

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH30045-LE-90A (2/26)

Short Title: Children With Disabilities/Federal Law.-AB (Public)

Sponsors: Representatives Warren, Bell, and Preston (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALIGN STATE LAW WITH FEDERAL LAW ON STUDENTS WITH
DISABILITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-106(b) reads as rewritten:

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

SECTION 2. G.S. 115C-107 reads as rewritten:

"§ 115C-107. **Children can learn.**

The General Assembly finds that all children with ~~special-needs-disabilities~~ are capable of ~~benefitting~~ benefiting from ~~appropriate programs of special education and training and that they have the ability to be educated and trained and to learn and develop~~ access to the general curriculum and are best educated in the least restrictive environment. Accordingly, the State has a duty to provide them with a free appropriate public education."

1 **SECTION 3.(a)** G.S. 115C-108 is repealed.

2 **SECTION 3.(b)** Part 1 of Article 9 of Chapter 115C of the General Statutes
3 is amended by adding a new section to read:

4 "§ 115C-108.1. Definitions.

5 As used in this section:

6 (1) The term "parent" means a parent, a guardian, a person acting in the
7 place of the parent, such as a grandparent or stepparent with whom the
8 student lives, a person who is legally responsible for the welfare of the
9 student, or a surrogate parent who has been appointed in accordance
10 with Section 1513.

11 The term does not include the State if the child is a ward of the
12 State. A foster parent may act as a parent if:

13 a. The natural parents' authority to make educational decisions on
14 the child's behalf has been terminated under State law; and

15 b. The foster parent:

16 1. Has a long-term parental relationship with the child;

17 2. Is willing to make educational decisions; and

18 3. Has no interest that would conflict with the interest of
19 the child.

20 (2) "Related services" means transportation, and such developmental,
21 corrective, and other supportive services (including speech pathology
22 and audiology; orientation and mobility services; psychological
23 services; physical and occupational therapy; recreation, including
24 therapeutic recreation; social work services; medical and counseling
25 services, including rehabilitation counseling) as may be required to
26 assist a child with a disability to benefit from special education, and
27 includes the early identification and assessment of disabling conditions
28 in children. Medical services shall be for diagnostic and evaluation
29 purposes only. A student who does not require special education is not
30 eligible for a related service funded under this program.

31 a. "Audiology" includes:

32 1. Identification of children with hearing loss and middle
33 ear dysfunction;

34 2. Determination of the range, nature, and degree of
35 hearing loss, including referral for medical or other
36 professional attention for the habilitation of hearing;

37 3. Provision of habilitative activities, such as language
38 habilitation, auditory training, speech reading (lip-
39 reading), hearing aid orientation, and speech
40 conservation;

41 4. Creation and administration of programs for prevention
42 of hearing loss;

43 5. Counseling and guidance of pupils, parents, and teachers
44 regarding hearing loss; and

- 1 6. Determination of the child's need for group and
2 individual amplification, selecting and fitting an
3 appropriate aid, and evaluating the effectiveness of
4 amplification.
- 5 b. "Counseling services" means services provided by licensed
6 social workers, psychologists, guidance counselors, or other
7 qualified personnel.
- 8 c. "Early identification" means the implementation of a formal
9 plan for identifying a disability as early as possible in a child's
10 life.
- 11 d. "Medical services" means services provided by a licensed
12 physician or other appropriately trained and/or supervised
13 health provider to determine a child's medically related
14 disability which results in the child's need for special education
15 and related services.
- 16 e. "Occupational therapy" is a service provided by a licensed
17 occupational therapist to address the functional needs of an
18 individual as they relate to sensory, motor, postural, and
19 emotional development, adaptive behavior and play, and the
20 performance of self-help skills. These services are designed to
21 develop, improve, restore, or maintain the individual's
22 functional ability to perform tasks in educational settings. In an
23 educational setting, occupational therapy services are provided
24 to enable an identified student to benefit from special education
25 in the least restrictive environment. Occupational therapy
26 services may include:
- 27 1. Identification, screening, evaluation, intervention, and
28 consultation;
- 29 2. Adaptation of environments, both human and physical,
30 and selection, design, and fabrication of assistive and
31 orthotic devices and other assistive technology to
32 facilitate development and promote the acquisition of
33 functional skills so that the child can perform tasks in the
34 least restrictive environment;
- 35 3. Prevention or minimization of the impact of initial or
36 further impairment, delay in development, or loss of
37 functional ability; and
- 38 4. Provision of in-service education and information to
39 families, school personnel, and community and State
40 agencies to assist with problem solving, program
41 planning, and priority setting.
- 42 f. "Orientation and Mobility" means services provided by
43 qualified personnel to enable students who are blind or visually
44 impaired to travel safely and independently and to remain

1 oriented to a wide variety of both familiar and unfamiliar indoor
2 and outdoor environments. For young children, orientation and
3 mobility is teaching concept development as it relates to body
4 movement, spatial awareness, knowledge of the environment,
5 attitude toward independence, and travel skills.

