~special-needs disabilities~~; and (viii) bring  
6 State law, regulations, and practice into conformity with relevant federal law.

7 **"§ 115C-107. Children can learn.**

8 The General Assembly finds that all children with ~~special-needs disabilities~~ are  
9 capable of ~~benefitting~~ benefiting from appropriate programs of special education ~~and~~  
10 ~~training~~ and that they have the ability to be educated ~~and trained~~ and to learn and  
11 develop. Accordingly, the State has a duty to provide them with a free appropriate  
12 public education.

13 **"§ 115C-108. ~~Definition of special education and related services.~~ Definitions.**

14 The term "~~special education~~" means ~~specially designed instruction, at no cost to the~~  
15 ~~parents or guardians, to meet the unique needs of a special needs child, including~~  
16 ~~classroom instruction, instruction in physical education, home instruction, and~~  
17 ~~instruction in hospitals and institutions. The term also includes speech pathology,~~  
18 ~~audiology, occupational and physical therapy. The term "related services" means~~  
19 ~~transportation for handicapped children with special needs who are unable because of~~  
20 ~~their handicap to ride the regular school buses and such developmental, corrective and~~  
21 ~~other supportive services as are required to assist a special needs child to benefit from~~  
22 ~~special education and includes speech pathology and audiology, psychological services,~~  
23 ~~physical and occupational therapy, recreation, early identification and assessment of~~  
24 ~~disabilities in children, counseling services, and medical services for diagnostic or~~  
25 ~~evaluation purposes only. The term also includes school social work services, parent~~  
26 ~~counseling and training, providing parents with information about child development~~  
27 ~~and assisting parents in understanding the special needs of their child. Other similar~~  
28 ~~services, materials and equipment may be provided as approved by regulations adopted~~  
29 ~~by the State Board of Education.~~

30 The following definitions apply in this Article, except when the context clearly  
31 indicates a different meaning:

- 32 (1) The term 'local educational agency' means all local school  
33 administrative units, all charter schools, and all other State and local  
34 governmental agencies providing special education services or having  
35 children with disabilities in their care, custody, management,  
36 jurisdiction, control, or programs.
- 37 (2) The term 'individualized education program' means a written program  
38 for each child with disabilities that specifies the special education to be  
39 provided to that child and is developed in an individualized education  
40 program team meeting.
- 41 (3) The term 'special education' means specially designed instruction, at  
42 no cost to the parent, to meet the unique needs of the child with a

1 disability, including classroom instruction, instruction in physical  
2 education, home instruction, instruction in hospitals and institutions,  
3 and instruction in other settings. The term includes speech-language  
4 pathology if the service consists of specially designed instruction, at no  
5 cost to the parent, to meet the unique needs of a child with a disability,  
6 and is considered 'special education' rather than a 'related service'  
7 under State standards. The term also includes vocational education and  
8 travel training if it consists of specially designed instruction, at no cost  
9 to the parent, to meet the unique needs of a child with a disability.

10 (4) The term 'related services' means transportation and such  
11 developmental, corrective, and other supportive services (including  
12 speech pathology and audiology; orientation and mobility services;  
13 psychological services; physical and occupational therapy; recreation  
14 including therapeutic recreation; social work services; medical and  
15 counseling services, including rehabilitation counseling,) as may be  
16 required to assist a child with a disability to benefit from special  
17 education, and includes the early identification and assessment of  
18 disabling conditions in children. Medical services shall be for  
19 diagnostic and evaluation purposes only. A student who does not  
20 require special education is not eligible for a related service funded  
21 under this program.

22 **"§ 115C-109. Definition of children with special needs disabilities.**

23 ~~The~~ As used in this Part, the term 'children with special needs  
24 without limitation, all children from age five through age 20 who are entitled to enroll in  
25 the public schools under G.S. 115C-364 and G.S. 115C-366(a) and who because of  
26 permanent or temporary mental, physical or emotional handicaps disabilities need  
27 special education, are unable to have all their needs met in a regular class without  
28 special education or related services, or are unable to be adequately educated in the  
29 public schools. It includes those who are mentally retarded, epileptic, learning disabled,  
30 cerebral palsied, seriously emotionally disturbed, orthopedically impaired, autistic,  
31 multiply handicapped, pregnant, hearing impaired, speech impaired, blind or visually  
32 impaired, and other health impaired. It includes those who are autistic, behaviorally  
33 emotionally disabled, deaf-blind, developmentally delayed, hearing impaired, mentally  
34 disabled, multihandicapped, orthopedically impaired, other health impaired, specific  
35 learning disabled, speech-language impaired, traumatic brain injured, and visually  
36 impaired.

37 **"§ 115C-110. Services mandatory; single-agency responsibility; State and local**  
38 **plans; census and registration.**

39 (a) ~~The Board shall cause to be provided by all local school administrative units~~  
40 ~~and by all other State and local governmental agencies providing special education~~  
41 ~~services or having children with special needs in their care, custody, management,~~  
42 ~~jurisdiction, control, or programs,~~ all local educational agencies to provide special

1 education and related services appropriate to all children with ~~special needs~~ disabilities.  
2 In this regard, all local ~~school administrative units and all other State and local~~  
3 ~~governmental agencies providing special education and related services~~ educational  
4 agencies shall explore available local resources and determine whether the services are  
5 currently being offered by an existing public or private agency.

6 When a specified special education or related service is being offered by a local  
7 public or private resource, any ~~unit or agency described above shall negotiate~~ local  
8 educational agency shall consider negotiating for the purchase of that service or shall  
9 present full consideration of alternatives and its recommendations to the Board. ~~In this~~  
10 ~~regard, a new or additional program for special education or related services shall be~~  
11 ~~developed with the approval of the Board only when that service is not being provided~~  
12 ~~by existing public or private resources or the service cannot be purchased from existing~~  
13 ~~providers. Further, the~~ The Board shall support and encourage joint and collaborative  
14 special education planning and programming at local levels to include local  
15 administrative units and the programs and agencies of the Departments of Health and  
16 Human Services, Correction, and Juvenile Justice and Delinquency Prevention.

17 The jurisdiction of the Board with respect to the design and content of special  
18 education programs or related services for children with ~~special needs~~ disabilities  
19 extends to and over the Department of Health and Human Services, the Department of  
20 Juvenile Justice and Delinquency Prevention, and the Department of Correction.

21 All provisions of this Article that are specifically applicable to local school  
22 administrative units ~~also or to~~ educational agencies are applicable to charter schools, the  
23 Department of Health and Human Services, the Department of Juvenile Justice and  
24 Delinquency Prevention, and the Department of Correction and their divisions and  
25 ~~agencies; all agencies.~~ All duties, responsibilities, rights and privileges specifically  
26 imposed on or granted to local school administrative units or local educational agencies  
27 by this Article also are imposed on or granted to charter schools, the Department of  
28 Health and Human Services, the Department of Juvenile Justice and Delinquency  
29 Prevention, and the Department of Correction and their divisions and agencies.  
30 However, with respect to children with ~~special needs~~ disabilities who are residents or  
31 patients of any state-operated or state-supported residential treatment facility, including  
32 without limitation, a school for the deaf, school for the blind, mental hospital or center,  
33 mental retardation center, or in a facility operated by the Department of Juvenile Justice  
34 and Delinquency Prevention, the Department of Correction or any of its divisions and  
35 agencies, the Board ~~shall have the power to~~ may contract with the Department of Health  
36 and Human Services, the Department of Juvenile Justice and Delinquency Prevention,  
37 and the Department of Correction for the provision of special education and related  
38 services and the power to review, revise and approve any plans for special education  
39 and related services to those residents.

40 The Departments of Health and Human Services, Correction, and Juvenile Justice  
41 and Delinquency Prevention shall submit to the Board their plans for the education of  
42 children with ~~special needs~~ disabilities in their care, custody, or control. The Board shall

1 have general supervision and shall set standards, by rule or regulation, for the programs  
2 of special education to be administered by ~~it, by local educational agencies, and by the~~  
3 ~~Departments of Health and Human Services, Correction, and Juvenile Justice and~~  
4 ~~Delinquency Prevention. the Board and by local educational agencies.~~ The Board may  
5 grant specific exemptions for programs administered by the Department of Health and  
6 Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the  
7 Department of Correction when compliance by them with the Board's standards would,  
8 in the Board's judgment, impose undue hardship on this department and when other  
9 procedural due process requirements, substantially equivalent to those of G.S.  
10 115C-116, are assured in programs of special education and related services furnished  
11 to children with ~~special needs~~disabilities served by this department. Further, the Board  
12 shall recognize that inpatient and residential special education programs within the  
13 Departments of Health and Human Services, Correction, and Juvenile Justice and  
14 Delinquency Prevention may require more program resources than those necessary for  
15 optimal operation of these programs in local school administrative ~~units.~~units or charter  
16 schools.

17 ~~Every State and local department, division, unit or agency covered by this section is~~  
18 ~~hereinafter referred to as a "local educational agency" unless the text of this Article~~  
19 ~~otherwise provides.~~

20 (b) The Board shall make and keep current a plan for the implementation of the  
21 policy set forth in G.S. 115C-106(b). The plan shall include:

- 22 (1) A ~~census~~child count of the children with ~~special needs~~disabilities in  
23 the State, as required by subsection (j) of this section;
- 24 (2) A procedure for diagnosis and evaluation of each child;
- 25 (3) An inventory of the personnel and facilities available to provide  
26 special education for these children;
- 27 (4) An analysis of the present distribution of responsibility for special  
28 education between State and local educational agencies, together with  
29 recommendations for any necessary or desirable changes in the  
30 distribution of responsibilities;
- 31 (5) Standards for the education of children with ~~special needs;~~disabilities;
- 32 (6) Programs and procedures for the development and implementation of a  
33 comprehensive system of personnel development; and
- 34 (7) Any additional matters, including recommendations for amendment of  
35 laws, changes in administrative regulations, rules and practices and  
36 patterns of special organization, and changes in levels and patterns of  
37 education financial support.

38 ~~(c) The Board shall annually submit amendments to or revisions of the plan~~  
39 ~~required by subsection (b) to the Governor and General Assembly and make it available~~  
40 ~~for public comment pursuant to subdivision (1) and for public distribution no less than~~  
41 ~~30 days before January 15 of each year. All such submissions shall set forth in detail the~~  
42 ~~progress made in the implementation of the plan.~~

1 (d) The Board shall adopt rules covering:

- 2 (1) The qualifications of and standards for certification of teachers,  
3 teacher assistants, speech clinicians, school psychologists, and others  
4 involved in the education and training of children with ~~special~~  
5 ~~needs;disabilities;~~  
6 (2) Minimum standards for the individualized educational program for all  
7 children with ~~special needs other than for the pregnant children, and~~  
8 ~~for the educational program for the pregnant children, who receive~~  
9 ~~special education and related services;disabilities; and~~  
10 (3) Any other rules as may be necessary or appropriate for carrying out the  
11 purposes of this Article. Representatives from the Departments of  
12 Health and Human Services, Correction, and Juvenile Justice and  
13 Delinquency Prevention shall be involved in the development of the  
14 standards outlined under this subsection.

15 (e) ~~On or before October 15, each local educational agency shall report annually~~  
16 ~~to the Board the extent to which it is then providing special education for children with~~  
17 ~~special needs. The annual report also shall detail the means by which the local~~  
18 ~~educational agency proposes to secure full compliance with the policy of this Article,~~  
19 ~~including the following:~~

- 20 (1) ~~A statement of the extent to which the required education and services~~  
21 ~~will be provided directly by the agency;~~  
22 (2) ~~A statement of the extent to which standards in force pursuant to G.S.~~  
23 ~~115C 110(b)(5) and (d)(2) are being met by the agency; and~~  
24 (3) ~~The means by which the agency will contract to provide, at levels~~  
25 ~~meeting standards in force pursuant to G.S. 115C 110(b)(5) and (d)(2),~~  
26 ~~all special education and related services not provided directly by it or~~  
27 ~~by the State.~~

28 (f) ~~After submitting the report required by subsection (e), the local educational~~  
29 ~~agency also shall submit such supplemental and additional reports as the Board may~~  
30 ~~require to keep the local educational agency's plan current.~~

31 (g) ~~By rule, the Board shall prescribe due dates not later than October 15 of each~~  
32 ~~year, and all other necessary or appropriate matters relating to these annual and~~  
33 ~~supplemental and additional reports.~~

34 (h) ~~The annual report shall be a two-year plan for providing appropriate special~~  
35 ~~education and related services to children with special needs. The agency shall submit~~  
36 ~~the plan to the Board for its review, approval, modification, or disapproval. Unless~~  
37 ~~thereafter modified with approval of the Board, the plan shall be adhered to by the local~~  
38 ~~educational agency. The procedure for approving, disapproving, establishing, and~~  
39 ~~enforcing the plan shall be the same as that set forth for the annual plan. The long-range~~  
40 ~~plan shall include such provisions as may be appropriate for the following, without~~  
41 ~~limitation:~~

1           (1) ~~Establishment of classes, other programs of instruction, curricula,~~  
2           ~~facilities, equipment, and special services for children with special~~  
3           ~~needs; and~~

4           (2) ~~Utilization and professional development of teachers and other~~  
5           ~~personnel working with children with special needs.~~

6           (i) ~~Each local educational agency school administrative unit shall provide free~~  
7           ~~appropriate special education and related services in accordance with the provisions of~~  
8           ~~this Article for all children with special needs~~disabilities ~~who are residents of, or whose~~  
9           ~~parents or guardians are residents of, the agency's district, local school administrative~~  
10           ~~unit, beginning with children aged five. No matriculation or tuition fees or other fees or~~  
11           ~~charges shall be required or asked of children with special needs~~disabilities ~~or their~~  
12           ~~parents or guardians except those fees or charges as are required uniformly of all public~~  
13           ~~school pupils. The provision of free appropriate special education within the facilities of~~  
14           ~~the Department of Health and Human Services and the Department of Juvenile Justice~~  
15           ~~and Delinquency Prevention shall not prevent that department from charging for other~~  
16           ~~services or treatment.~~

17           (j) ~~The Board shall require an annual census~~child count ~~of children with special~~  
18           ~~needs, subdivided for "identified" and "suspected" children with special needs,~~  
19           ~~disabilities to be taken in each school year. Suspected children are those in the formal~~  
20           ~~process of being identified, evaluated or diagnosed as children with special needs. The~~  
21           ~~census~~The child count ~~shall be conducted annually and shall be completed not later~~  
22           ~~than October 15, and shall be submitted to the Governor and General Assembly and be~~  
23           ~~made available to the public no later than January 15 annually.~~

24           ~~In taking the census, conducting the child count, the Board shall require the~~  
25           ~~cooperation, participation, and assistance of all local educational agencies and all other~~  
26           ~~State and local governmental departments and agencies providing or required to provide~~  
27           ~~special education services to children with special needs~~disabilities, ~~and those~~  
28           ~~departments and local educational agencies shall cooperate and cooperate, participate~~  
29           ~~with and assist the Board in conducting the census~~child count.