6 g. "Parent counseling and training" means assisting parents in
7 understanding the special needs of their child and providing
8 parents with information about child development. For
9 preschool children with disabilities, parent counseling and
10 training includes family services which would assist parents in
11 securing support that affect the child's development.

12 h. "Physical therapy" is a service provided by a licensed physical
13 therapist and is concerned with prevention of physical
14 disabilities and with providing rehabilitation services to
15 individuals with disabilities resulting from prenatal causes, birth
16 trauma, illness, or injury. These services are designed to
17 develop or restore neuromuscular and/or sensorimotor
18 functions, control postural deviations to minimize disabilities,
19 and to develop and to maintain maximal performance levels
20 within the individual's physical capabilities. In an educational
21 setting, physical therapy services are provided to enable an
22 identified student to benefit from special education in the least
23 restrictive environment. Physical therapy services may include:

- 24 1. Development and maintenance of an individual student's
25 physical potential for independence and safety in
26 educationally related activities;
- 27 2. Modification and adaptation of the student's physical
28 environment so that the student may benefit from special
29 education;
- 30 3. Provision of in-service training for school personnel;
- 31 4. Communication with State and community agencies;
- 32 5. Education for parents or guardians; and
- 33 6. Involvement in total program planning for exceptional
34 children.

35 i. "Psychological services" include:

- 36 1. Administering psychological and educational tests, and
37 other procedures such as observations and interviews, in
38 order to determine a student's strengths and educational,
39 social, behavioral and/or developmental needs. For
40 preschool children, psychological assessment may
41 include administering psychological tests and/or
42 criterion-referenced, curriculum-based and other
43 educational tests, as well as conducting other assessment
44 procedures such as observations, interviews, structured

- 1 interactions, and play assessments as deemed appropriate
2 by the psychologist;
- 3 2. Interpreting assessment results;
4 3. Obtaining, integrating, and interpreting information
5 about a child's behavior and environmental conditions
6 related to learning and development;
7 4. Consulting with parents, teachers, and other school
8 personnel in planning programs and services to meet the
9 identified needs of children, including, but not limited to,
10 placement, effective learning/teaching strategies, and
11 personal and social skills;
12 5. Planning and managing a program of psychological
13 services including psychological counseling for children
14 and parents;
15 6. Referring children and families to community agencies
16 and services when appropriate;
17 7. Screening and early identification of children with
18 disabilities;
19 8. Developing strategies for the prevention of learning and
20 behavior problems; and
21 9. Assisting in developing positive behavioral strategies.
- 22 j. "Recreation" includes:
23 1. Assessment of leisure functions;
24 2. Therapeutic recreation services;
25 3. Recreation programs in schools and community
26 agencies; and
27 4. Leisure education.
- 28 k. "School health services" are services provided by a qualified
29 school nurse or other qualified person.
- 30 l. "Social work services in schools" include:
31 1. Preparing a social or developmental history for a child
32 with a disability;
33 2. Group and individual counseling with the child and
34 family;
35 3. Working with those problems in a child's living situation
36 (home, school, and community) that affect the child's
37 adjustment in school;
38 4. Mobilizing school and community resources to enable
39 the child to receive benefit from his or her educational
40 program; and
41 5. Assisting in developing positive behavioral intervention
42 strategies.
- 43 m. "Speech-language pathology" includes:

1. Identification of children with speech-language disorders;
 2. Diagnosis and appraisal of specific speech-language disorders;
 3. Referral for medical or other professional attention necessary for the habilitation of speech-language disorders;
 4. Provision of speech-language services for the habilitation or prevention of communicative disorders; and
 5. Counseling and guidance of parents, children, and teachers regarding speech-language disorders.
- n. "Transportation" includes:
1. Travel to and from school and between schools;
 2. Travel in and around school buildings; and
 3. Specialized equipment (such as special or adaptive buses, lifts, and ramps) if required to provide special transportation for a child with a disability.
- (3) Screening consists of first-step assessment procedures aimed at selecting students who may have special needs. Two separate components of screening may be identified:
- a. Mass screening or sweep screening is the selection of children who may need services such as special education, related services, special health services, or sensory aids in order to achieve full learning potential. These individuals will need follow-up to identify specific academic and behavioral or developmental needs by additional evaluation processes. Mass screening or sweep screening may be accomplished through the administration of such programs as:
1. School-wide achievement testing;
 2. School-wide health and sensory testing;
 3. Early childhood and kindergarten testing; and
 4. Class-wide surveys and observations.
- For preschool children, screening also may be carried out by the public health departments, developmental evaluation centers, mental health centers, and developmental programs (e.g., Head Start).
- b. Individual screening is the identification of children whose specific academic, behavioral, or developmental problem areas may need further in-depth evaluation. Individual screening should more accurately select those students who need further consideration for special school services, which may include special education and related services."