30           ~~The census~~child count ~~shall include the number of children identified and suspected~~  
31           ~~with special needs~~disabilities, ~~their age, the nature of their disability, their county or~~  
32           ~~city of residence, their local school administrative unit residence, whether they are being~~  
33           ~~provided special educational or related services and if so by what department or local~~  
34           ~~educational agency, whether they are not being provided special education or related~~  
35           ~~services, the identity of each department or local educational agency having children~~  
36           ~~with special needs~~disabilities ~~in its care, custody, management, jurisdiction, control, or~~  
37           ~~programs, the number of children with special needs~~disabilities ~~being served by each~~  
38           ~~department or local educational agency, and such any other information or data as the~~  
39           ~~Board shall require. requires. The census~~child count ~~shall be of children with special~~  
40           ~~needs~~disabilities ~~between the ages of three and birth through 21, inclusive.~~

41           (k) ~~The Department shall monitor the effectiveness of individualized education~~  
42           ~~programs in meeting the educational needs of all children with special needs other than~~

1 ~~pregnant children, and of educational programs in meeting the educational needs of the~~  
2 ~~pregnant children.~~disabilities.

3 (l) The Board shall provide for procedures assuring that in carrying out the  
4 requirements of this Article procedures are established for consultation with individuals  
5 involved in or concerned with the education of children with ~~special needs,~~disabilities,  
6 including parents or guardians of such children, and there are public hearings, adequate  
7 notice of such hearings, and an opportunity for comment available to the general public  
8 prior to the adoption of the policies, procedures, and rules or regulations required by this  
9 Article.

10 (m) Children with ~~special needs~~disabilities shall be educated in the least  
11 restrictive appropriate setting, as defined by the State Board of Education.

12 "Part 2. Nondiscrimination in Education.

13 "**§ 115C-111. Free appropriate education for all children with special**  
14 **needs.**disabilities.

15 (a) No child with ~~special needs~~disabilities between the ages specified by G.S.  
16 115C-109 shall be denied a free appropriate public education or be prevented from  
17 attending the public schools of the local ~~educational agency~~ school administrative unit  
18 in which that child or that child's parents or legal guardian resides or from which that  
19 child receives services or from attending any other public program of free appropriate  
20 public education because he is a child with ~~special needs.~~disabilities. If it appears that a  
21 child should receive a program of free appropriate public education in a program  
22 operated by or under the supervision of the Department of Health and Human Services  
23 or the Department of Juvenile Justice and Delinquency Prevention, the local ~~educational~~  
24 ~~agency~~ school administrative unit shall confer with the appropriate Department of  
25 Health and Human Services or Department of Juvenile Justice and Delinquency  
26 Prevention staff for their participation and determination of the appropriateness of  
27 placement in ~~said~~ the program and development of the child's individualized education  
28 program. The individualized education program may then be challenged under the due  
29 process provisions of G.S. 115C-116. ~~Every child with special needs shall be entitled to~~  
30 ~~attend these nonresidential schools or programs and receive from them free appropriate~~  
31 ~~public education.~~

32 (b) Local educational agencies may establish special education and related  
33 programs for children with disabilities aged birth through four and 19 through 21  
34 inclusive.

35 "**§ 115C-112:** Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 20.

36 "**§ 115C-113. ~~Diagnosis and evaluation;~~ Evaluation; individualized education**  
37 **program.**

38 (a) Before taking any action described in subsection (b), below, each local  
39 educational agency shall ~~cause a multi-disciplinary diagnosis and evaluation to be made~~  
40 ~~of the child. The State Board of Education shall establish special, simplified procedures~~  
41 ~~for the diagnosis and evaluation of the pregnant child, which procedures shall focus on~~  
42 ~~the particular needs of the pregnant child and shall exclude those procedures which are~~



1 ~~not pertinent to the pregnant.~~ conduct evaluations and determine eligibility consistent  
2 with federal regulations and State Board policies. The local educational agency shall use  
3 the ~~diagnosis and~~ evaluation to determine if the child has ~~special needs,~~ disabilities,  
4 diagnose and evaluate those needs, propose special education programs to meet those  
5 needs, and provide or arrange to provide such programs. A multi-disciplinary ~~diagnosis~~  
6 ~~and~~ evaluation is one which includes, without limitation, medical (if necessary),  
7 psychological (if necessary) and educational assessments and recommendations; such  
8 an evaluation may include any other assessments as the Board may, by rule or  
9 regulation, require.

10 All testing and evaluation materials and procedures utilized for the purposes of  
11 evaluation and placement of children with ~~special needs~~ disabilities will be selected and  
12 administered so as not to be racially or culturally discriminatory. Such materials or  
13 procedures shall be provided and administered in the child's native language or mode of  
14 communication, unless it clearly is not feasible to do so, and no single procedure shall  
15 be the sole criterion for determining an appropriate educational program for a child.

16 (b) ~~An initial~~ A multi-disciplinary ~~diagnosis and~~ evaluation based on rules  
17 developed by the Board shall be made before any such child is placed in a special  
18 education program, removed from such a program and placed in a regular school  
19 program, transferred from one type of special education program to another, removed  
20 from a school program for placement in a nonschool ~~program, or otherwise tracked,~~  
21 ~~classified, or treated as a child with special needs.~~ program.

22 (c) Referral of any child shall be in writing, signed by the person requesting  
23 ~~diagnosis and~~ an evaluation, setting forth the reasons for the request; it shall be sent or  
24 delivered to one of the following: the child's teacher, the principal of the school to  
25 which the child is, has been or will be assigned, or the superintendent of the affected  
26 local educational agency or his designee. The local educational agency shall send a  
27 written notice to the parent or guardian describing the evaluation procedure to be  
28 followed and requesting consent for the evaluation. If the parents or guardian consent,  
29 the ~~diagnosis and~~ evaluation may be undertaken; if they do not, the local educational  
30 agency may obtain a due process hearing ~~pursuant to~~ under G.S. 115C-116 on the  
31 failure of the parent or guardian to consent.

32 The local educational agency shall provide or cause to be provided, as soon as  
33 possible after receiving consent for evaluation, ~~a diagnosis and~~ an evaluation  
34 appropriate to the needs of the child unless the parents or guardian have objected to  
35 such evaluation. If at the conclusion of the evaluation, the child is determined to be a  
36 child with ~~special needs,~~ disabilities, the local educational agency shall within 30  
37 calendar days convene an individualized education program committee. The purpose of  
38 the meeting shall be to propose the special education and related services for the child.  
39 An interpretation of the multi-disciplinary ~~diagnosis and~~ evaluation will be made to the  
40 parent or guardian during the meeting. The proposal shall set forth the specific benefits  
41 expected from such a program, a method for monitoring the benefits, and a statement

1 regarding conditions ~~which~~that will be considered indicative of the child's readiness for  
2 participation in regular classes.

3 After an initial referral is made, the provision of special education and related  
4 services shall be implemented within 90 calendar days to eligible students, unless the  
5 parents or guardian refuse to consent to evaluation or placement or the parent or local  
6 educational agency requests a due process hearing.

7 Within 12 months after placement in a special education program, and at least  
8 annually thereafter, those people responsible for developing the child's individualized  
9 education ~~program, or educational program for the pregnant, program~~ shall review the  
10 child's progress and, on the basis of previously stated expected benefits, decide whether  
11 to continue or discontinue the placement or program. If the review indicates that the  
12 placement or program does not benefit the child, the appropriate reassignment or change  
13 in the prescribed program shall be recommended to the parents or guardian.

14 The local educational agency shall keep a complete written record of all ~~diagnostic~~  
15 ~~and~~ evaluation procedures attempted, their results, the conclusions reached, and the  
16 proposals made.

17 (d) The local educational agency shall furnish the results, findings, and  
18 proposals, as described in the individualized education program based on the ~~diagnosis~~  
19 ~~and~~ evaluation to the parents or guardian in writing in the parents' or guardian's native  
20 language or by their dominant mode of communication, prior to the parent or guardian  
21 giving consent for initial placement in special education and related services. Prior  
22 notice will be given to the parents or guardian by the local educational education agency  
23 before any change in placement.

24 A reevaluation must be completed at least every three years to determine the  
25 appropriateness of the child's continuing to receive special education and related  
26 services.

27 (e) Each local educational agency shall make and keep current a list of all  
28 children evaluated ~~and diagnosed pursuant to~~under this section who are found to have  
29 ~~special needs~~disabilities and of all children who are receiving home, hospital,  
30 institutional or other special education services, including those being educated within  
31 the regular classroom setting or in other special education programs.

32 (f) Each local educational agency shall prepare individualized educational  
33 programs for all children found to be children with ~~special needs other than the pregnant~~  
34 ~~children, and educational programs prescribed in subsection (h) of this section for the~~  
35 ~~pregnant children~~disabilities. The individualized ~~educational~~education program shall  
36 be developed in conformity with ~~Public Law 94-142~~ federal law and the implementing  
37 regulations issued by the United States Department of Education and shall be  
38 implemented in conformity with timeliness set by that Department. ~~The term~~  
39 ~~"individualized educational program" means a written statement for each such child~~  
40 ~~developed in any meeting by a representative of the local educational agency who shall~~  
41 ~~be qualified to provide, or supervise the provision of, specially designed instruction to~~  
42 ~~meet the unique needs of such children, the teacher, the parents or guardian of such~~

1 ~~child, and, whenever appropriate, such child, which statement shall be based on rules~~  
2 ~~developed by the Board. The individualized education program team shall meet~~  
3 ~~requirements of federal law and Board procedures. The individualized education~~  
4 ~~program shall be based on Board procedures and policies.~~ Each local educational  
5 agency shall establish, or revise, whichever is appropriate, the individualized  
6 ~~educational-education~~ program of each child with ~~special-needs~~disabilities each school  
7 year and will then review and, if appropriate revise, its provisions periodically, but not  
8 less than annually. In the facilities and programs of the Department of Health and  
9 Human Services and the Department of Juvenile Justice and Delinquency Prevention,  
10 the individualized ~~educational-education~~ program shall be planned in collaboration with  
11 those other individuals responsible for the design of the total treatment or habilitation  
12 plan or both; the resulting educational, treatment, and habilitation plans shall be  
13 coordinated, integrated, and internally consistent.

14 (g) Repealed by Session Laws 1996, Second Extra Session, c. 18, s. 18.24(e).

15 (h) ~~Each local educational agency shall prepare educational programs for the~~  
16 ~~pregnant children. The State Board of Education shall promulgate rules and regulations~~  
17 ~~specifically to address the preparation of these educational programs, which rules and~~  
18 ~~regulations shall include specific standards for ensuring that the individual educational~~  
19 ~~needs of each child are addressed.~~

20 "**§ 115C-113.1. Surrogate parents.**

21 In the case of a child whose parent or guardian is unknown, whose whereabouts  
22 cannot be determined after reasonable investigation, or who is a ward of the State, the  
23 local educational agency shall appoint a surrogate parent for the child. ~~The surrogate~~  
24 ~~parent shall be appointed from a group of persons approved by the Superintendent of~~  
25 ~~Public Instruction, the Secretary of Health and Human Services, and the Secretary of~~  
26 ~~Juvenile Justice and Delinquency Prevention, but in~~ In no case shall the person  
27 appointed be an employee of the local educational agency or directly involved in the  
28 education or care of the child. ~~The Superintendent shall ensure that local educational~~  
29 ~~agencies appoint a surrogate parent for every child in need of a surrogate parent.~~  
30 a person ineligible under applicable law.

31 "**§ 115C-114. Records; privacy and expunction.**

32 (a) No local educational agency may release to any persons other than the  
33 eligible student, his parents or guardian or any surrogate parent any records, data or  
34 information on any child with ~~special-needs~~disabilities except (i) as permitted by the  
35 prior written consent of the student, his parents or guardian or surrogate parent, (ii) as  
36 required or permitted by federal law, (iii) school officials within the local education  
37 agency who have legitimate educational interest, (iv) school officials of other local  
38 educational agencies in which the student intends to enroll, or (v) certain authorized  
39 representatives of the State and federal government who are determining eligibility of  
40 the child for aid, as provided under Public Law 93-380 or other federal law.

41 (b) The eligible student, his parents or guardian or surrogate parent shall have the  
42 right to read, inspect and copy all and any records, data and information maintained by a

1 local educational agency with respect to the student, and, upon their request, shall be  
2 entitled to have those records, data and information fully explained, interpreted and  
3 analyzed for them by the staff of the agency. The parent or guardian or surrogate parent  
4 may demand that his request must be honored within not more than 45 days after it is  
5 made.

6 (c) The student, his parents or guardian or surrogate parent shall have the right to  
7 add to the records, data and information written explanations or clarifications thereof,  
8 and to cause the expunction of incorrect, outdated, misleading or irrelevant entries. If a  
9 local educational agency refuses to expunge incorrect, outdated, misleading or  
10 irrelevant entries after having been asked to do so by the parent, such person may  
11 obtain a due process hearing, under G.S. 115C-116, on the agency's refusal, and must  
12 request the hearing within 30 days after the agency's refusal.