SECTION 4. G.S. 115C-109 reads as rewritten:

1 **"§ 115C-109. Definition of children with ~~special needs~~ disabilities.**

2 The term "children with special needs" includes, without limitation, all children from
3 age five through age 20 who because of permanent or temporary mental, physical or
4 emotional handicaps need special education, are unable to have all their needs met in a
5 regular class without special education or related services, or are unable to be
6 adequately educated in the public schools. It includes those who are mentally retarded,
7 epileptic, learning disabled, cerebral palsied, seriously emotionally disturbed,
8 orthopedically impaired, autistic, multiply handicapped, pregnant, hearing impaired,
9 speech impaired, blind or visually impaired, and other health impaired. disabilities"
10 includes, without limitation, all children who, because of permanent or temporary
11 mental, physical, or emotional disabilities, need special education, are unable to have all
12 their educational needs met in a regular class without special education and related
13 services, or are unable to be adequately educated in the public schools. It includes those
14 who are autistic, behaviorally-emotionally disabled, deaf-blind, hearing impaired,
15 mentally disabled, multihandicapped, orthopedically impaired, other health impaired,
16 pregnant, specific-learning disabled, speech-language impaired, traumatic brain injured
17 and visually impaired. The term "preschool children with disabilities" includes, without
18 limitation, all 3- and 4-year-old children and those 5-year-old children who are
19 ineligible for kindergarten and who because of permanent or temporary cognitive,
20 communication, social/emotional and/or adaptive disabilities are unable to have all of
21 their developmental needs met in a natural environment without special education and
22 related services. Preschool children with disabilities become eligible for services upon
23 reaching their third birthday."

24 **SECTION 5.** G.S. 115C-110 reads as rewritten:

25 **"§ 115C-110. Services mandatory; single-agency responsibility; State and local**
26 **plans; census and registration.**

27 (a) The Board shall cause to be provided by all local school administrative units
28 and by all other State and local governmental agencies providing special education
29 services or having children with ~~special needs~~ disabilities in their care, custody,
30 management, jurisdiction, control, or programs, special education and related services
31 appropriate to all children with ~~special needs~~ disabilities. In this regard, all local school
32 administrative units and all other State and local governmental agencies providing
33 special education and related services shall explore available local resources and
34 determine whether the services are currently being offered by an existing public or
35 private agency.

36 When a specified special education or related service is being offered by a local
37 public or private resource, any unit or agency described above shall negotiate for the
38 purchase of that service or shall present full consideration of alternatives and its
39 recommendations to the Board. In this regard, a new or additional program for special
40 education or related services shall be developed with the approval of the Board only
41 when that service is not being provided by existing public or private resources or the
42 service cannot be purchased from existing providers. Further, the Board shall support
43 and encourage joint and collaborative special education planning and programming at
44 local levels to include local administrative units and the programs and agencies of the

1 Departments of Health and Human Services, Correction, and Juvenile Justice and
2 Delinquency Prevention.

3 The jurisdiction of the Board with respect to the design and content of special
4 education programs or related services for children with ~~special-needs~~disabilities
5 extends to and over the Department of Health and Human Services, the Department of
6 Juvenile Justice and Delinquency Prevention, and the Department of Correction.

7 All provisions of this Article that are specifically applicable to local school
8 administrative units also are applicable to the Department of Health and Human
9 Services, the Department of Juvenile Justice and Delinquency Prevention, and the
10 Department of Correction and their divisions and agencies; all duties, responsibilities,
11 rights and privileges specifically imposed on or granted to local school administrative
12 units by this Article also are imposed on or granted to the Department of Health and
13 Human Services, the Department of Juvenile Justice and Delinquency Prevention, and
14 the Department of Correction and their divisions and agencies. However, with respect to
15 children with ~~special-needs~~disabilities who are residents or patients of any
16 state-operated or state-supported residential treatment facility, including without
17 limitation, a school for the deaf, school for the blind, mental hospital or center, mental
18 retardation center, or in a facility operated by the Department of Juvenile Justice and
19 Delinquency Prevention, the Department of Correction or any of its divisions and
20 agencies, the Board shall have the power to contract with the Department of Health and
21 Human Services, the Department of Juvenile Justice and Delinquency Prevention, and
22 the Department of Correction for the provision of special education and related services
23 and the power to review, revise and approve any plans for special education and related
24 services to those residents.

25 The Departments of Health and Human Services, Correction, and Juvenile Justice
26 and Delinquency Prevention shall submit to the Board their plans for the education of
27 children with ~~special-needs~~disabilities in their care, custody, or control. The Board shall
28 have general supervision and shall set standards, by rule or regulation, for the programs
29 of special education to be administered by it, by local educational agencies, and by the
30 Departments of Health and Human Services, Correction, and Juvenile Justice and
31 Delinquency Prevention. The Board may grant specific exemptions for programs
32 administered by the Department of Health and Human Services, the Department of
33 Juvenile Justice and Delinquency Prevention, or the Department of Correction when
34 compliance by them with the Board's standards would, in the Board's judgment, impose
35 undue hardship on this department and when other procedural due process requirements,
36 substantially equivalent to those of G.S. 115C-116, are assured in programs of special
37 education and related services furnished to children with ~~special-needs~~disabilities served
38 by this department. Further, the Board shall recognize that inpatient and residential
39 special education programs within the Departments of Health and Human Services,
40 Correction, and Juvenile Justice and Delinquency Prevention may require more program
41 resources than those necessary for optimal operation of these programs in local school
42 administrative units.