13 **"§ 115C-115. Placements in private schools, out-of-state schools and schools in**  
14 **other local educational agencies.**

15 The board shall adopt rules and regulations to assure that:

- 16 (1) There be no cost to the parents or guardian for the placement of a child  
17 in a private school, out-of-state school or a school in another local  
18 ~~education-educational~~ agency if the child was so placed by the Board  
19 or by the appropriate local educational agency as the means of carrying  
20 out the requirement of this Article or any other applicable law  
21 requiring the provision of special education and related services to  
22 children within the State.
- 23 (2) No child shall be placed by the Board or by the local educational  
24 agency in a private or out-of-state school unless the Board has  
25 determined that the school meets standards that apply to State and  
26 local educational agencies and that the child so placed will have all the  
27 rights he would have if served by a State or local educational agency.
- 28 (3) If the placement of the child in a private school, out-of-state school or  
29 a school in another local educational agency determined by the  
30 Superintendent of Public Instruction to be the most cost-effective way  
31 to provide an appropriate education to that child and the child is not  
32 currently being educated by the Department of Health and Human  
33 Services, the Department of Juvenile Justice and Delinquency  
34 Prevention, or the Department of Correction, the State will bear a  
35 portion of the cost of the placement of the child. The local school  
36 administrative unit shall pay an amount equal to what it receives per  
37 pupil from the State Public School Fund and from other State and  
38 federal funds for children with ~~special-needs~~disabilities for that child.  
39 The State shall pay the full cost of any remainder up to a maximum of  
40 fifty percent (50%) of the total cost.

41 "Part 3. Appeals.

1 **"§ 115C-116. Notice of decisions; mediation, administrative review, and judicial**  
2 **review of disagreements.**

3 (a) Prior Notice. – The parent, guardian, or surrogate parent of a child shall be  
4 notified promptly when the local educational agency proposes to initiate or change, or  
5 refuses to initiate or change, the identification, evaluation, or educational placement of a  
6 child as a child with ~~special-needs-disabilities~~. The written notice shall contain a full  
7 explanation of all the procedural safeguards available to the parent, guardian, or  
8 surrogate parent including the right to review the proposed decision, and a statement  
9 offering the parent, guardian, or surrogate parent the opportunity for mediation. The  
10 local educational agency shall document that all required notices have been sent to and  
11 received by parents, guardians, or surrogate parents.

12 (b) Mediation. – It is the policy of this State to encourage local educational  
13 agencies and parents, guardians, surrogate parents, custodians, and eligible students to  
14 seek informal resolution of disputes or disagreements regarding the identification of  
15 children with ~~special-needs-disabilities~~ and the provision of special education and related  
16 services before filing a request for a formal administrative review of the matter. To that  
17 end, the following provisions apply to the mediation of these disputes:

- 18 (1) Purpose. – The purpose of mediation is to clarify the concerns of the  
19 parents and to resolve disputes.
- 20 (2) Definitions. – As used in this subsection, the following terms have the  
21 following meanings:
- 22 a. 'Dispute' means a disagreement between the parties that is  
23 subject to review under subsection (c) of this section.
- 24 b. 'Mediation' means an informal process conducted by a mediator  
25 with the objective of helping parties voluntarily settle their  
26 dispute.
- 27 c. 'Mediator' means a neutral person who acts to encourage and  
28 facilitate a resolution of a dispute.
- 29 d. 'Parents' means parents, guardians, surrogate parents,  
30 custodians, and eligible students.
- 31 e. 'Parties' means the local educational agency and the parents.
- 32 (3) Nonadversarial. – The mediation shall be informal and nonadversarial  
33 as provided in G.S. 150B-22.
- 34 (4) Rules of procedure. – The mediator is encouraged to follow applicable  
35 procedures provided in G.S. 7A-38.1, G.S. 7A-38.2, and applicable  
36 rules adopted by the Supreme Court under G.S. 7A-38.1. The mediator  
37 may establish other procedures to facilitate an informal resolution of  
38 the dispute. The mediator shall not render a decision or judgment as to  
39 the merits of the dispute.
- 40 (5) Request for mediation. – Before a request for formal administrative  
41 review is filed, mediation shall commence upon the request of either  
42 party, so long as the other party consents.

- 1           (6) Selection of mediator. – The parties shall agree to the selection of the  
2 mediator. The Exceptional Children Division of the Department of  
3 Public Instruction shall maintain a list of mediators who are certified  
4 or trained in resolving disputes under this subsection.
- 5           (7) Notice of right to mediation. – The local educational agency shall  
6 notify parents of their right to request mediation under this subsection.
- 7           (8) Time periods tolled. – Notwithstanding G.S. 150B-23, time periods  
8 related to the filing of a formal administrative review or the taking of  
9 any other action with respect to the dispute, including any applicable  
10 statutes of limitations, are tolled upon the filing of a request for  
11 mediation under this subsection until the mediation is completed or the  
12 mediator declares an impasse.
- 13          (9) Good cause for continuance. – A good faith effort by both parties to  
14 mediate the dispute is presumed to constitute good cause for a  
15 continuance so long as the administrative law judge does not find that  
16 the time delay for mediation would likely result in irreparable harm to  
17 one of the parties or to the child.
- 18          (10) Inadmissibility of negotiations. – Evidence of statements made and  
19 conduct occurring in a mediation shall not be subject to discovery and  
20 shall be inadmissible in any proceeding in the action or other actions  
21 on the same claim. However, no evidence otherwise discoverable shall  
22 be inadmissible merely because it is presented or discussed in a  
23 mediation. Mediators shall not be compelled in any civil proceeding to  
24 testify or produce evidence concerning statements made and conduct  
25 occurring in a mediation.
- 26          (11) Mediator's fees. – If mediation is requested before a request for formal  
27 administrative review is filed, the local educational agency shall pay  
28 the mediator's fees for one mediation session. If resolution is not  
29 reached in that session, the parties must agree to continue the  
30 mediation. The local educational agency shall pay any mediator fees  
31 for subsequent mediation sessions unless the parties agree otherwise.
- 32          (12) Mediated settlement conference after a request for administrative  
33 review. – In addition to mediation as provided by this subsection, the  
34 parties may participate in a mediated settlement conference as  
35 provided by G.S. 150B-23.1.
- 36          (13) Promotion of other settlement procedures. – The parties may agree to  
37 use other dispute resolution methods or to use mediation in other  
38 circumstances, including after a request for formal administrative  
39 review is filed, to the extent permitted under State and federal law.
- 40          (c) Right of Review. – The parent, guardian, or surrogate parent may obtain  
41 review of proposed decisions on the following grounds:

- 1 (1) The child has not been identified or has been incorrectly identified as a  
2 child with ~~special needs; disabilities;~~
- 3 (2) The child's individualized education ~~plan program~~ is not appropriate to  
4 meet his needs;
- 5 (3) The child's individualized education ~~plan program~~ is not being  
6 implemented; or
- 7 (4) The child is otherwise being denied a free, appropriate education.

8 In addition, a local educational agency may obtain review as provided by this section if  
9 a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child  
10 for the purpose of determining whether the child is a child with ~~special needs; disabilities~~  
11 or for the purpose of developing a free appropriate educational program for the child.

12 (d) Administrative Review. – Except as otherwise provided in this section, the  
13 administrative review shall be initiated and conducted in accordance with Article 3 of  
14 Chapter 150B of the General Statutes, the Administrative Procedure Act.

15 (e) Scope of Review. – The issues for review shall be limited to those set forth in  
16 subsection (c).

17 (f) Venue of Hearing. – The hearing shall be conducted in the county where the  
18 child attends school or is entitled to enroll pursuant to G.S. 115C-366.

19 (g) Hearing Closed. – The hearing shall be closed to the public unless the parent,  
20 guardian, or surrogate parent, requests in writing that the hearing be open to the public.

21 (h) Decision of the Administrative Law Judge. – Following the hearing, the  
22 administrative law judge shall make a decision regarding the issues set forth in  
23 subsection (c). The decision shall contain findings of fact and conclusions of law.  
24 Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of  
25 the administrative law judge becomes final and not subject to further review unless  
26 appealed to the Review Officer as provided in subsection (i). A copy of the  
27 administrative law judge's decision shall be served upon each party and a copy shall be  
28 furnished to the attorneys of record. The written notice shall contain a statement  
29 informing the parties of the availability of appeal and the 30-day limitations period for  
30 appeal as set forth in subsection (i).

31 (i) Review by Review Officer. – Any party aggrieved by the decision of the  
32 administrative law judge may appeal that decision within 30 days after receipt of notice  
33 of the decision by filing a written notice of appeal with the Superintendent of Public  
34 Instruction. The State Superintendent of Public Instruction shall appoint a Review  
35 Officer from a pool of review officers approved by the State Board of Education. A  
36 Review Officer shall be an educator or other professional who is knowledgeable about  
37 special education and who possesses such other qualifications as may be established by  
38 the State Board of Education. The Review Officer may issue subpoenas upon his own  
39 motion or upon a written request.

40 No person may be appointed as a Review Officer if that person is an employee of an  
41 agency that has been involved in the education or care of the child whose parents have  
42 filed the petition (including an employee or official of the State Department of

1 Education or the State Board of Education) or if the person is or has been employed by  
2 the local board of education responsible for the education or care of the child whose  
3 parents have filed the petition. The decision of the Review Officer shall contain findings  
4 of fact and conclusions of law and becomes final unless an aggrieved party brings a  
5 civil action pursuant to subsection (k). A copy of the decision shall be served upon each  
6 party and a copy shall be furnished to the attorneys of record. The written notice shall  
7 contain a statement informing the parties of the right to file a civil action and the 30-day  
8 limitations period for filing a civil action pursuant to subsection (k).

9 (j) Power to Enforce Final Decision. – The State Board shall have the power to  
10 enforce the final decision of the administrative law judge, if not appealed pursuant to  
11 subsection (i), or the final decision of the Review Officer, by ordering a local  
12 educational agency:

13 (1) To provide a child with appropriate education;

14 (2) To place a child in a private school that is approved to provide special  
15 education and that can provide the child an appropriate education; or

16 (3) To reimburse parents for reasonable private school placement costs in  
17 accordance with the provisions of G.S. 115C-115 when it is  
18 determined that the local educational agency did not offer or provide  
19 the child with appropriate education and the private school in which  
20 the parent, guardian, or surrogate parent placed the child was an  
21 approved school and did provide the child an appropriate education.

22 (k) Right to File Civil Action. – Any party aggrieved by the decision of the  
23 Review Officer may institute a civil action in State court within 30 days after receipt of  
24 the notice of the decision or in federal court as provided in 20 U.S.C. § 1415.

25 (l) Change in Placement. – Upon the filing of a petition, no change may be made  
26 in the child's status or program by school officials during the period of the  
27 administrative review or subsequent judicial review, unless the parent, guardian, or  
28 surrogate parent gives written consent.

29 "Part 5. Council on Educational Services for ~~Exceptional Children~~ Children with  
30 Disabilities.

31 "**§ 115C-121. Establishment; organization; powers and duties.**

32 (a) There is hereby established an Advisory Council to the State Board of  
33 Education to be called the Council on Educational Services for ~~Exceptional Children~~.  
34 Children with Disabilities.

35 ~~(b) The Council shall consist of 23 members to be appointed as follows: five ex~~  
36 ~~officio members; two members appointed by the Governor; two members of the Senate~~  
37 ~~appointed by the President Pro Tempore; two members of the House of Representatives~~  
38 ~~appointed by the Speaker of the House; and 12 members appointed by the State Board~~  
39 ~~of Education. Of those members of the Council appointed by the State Board one~~  
40 ~~member shall be selected from each congressional district within the State, and the~~  
41 ~~members so selected shall be composed of at least one person representing each of the~~  
42 ~~following: handicapped individuals, parents or guardians of children with special needs,~~



~~1 teachers of children with special needs, and State and local education officials and  
2 administrators of programs for children with special needs. The Council shall designate  
3 a chairperson from among its members. The designation of the chairperson is subject to  
4 the approval of the State Board of Education. The board shall promulgate rules or  
5 regulations to carry out this subsection.~~

~~6 Ex officio members of the Council shall be the following:~~

- ~~7 (1) The Secretary of the Department of Health and Human Services or the  
8 Secretary's designee;~~
- ~~9 (1a) A representative of the Department of Juvenile Justice and  
10 Delinquency Prevention, appointed by the Governor;~~
- ~~11 (2) The Secretary of the Department of Correction or the Secretary's  
12 designee;~~
- ~~13 (3) A representative from The University of North Carolina Planning  
14 Consortium for Children with Special Needs; and~~
- ~~15 (4) The Superintendent of Public Instruction or the Superintendent's  
16 designee.~~

~~17 The term of appointment for all members except those appointed by the State Board  
18 of Education shall be for two years. The term for members appointed by the State Board  
19 of Education shall be for four years. No person shall serve more than two consecutive  
20 four year terms. The initial term of office of the person appointed from the 12th  
21 Congressional District shall commence on January 3, 1993, and expire on June 30,  
22 1996.~~

~~23 (b) This advisory panel shall be constituted so as to include all individuals  
24 referenced in applicable federal law and regulations. A majority of the members of the  
25 Council shall be individuals with disabilities or parents of children with disabilities.~~

~~26 (b1) Each Council member shall serve without pay, but shall receive travel  
27 allowances and per diem in the same amount provided for members of the North  
28 Carolina General Assembly.~~

~~29 (c) The Council shall meet in offices provided by the Department of Public  
30 Instruction on a date to be agreed upon by the members of the Council from meeting to  
31 meeting. Provided, however, that the Council shall meet no less than once every three  
32 months. The Department of Public Instruction shall provide the necessary secretarial  
33 and clerical staff and supplies to accomplish the objectives of the Council.~~

~~34 (d) The duties of the Council shall be as set out in applicable federal law and  
35 regulations. to:~~

- ~~36 (1) Advise the Board with respect to unmet needs within the State in the  
37 education of children with special needs, as defined in this Chapter.~~
- ~~38 (2) Comment publicly on rules and regulations proposed for issuance by  
39 the Board regarding special education and related services and the  
40 procedures for issuing State and federal funds for special education  
41 and related services.~~

1 (3) ~~Assist the Board in developing and reporting such data and evaluations~~  
2 ~~as may assist the Commissioner of Education in the performance of his~~  
3 ~~duties under Part B, Education of the Handicapped Act, as amended by~~  
4 ~~Public Law 94-142.~~

5 (4) ~~Comment publicly on State special education plans developed~~  
6 ~~pursuant to Public Law 94-142 and State law.~~

7 (e) The Council shall maintain a set of guidelines and bylaws governing its  
8 functions, procedures, appointment of members, and internal organization. These  
9 guidelines and bylaws shall be updated as necessary to remain in conformity with  
10 applicable federal law.