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

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

- 6 (1) A census of the children with ~~special-needs~~disabilities in the State, as
7 required by subsection (j) of this section;
- 8 (2) A procedure for diagnosis and evaluation of each child;
- 9 (3) An inventory of the personnel and facilities available to provide
10 special education for these children;
- 11 (4) An analysis of the present distribution of responsibility for special
12 education between State and local educational agencies, together with
13 recommendations for any necessary or desirable changes in the
14 distribution of responsibilities;
- 15 (5) Standards for the education of children with ~~special-needs;~~disabilities;
- 16 (6) Programs and procedures for the development and implementation of a
17 comprehensive system of personnel development; and
- 18 (7) Any additional matters, including recommendations for amendment of
19 laws, changes in administrative regulations, rules and practices and
20 patterns of special organization, and changes in levels and patterns of
21 education financial support.

22 ~~(c) The Board shall annually submit amendments to or revisions of the plan
23 required by subsection (b) to the Governor and General Assembly and make it available
24 for public comment pursuant to subdivision (1) and for public distribution no less than
25 30 days before January 15 of each year. All such submissions shall set forth in detail the
26 progress made in the implementation of the plan.~~

27 (d) The Board shall adopt rules covering:

- 28 (1) The qualifications of and standards for certification of teachers,
29 teacher assistants, speech clinicians, school psychologists, and others
30 involved in the education and training of children with ~~special
31 needs;~~disabilities;
- 32 (2) Minimum standards for the individualized educational program for all
33 children with ~~special-needs other than for the pregnant children, and
34 for the educational program for the pregnant children, who receive
35 special education and related services; and~~disabilities; and
- 36 (3) Any other rules as may be necessary or appropriate for carrying out the
37 purposes of this Article. Representatives from the Departments of
38 Health and Human Services, Correction, and Juvenile Justice and
39 Delinquency Prevention shall be involved in the development of the
40 standards outlined under this subsection.

41 ~~(e) On or before October 15, each local educational agency shall report annually
42 to the Board the extent to which it is then providing special education for children with
43 special-needs. The annual report also shall detail the means by which the local~~

1 educational agency proposes to secure full compliance with the policy of this Article,
2 including the following:

- 3 (1) A statement of the extent to which the required education and services
4 will be provided directly by the agency;
- 5 (2) A statement of the extent to which standards in force pursuant to G.S.
6 115C-110(b)(5) and (d)(2) are being met by the agency; and
- 7 (3) The means by which the agency will contract to provide, at levels
8 meeting standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2),
9 all special education and related services not provided directly by it or
10 by the State.

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

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

17 (h) The annual report shall be a two-year plan for providing appropriate special
18 education and related services to children with special needs. The agency shall submit
19 the plan to the Board for its review, approval, modification, or disapproval. Unless
20 thereafter modified with approval of the Board, the plan shall be adhered to by the local
21 educational agency. The procedure for approving, disapproving, establishing, and
22 enforcing the plan shall be the same as that set forth for the annual plan. The long-range
23 plan shall include such provisions as may be appropriate for the following, without
24 limitation:

- 25 (1) Establishment of classes, other programs of instruction, curricula,
26 facilities, equipment, and special services for children with special
27 needs; and
- 28 (2) Utilization and professional development of teachers and other
29 personnel working with children with special needs.

30 (i) Each local educational agency shall provide free appropriate special
31 education and related services in accordance with the provisions of this Article for all
32 children with special-needs-disabilities who are residents of, or whose parents or
33 guardians are residents of, the agency's district, beginning with children aged five. No
34 matriculation or tuition fees or other fees or charges shall be required or asked of
35 children with special-needs-disabilities or their parents or guardians except those fees or
36 charges as are required uniformly of all public school pupils. The provision of free
37 appropriate special education within the facilities of the Department of Health and
38 Human Services and the Department of Juvenile Justice and Delinquency Prevention
39 shall not prevent that department from charging for other services or treatment.

40 (j) The Board shall require an annual census of children with special-needs,
41 disabilities, subdivided for "identified" and "suspected" children with special-needs,
42 disabilities, to be taken in each school year. Suspected children are those in the formal
43 process of being identified, evaluated or diagnosed as children with special-needs
44 disabilities. The census shall be conducted annually and shall be completed not later

1 than October 15, and shall be submitted to the Governor and General Assembly and be
2 made available to the public no later than January 15 annually.

3 In taking the census, the Board shall require the cooperation, participation, and
4 assistance of all local educational agencies and all other State and local governmental
5 departments and agencies providing or required to provide special education services to
6 children with ~~special needs,~~ disabilities, and those departments and agencies shall
7 cooperate and participate with and assist the Board in conducting the census.

8 The census shall include the number of children identified and suspected with
9 ~~special needs,~~ disabilities, their age, the nature of their disability, their county or city of
10 residence, their local school administrative unit residence, whether they are being
11 provided special educational or related services and if so by what department or agency,
12 whether they are not being provided special education or related services, the identity of
13 each department or agency having children with ~~special needs~~ disabilities in its care,
14 custody, management, jurisdiction, control, or programs, the number of children with
15 ~~special needs~~ disabilities being served by each department or agency, and such other
16 information or data as the Board shall require. The census shall be of children with
17 ~~special needs~~ disabilities between the ages of three and 21, inclusive.

18 (k) The Department shall monitor the effectiveness of individualized education
19 programs in meeting the educational needs of all children with ~~special needs other than~~
20 ~~pregnant children, and of educational programs in meeting the educational needs of the~~
21 ~~pregnant children.~~ disabilities.

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

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

31 (n) **(Effective July 1, 2003)** Each interpreter or transliterator employed by a local
32 educational agency, to provide services to hearing-impaired students, must annually
33 complete 15 hours of job-related training that has been approved by the local
34 educational agency."

35 **SECTION 6.** G.S. 115C-111 reads as rewritten:

36 "**§ 115C-111. Free appropriate education for all children with ~~special~~**
37 **needs. disabilities.**

38 No child with ~~special needs~~ disabilities between the ages specified by G.S. 115C-109
39 shall be denied a free appropriate public education or be prevented from attending the
40 public schools of the local educational agency in which he or his parents or legal
41 guardian resides or from which he receives services or from attending any other public
42 program of free appropriate public education because he is a child with ~~special needs.~~
43 disabilities. If it appears that a child should receive a program of free appropriate public
44 education in a program operated by or under the supervision of the Department of

1 Health and Human Services or the Department of Juvenile Justice and Delinquency
2 Prevention, the local educational agency shall confer with the appropriate Department
3 of Health and Human Services or Department of Juvenile Justice and Delinquency
4 Prevention staff for their participation and determination of the appropriateness of
5 placement in said program and development of the child's individualized education
6 program. The individualized education program may then be challenged under the due
7 process provisions of G.S. 115C-116. Every child with ~~special needs~~disabilities shall be
8 entitled to attend these nonresidential schools or programs and receive from them free
9 appropriate public education."

10 **SECTION 8.** G.S. 115C-113 reads as rewritten:

11 "**§ 115C-113. Diagnosis and evaluation; individualized education program.**

12 (a) Before taking any action described in subsection (b), below, each local
13 educational agency shall ~~cause a multi-disciplinary diagnosis and evaluation to be made~~
14 ~~of the child. The State Board of Education shall establish special, simplified procedures~~
15 ~~for the diagnosis and evaluation of the pregnant child, which procedures shall focus on~~
16 ~~the particular needs of the pregnant child and shall exclude those procedures which are~~
17 ~~not pertinent to the pregnant.~~ conduct evaluations and determine eligibility consistent
18 with federal regulations. The local educational agency shall use the diagnosis and
19 evaluation to determine if the child has ~~special needs~~disabilities, diagnose and evaluate
20 those needs, propose special education programs to meet those needs, and provide or
21 arrange to provide such programs. A multi-disciplinary diagnosis and evaluation is one
22 which includes, without limitation, medical (if necessary), psychological (if necessary)
23 and educational assessments and recommendations; such an evaluation may include any
24 other assessments as the Board may, by rule or regulation, require.

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

31 (b) An initial multi-disciplinary diagnosis and evaluation based on rules
32 developed by the Board shall be made before any such child is placed in a special
33 education program, removed from such a program and placed in a regular school
34 program, transferred from one type of special education program to another, or removed
35 from a school program for placement in a nonschool program, or otherwise tracked,
36 classified, or treated as a child with special needs program.

37 (c) Referral of any child shall be in writing, signed by the person requesting
38 diagnosis and evaluation, setting forth the reasons for the request; it shall be sent or
39 delivered to one of the following: the child's teacher, the principal of the school to
40 which the child is, has been or will be assigned, or the superintendent of the affected
41 local educational agency or his designee. The local educational agency shall send a
42 written notice to the parent or guardian describing the evaluation procedure to be
43 followed and requesting consent for the evaluation. If the parents or guardian consent,
44 the diagnosis and evaluation may be undertaken; if they do not, the local educational

1 agency may obtain a due process hearing pursuant to G.S. 115C-116 on the failure of
2 the parent or guardian to consent.