11 "Part 6. Range of Services Available.

12 "**§ 115C-122. Early childhood development program; evaluation and placement of**  
13 **children.**

14 The General Assembly of North Carolina declares that the public policy of North  
15 Carolina is defined as follows to carry out the policies stated in G.S. 115C-106:

16 (1) The State shall provide for a comprehensive early childhood  
17 development program by emphasizing preventative and remedial  
18 measures designed to provide the services which will enable children  
19 to develop to the maximum level their physical, mental, social, and  
20 emotional potentials and to strengthen the role of the family as the first  
21 and most fundamental influence on child development. The General  
22 Assembly finds that the complexity of early childhood development  
23 precludes the enactment of legislation which is of a sufficiently  
24 comprehensive nature to encompass all possible implications. The  
25 Departments of Public Instruction and Health and Human Services  
26 shall, therefore, jointly develop an early childhood development  
27 program plan with flexibility sufficient to meet the State's policy as set  
28 forth in this subdivision. Said plan shall provide for the operation of a  
29 statewide early childhood development program no later than June 30,  
30 1983.

31 (2) The State requires a system of educational opportunities for all  
32 children with ~~special needs~~disabilities and requires the identification  
33 and evaluation of the needs of children and the adequacy of various  
34 education programs before placement of children, and shall provide for  
35 periodic evaluation of the benefits of programs to the individual child  
36 and the nature of the child's needs thereafter.

37 (3) The State shall prevent denial of equal educational and service  
38 opportunity on the basis of national origin, sex, economic status, race,  
39 religion, and physical, mental, social or emotional ~~handicap~~disability  
40 in the provision of services to any child. Each local school  
41 administrative unit shall develop program plans to meet the  
42 educational requirements of children with ~~special needs~~disabilities and

1 each local human services agency shall develop program plans to meet  
2 the human service requirements of children with ~~special~~  
3 ~~needs~~disabilities in accordance with program standards and in a  
4 planning format as shall be prescribed by the State Board of Education  
5 and the Department of Health and Human Services respectively.

6 The General Assembly intends that the educational program and  
7 human service program requirements of Session Laws 1973, Chapter  
8 1293, shall be realized no later than June 30, 1982. The General  
9 Assembly further intends that currently imposed barriers to  
10 educational and human service opportunities for children with ~~special~~  
11 ~~needs~~disabilities by reason of a single standardized test, income,  
12 federal regulations, conflicting statutes, or any other barriers are  
13 hereby abrogated; except that with respect to barriers caused by reason  
14 of income, it shall be permissible for the State or any local education  
15 agency or local human services agency to charge fees for special  
16 services rendered, or special materials furnished to a child with ~~special~~  
17 ~~needs~~disabilities, his parents, guardian or persons standing in loco  
18 parentis unless the imposition of such fees would prevent or  
19 substantially deter the child, his parents, guardian, or persons standing  
20 in loco parentis from availing themselves of or receiving such services  
21 or materials.

- 22 (4) It is recognized that children have a variety of characteristics and  
23 needs, all of which must be considered if the potential of each child is  
24 to be realized; that in order to accomplish this the State must develop a  
25 full range of service and education programs, and that a program must  
26 actually benefit a child or be designed to benefit a particular child in  
27 order to provide such child with appropriate educational and service  
28 opportunities. The General Assembly requires that all programs  
29 employ least restrictive alternatives as shall be defined by the  
30 Departments of Public Instruction and Health and Human Services.

31 "Part 10. State and Local Relationships.

32 **"§ 115C-139. Interlocal cooperation.**

33 (a) The Board, any two or more local educational agencies ~~and any such agency~~  
34 ~~and any State department, agency, or division having responsibility for the education,~~  
35 ~~treatment or habilitation of children with special needs are authorized to~~ may enter into  
36 interlocal cooperation undertakings pursuant to the provisions of Chapter 160A, Article  
37 20, Part 1 of the General Statutes or into undertakings with a State agency such as the  
38 Departments of Public Instruction, Health and Human Services, Juvenile Justice and  
39 Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the  
40 purpose of providing for the special education and related services, treatment or  
41 habilitation of such children within the jurisdiction of the agency or unit, and shall do so  
42 when it itself is unable to provide the appropriate public special education or related

1 services for these children. In entering into such undertakings, the local agency and  
2 State department, agency, or division shall also contract to provide the special education  
3 or related services that are most educationally appropriate to the children with ~~special~~  
4 ~~needs~~disabilities for whose benefit the undertaking is made, and provide these services  
5 by or in the local agency unit or State department, agency, or division located in the  
6 place most convenient to these children.

7 ~~(b) Local educational agencies may establish special education and related~~  
8 ~~programs for children with special needs~~~~saged birth through four and 19 through 21~~  
9 ~~inclusive.~~

10 **"§ 115C-140. Contracts with private service-providers.**

11 ~~State departments, agencies and divisions and local~~ Local educational agencies  
12 furnishing special education and related services to children with ~~special~~  
13 ~~needs~~disabilities may contract with private special education facilities or service  
14 providers to furnish such services as the public providers are unable to furnish. Private  
15 providers and private facilities shall meet the standards established by the Board. No  
16 ~~contract between any public and private service provider shall be effective until it has~~  
17 ~~received the prior written approval of the Board. The Board shall not withhold its~~  
18 ~~approval of the contract unless the private facilities and providers do not meet the~~  
19 ~~Board's standards established pursuant to G.S. 115C 110(a), (b)(5), and (d)(2).~~

20 **"§ 115C-140.1. Cost of education of children in group homes, foster homes, etc.**

21 (a) Notwithstanding the provisions of any other statute and without regard for the  
22 place of domicile of a parent or guardian, the cost of a free appropriate public education  
23 for a child with ~~special needs~~disabilities who is placed in or assigned to a group home,  
24 foster home or other similar facility, pursuant to State and federal law, shall be borne by  
25 the local board of education in which the group home, foster home or other similar  
26 facility is located. Nothing in this section obligates any local board of education to bear  
27 any cost for the care and maintenance of a child with ~~special needs~~disabilities in a group  
28 home, foster home or other similar facility.

29 (b) The State Board of Education shall use State and federal funds appropriated  
30 for children with ~~special needs~~disabilities to establish a reserve fund to reimburse local  
31 boards of education for the education costs of children assigned to group homes or other  
32 facilities as provided in subsection (a) of this section.