3 The local educational agency shall provide or cause to be provided, as soon as
4 possible after receiving consent for evaluation, a diagnosis and evaluation appropriate to
5 the needs of the child unless the parents or guardian have objected to such evaluation. If
6 at the conclusion of the evaluation, the child is determined to be a child with ~~special~~
7 ~~needs, disabilities,~~ the local educational agency shall within 30 calendar days convene an
8 individualized education program committee. The purpose of the meeting shall be to
9 propose the special education and related services for the child. An interpretation of the
10 multi-disciplinary diagnosis and evaluation will be made to the parent or guardian
11 during the meeting. The proposal shall set forth the specific benefits expected from such
12 a program, a method for monitoring the benefits, and a statement regarding conditions
13 which will be considered indicative of the child's readiness for participation in regular
14 classes.

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

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

26 The local educational agency shall keep a complete written record of all diagnostic
27 and evaluation procedures attempted, their results, the conclusions reached, and the
28 proposals made.

29 (d) The local educational agency shall furnish the results, findings, and
30 proposals, as described in the individualized education program based on the diagnosis
31 and evaluation to the parents or guardian in writing in the parents' or guardian's native
32 language or by their dominant mode of communication, prior to the parent or guardian
33 giving consent for initial placement in special education and related services. Prior
34 notice will be given to the parents or guardian by the local educational agency before
35 any change in placement.

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

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

1 (f) Each local educational agency shall prepare individualized educational
2 programs for all children found to be children with ~~special needs other than the pregnant~~
3 ~~children, and educational programs prescribed in subsection (h) of this section for the~~
4 ~~pregnant children.—disabilities.~~ The individualized educational program shall be
5 developed in conformity with ~~Public Law 94-142~~ federal law and the implementing
6 regulations issued by the United States Department of Education and shall be
7 implemented in conformity with timeliness set by that Department. The term
8 "individualized educational program" means a written statement for each such child
9 developed in any meeting by a representative of the local educational agency who shall
10 be qualified to provide, or supervise the provision of, specially designed instruction to
11 meet the unique needs of such children, the teacher, the parents or guardian of such
12 child, and, whenever appropriate, such child, which statement shall be based on ~~rules~~
13 ~~developed by the Board.~~ State Board procedures and policy. Each local educational
14 agency shall establish, or revise, whichever is appropriate, the individualized
15 educational program of each child with ~~special needs~~ disabilities each school year and
16 will then review and, if appropriate revise, its provisions periodically, but not less than
17 annually. In the facilities and programs of the Department of Health and Human
18 Services and the Department of Juvenile Justice and Delinquency Prevention, the
19 individualized educational program shall be planned in collaboration with those other
20 individuals responsible for the design of the total treatment or habilitation plan or both;
21 the resulting educational, treatment, and habilitation plans shall be coordinated,
22 integrated, and internally consistent.

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

24 (h) ~~Each local educational agency shall prepare educational programs for the~~
25 ~~pregnant children. The State Board of Education shall promulgate rules and regulations~~
26 ~~specifically to address the preparation of these educational programs, which rules and~~
27 ~~regulations shall include specific standards for ensuring that the individual educational~~
28 ~~needs of each child are addressed."~~

29 **SECTION 9.** G.S. 115C-113.1 reads as rewritten:

30 "**§ 115C-113.1. Surrogate parents.**

31 In the case of a child whose parent or guardian is unknown, whose whereabouts
32 cannot be determined after reasonable investigation, or who is a ward of the State, the
33 local educational agency shall appoint a surrogate parent for the child. The surrogate
34 parent shall be appointed by the local superintendent from a group of persons approved
35 by the Superintendent of Public Instruction, the Secretary of Health and Human
36 Services, and the Secretary of Juvenile Justice and Delinquency Prevention, list of
37 persons who are appropriately trained, but in no case shall the person appointed be ~~an~~
38 ~~employee of the local educational agency or directly involved in the education or care of~~
39 ~~the child.~~ a person ineligible under applicable law. The Superintendent shall ensure that
40 local educational agencies appoint a surrogate parent for every child in need of a
41 surrogate parent."

42 **SECTION 10.** G.S. 115C-114(a) reads as rewritten:

43 "(a) No local educational agency may release to any persons other than the
44 eligible student, his parents or guardian or any surrogate parent any records, data or

1 information on any child with ~~special-needs~~disabilities except (i) as permitted by the
2 prior written consent of the student, his parents or guardian or surrogate parent, (ii) as
3 required or permitted by federal law, (iii) school officials within the local education
4 agency who have legitimate educational interest, (iv) school officials of other local
5 educational agencies in which the student intends to enroll, or (v) certain authorized
6 representatives of the State and federal government who are determining eligibility of
7 the child for aid, as provided under Public Law 93-380 or other federal law."

8 **SECTION 11.** G.S. 115C-115(3) reads as rewritten:

9 "(3) If the placement of the child in a private school, out-of-state school or
10 a school in another local educational agency determined by the
11 Superintendent of Public Instruction to be the most cost-effective way
12 to provide an appropriate education to that child and the child is not
13 currently being educated by the Department of Health and Human
14 Services, the Department of Juvenile Justice and Delinquency
15 Prevention, or the Department of Correction, the State will bear a
16 portion of the cost of the placement of the child. The local school
17 administrative unit shall pay an amount equal to what it receives per
18 pupil from the State Public School Fund and from other State and
19 federal funds for children with ~~special-needs~~disabilities for that child.
20 The State shall pay the full cost of any remainder up to a maximum of
21 fifty percent (50%) of the total cost."

22 **SECTION 12.** G.S. 115C-116 reads as rewritten:

23 **"§ 115C-116. Notice of decisions; mediation, administrative review, and judicial**
24 **review of disagreements.**

25 (a) **Prior Notice.** – The parent, guardian, or surrogate parent of a child shall be
26 notified promptly when the local educational agency proposes to initiate or change, or
27 refuses to initiate or change, the identification, evaluation, or educational placement of a
28 child as a child with ~~special-needs~~disabilities. The written notice shall contain a full
29 explanation of all the procedural safeguards available to the parent, guardian, or
30 surrogate parent including the right to review the proposed decision, and a statement
31 offering the parent, guardian, or surrogate parent the opportunity for mediation. The
32 local educational agency shall document that all required notices have been sent to and
33 received by parents, guardians, or surrogate parents.

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

40 (1) **Purpose.** – The purpose of mediation is to clarify the concerns of the
41 parents and to resolve disputes.

42 (2) **Definitions.** – As used in this subsection, the following terms have the
43 following meanings:

- 1 a. "Dispute" means a disagreement between the parties that is
2 subject to review under subsection (c) of this section.
- 3 b. "Mediation" means an informal process conducted by a
4 mediator with the objective of helping parties voluntarily settle
5 their dispute.
- 6 c. "Mediator" means a neutral person who acts to encourage and
7 facilitate a resolution of a dispute.
- 8 d. "Parents" means parents, guardians, surrogate parents,
9 custodians, and eligible students.
- 10 e. "Parties" means the local educational agency and the parents.
- 11 (3) Nonadversarial. – The mediation shall be informal and nonadversarial
12 as provided in G.S. 150B-22.
- 13 (4) Rules of procedure. – The mediator is encouraged to follow applicable
14 procedures provided in G.S. 7A-38.1, G.S. 7A-38.2, and applicable
15 rules adopted by the Supreme Court under G.S. 7A-38.1. The mediator
16 may establish other procedures to facilitate an informal resolution of
17 the dispute. The mediator shall not render a decision or judgment as to
18 the merits of the dispute.
- 19 (5) Request for mediation. – Before a request for formal administrative
20 review is filed, mediation shall commence upon the request of either
21 party, so long as the other party consents.
- 22 (6) Selection of mediator. – The parties shall agree to the selection of the
23 mediator. The Exceptional Children Division of the Department of
24 Public Instruction shall maintain a list of mediators who are certified
25 or trained in resolving disputes under this subsection.
- 26 (7) Notice of right to mediation. – The local educational agency shall
27 notify parents of their right to request mediation under this subsection.
- 28 (8) Time periods tolled. – ~~Notwithstanding G.S. 150B-23, time~~Time
29 periods related to the filing of a formal administrative review or the
30 taking of any other action with respect to the dispute, including any
31 applicable statutes of limitations, are tolled upon the filing of a request
32 for mediation under this subsection until the mediation is completed or
33 the mediator declares an impasse.
- 34 (9) Good cause for continuance. – A good faith effort by both parties to
35 mediate the dispute is presumed to constitute good cause for a
36 continuance so long as the administrative law judge does not find that
37 the time delay for mediation would likely result in irreparable harm to
38 one of the parties or to the child.
- 39 (10) Inadmissibility of negotiations. – Evidence of statements made and
40 conduct occurring in a mediation shall not be subject to discovery and
41 shall be inadmissible in any proceeding in the action or other actions
42 on the same claim. However, no evidence otherwise discoverable shall
43 be inadmissible merely because it is presented or discussed in a
44 mediation. Mediators shall not be compelled in any civil proceeding to

1 testify or produce evidence concerning statements made and conduct
2 occurring in a mediation.

3 (11) Mediator's fees. – If mediation is requested before a request for formal
4 administrative review is filed, the local educational agency shall pay
5 the mediator's fees for one mediation session. If resolution is not
6 reached in that session, the parties must agree to continue the
7 mediation. The local educational agency shall pay any mediator fees
8 for subsequent mediation sessions unless the parties agree otherwise.

9 (12) Mediated settlement conference after a request for administrative
10 review. – In addition to mediation as provided by this subsection, the
11 parties may voluntarily participate in a mediated settlement conference
12 as provided by G.S. 150B-23.1.conference. The mediated settlement
13 conference shall not deny or delay a timely administrative review.