33 "Part 11. Rules and Regulations.

34 **"§ 115C-141. Board rules and regulations.**

35 The Board shall adopt rules and regulations for the administration of this Article.  
36 The Board shall provide technical assistance to the various concerned agencies at their  
37 request.

38 "Part 12. Nonreduction Provision.

39 **"§ 115C-142. Nonreduction.**

40 Notwithstanding any of the other provisions of this Article, it is the intent of the  
41 General Assembly that funds appropriated by it for the operation of programs of special  
42 education and related services by local school administrative units not be reduced;

1 rather, that adequate funding be made available to meet the special educational and  
2 related services needs of children with ~~special needs;~~disabilities, without regard to  
3 which State or local department, agency, or unit has the child in its care, custody,  
4 control, or program.

5 "Part 13. Budget Analysis and Departmental Funding.

6 "§ 115C-143: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1282, s. 29.

7 "§ 115C-144: Repealed by Session Laws 1997-18, s. 7.

8 "§ 115C-145. **Allocation of federal funds.**

9 At such time as any federal ~~moneys~~funds for the special education and related  
10 services for children with ~~special needs~~disabilities are made available, these funds shall  
11 be allocated according to a formula designed by the Board ~~not inconsistent~~consistent  
12 with federal laws and regulations. ~~Such formula shall insure equitable distribution of~~  
13 ~~resources based upon the number of children with special needs served by the respective~~  
14 ~~agencies, and shall be implemented as funds are made available from federal and State~~  
15 ~~appropriations.~~

16 "Part 14. ~~Handicapped Children,~~Children With Disabilities, Ages Three to Five.

17 "§ 115C-146.1. **Definitions.**

18 The term 'preschool ~~handicapped children~~children with disabilities' ~~means all~~  
19 ~~handicapped children;~~includes without limitation all three- and four-year olds, and those  
20 five-year olds ineligible for kindergarten:

- 21 (1) Who have reached their third birthday and whose parents have  
22 requested services from the public schools, which services shall start  
23 no later than ~~the beginning of the school year immediately following~~  
24 ~~the children's third birthday;~~
- 25 (2) Who are not eligible to enroll in public kindergarten; and
- 26 (3) Who, because of permanent or temporary mental, physical, or  
27 emotional ~~handicaps,~~disabilities, need special education and related  
28 services in order to prepare them to benefit from the educational  
29 programs provided by the public schools, beginning with kindergarten.  
30 This term includes children who are mentally ~~retarded,~~disabled,  
31 specific learning disabled, ~~seriously~~emotionally  
32 ~~disturbed,~~behaviorally emotionally disabled, autistic, ~~cerebral palsied,~~  
33 orthopedically impaired, hearing impaired, speech-language impaired,  
34 ~~blind or deaf-blind,~~ traumatic brain injured, visually impaired, ~~multiply~~  
35 ~~handicapped,~~multihandicapped, or developmentally delayed, or other  
36 health impaired. All evaluations performed pursuant to this Part shall  
37 be appropriate to the individual child's age and development.

38 "§ 115C-146.2. **Entitlement to services.**

39 Preschool ~~handicapped children~~ with disabilities are entitled, at no cost to their  
40 parents or guardians, to individualized programs specifically designed to meet their  
41 unique needs for special education and related services.

42 "§ 115C-146.3. **Obligation to provide services.**

1 (a) The General Assembly finds:

- 2 (1) That preschool ~~handicapped~~-children with disabilities will benefit from  
3 the special education and related services required by this Part;  
4 (2) That the General Assembly has evaluated the known needs of the State  
5 and has endeavored to satisfy those needs in comparison to the social  
6 and economic problems of the State;  
7 (3) That the funds appropriated to serve these preschool ~~handicapped~~  
8 children with disabilities are a reasonable amount to provide such  
9 children with special education and related services; and  
10 (4) That, therefore, (i) State funds appropriated to implement this Part are  
11 the only State funds for public schools that may be used to provide  
12 special education and related services to preschool ~~handicapped~~  
13 children with disabilities; and (ii) preschool ~~handicapped~~-children with  
14 disabilities will continue to be served by all other State funds they are  
15 otherwise entitled to.

16 (b) The State Board of Education shall cause local school administrative units to  
17 make available special education and related services to all preschool ~~handicapped~~  
18 children with disabilities whose parents or guardians request these services.

19 (c) State funds appropriated to implement the provisions of this Part shall be used  
20 to supplement and not supplant existing federal, State, and local funding for the public  
21 schools.

22 (d) Related services provided under this Part shall be provided by qualified  
23 services providers. The term 'qualified services provider' means a person who meets  
24 State standards for licensure or State Board of Education standards for certification for a  
25 specific profession or discipline.

26 To the extent that the State Board of Education standards include provisions for  
27 certification that are less than the standard for certification or licensure for a specific  
28 profession, the Department of Public Instruction may certify individuals on a temporary  
29 or provisional basis, provided that the State Board of Education shall establish a  
30 comprehensive plan and reasonable time lines to ensure that only professionals who  
31 meet the appropriate standard for licensure or certification may be employed in the  
32 future.

33 **"§ 115C-146.4. Rules.**

34 The State Board of Education shall adopt rules implementing this Part, including  
35 rules necessary in order to receive federal funding pursuant to Part B of the Education  
36 of the Handicapped Act, 20 U.S.C. § 1400 et seq. These rules shall include a provision  
37 that, where a local ~~education agency~~-school administrative unit finds that appropriate  
38 services are available from other public agencies or private organizations, that local  
39 ~~education agency~~-school administrative unit shall, in accordance with G.S. 115C-149,  
40 ~~contract~~ consider contracting for those services rather than provide them directly. These  
41 ~~rules shall also include a provision that, where a local education agency finds that a~~

1 ~~child is already receiving appropriate services, that local education agency shall~~  
2 ~~continue those services as long as appropriate."~~

3         **SECTION 2.** Chapter 115C of the General Statutes is amended by adding  
4 the following new Article to read:

5                                 "Article 9C.

6                                 "Pregnant Children.

7         "**§ 115C-150.13. Educational programs for pregnant children.**

8         Consistent with the mission of the public school community to challenge with high  
9 expectations each child to learn, to achieve, and to fulfill his or her potential, each local  
10 educational agency shall establish and implement educational programs for pregnant  
11 students that enable these students to successfully complete their public school  
12 education. The State Board of Education shall adopt rules specifically to address the  
13 preparation of these educational programs. These rules shall include specific standards  
14 for ensuring that the individual educational needs of each child are addressed,  
15 homebound educational services are provided when necessary and appropriate, and data  
16 regarding pregnant and parenting students' performance, school continuation, and  
17 dropout rates are collected and retained for use in developing programs for this  
18 population."

19         **SECTION 3.** There is appropriated from the General Fund to State Aid to  
20 Local School Administrative Units the sum of five hundred thousand dollars (\$500,000)  
21 for the 2001-2002 fiscal year to implement this act.

22         **SECTION 4.** This act becomes effective July 1, 2001.