14 (13) Promotion of other settlement procedures. – The parties may agree to
15 use other dispute resolution methods or to use mediation in other
16 circumstances, including after a request for formal administrative
17 review is filed, to the extent permitted under State and federal law.

18 (c) Right of Review. – The parent, guardian, or surrogate parent may obtain
19 review of proposed decisions on the following grounds:

20 (1) The child has not been identified or has been incorrectly identified as a
21 child with ~~special needs; disabilities;~~

22 (2) The child's individualized education plan is not appropriate to meet his
23 needs;

24 (3) The child's individualized education plan is not being implemented; or

25 (4) The child is otherwise being denied a free, appropriate education.

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

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

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

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

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

39 (h) Decision of the Administrative Law Judge. – Following the hearing, the
40 administrative law judge shall make a decision regarding the issues set forth in
41 subsection (c). The decision shall contain findings of fact and conclusions of law.
42 Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of
43 the administrative law judge becomes final and not subject to further review unless
44 appealed to the Review Officer as provided in subsection (i). A copy of the

1 administrative law judge's decision shall be served upon each party and a copy shall be
2 furnished to the attorneys of record. The written notice shall contain a statement
3 informing the parties of the availability of appeal and the 30-day limitations period for
4 appeal as set forth in subsection (i).

5 (i) Review by Review Officer. – Any party aggrieved by the decision of the
6 administrative law judge may appeal that decision within 30 days after receipt of notice
7 of the decision by filing a written notice of appeal with the Superintendent of Public
8 Instruction. The State Superintendent of Public Instruction shall appoint a Review
9 Officer from a pool of review officers approved by the State Board of Education. A
10 Review Officer shall be an educator or other professional who is knowledgeable about
11 special education and who possesses such other qualifications as may be established by
12 the State Board of Education. The Review Officer may issue subpoenas upon his own
13 motion or upon a written request.

14 No person may be appointed as a Review Officer if that person is an employee of an
15 agency that has been involved in the education or care of the child whose parents have
16 filed the petition (including an employee or official of the State Department of
17 Education or the State Board of Education) or if the person is or has been employed by
18 the local board of education responsible for the education or care of the child whose
19 parents have filed the petition. The decision of the Review Officer shall contain findings
20 of fact and conclusions of law and becomes final unless an aggrieved party brings a
21 civil action pursuant to subsection (k). A copy of the decision shall be served upon each
22 party and a copy shall be furnished to the attorneys of record. The written notice shall
23 contain a statement informing the parties of the right to file a civil action and the 30-day
24 limitations period for filing a civil action pursuant to subsection (k).

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

- 29 (1) To provide a child with appropriate education;
- 30 (2) To place a child in a private school that is approved to provide special
31 education and that can provide the child an appropriate education; or
- 32 (3) To reimburse parents for reasonable private school placement costs in
33 accordance with the provisions of G.S. 115C-115 when it is
34 determined that the local educational agency did not offer or provide
35 the child with appropriate education and the private school in which
36 the parent, guardian, or surrogate parent placed the child was an
37 approved school and did provide the child an appropriate education.

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

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

1 **SECTION 13.** G.S. 115C-122 reads as rewritten:

2 "**§ 115C-122. Early childhood development program; evaluation and placement of**
3 **children.**

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

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

21 (2) The State requires a system of educational opportunities for all
22 children with ~~special-needs~~disabilities and requires the identification
23 and evaluation of the needs of children and the adequacy of various
24 education programs before placement of children, and shall provide for
25 periodic evaluation of the benefits of programs to the individual child
26 and the nature of the child's needs thereafter.

27 (3) The State shall prevent denial of equal educational and service
28 opportunity on the basis of national origin, sex, economic status, race,
29 religion, and physical, mental, social or emotional ~~handicap~~disability
30 in the provision of services to any child. Each local school
31 administrative unit shall develop program plans to meet the
32 educational requirements of children with ~~special-needs~~disabilities and
33 each local human services agency shall develop program plans to meet
34 the human service requirements of children with ~~special~~
35 ~~needs~~disabilities in accordance with program standards and in a
36 planning format as shall be prescribed by the State Board of Education
37 and the Department of Health and Human Services respectively.

38 The General Assembly intends that the educational program and
39 human service program requirements of Session Laws 1973, Chapter
40 1293, shall be realized no later than June 30, 1982. The General
41 Assembly further intends that currently imposed barriers to
42 educational and human service opportunities for children with ~~special~~
43 ~~needs~~disabilities by reason of a single standardized test, income,
44 federal regulations, conflicting statutes, or any other barriers are

1 hereby abrogated; except that with respect to barriers caused by reason
2 of income, it shall be permissible for the State or any local education
3 agency or local human services agency to charge fees for special
4 services rendered, or special materials furnished to a child with ~~special~~
5 ~~needs, disabilities,~~ his parents, guardian or persons standing in loco
6 parentis unless the imposition of such fees would prevent or
7 substantially deter the child, his parents, guardian, or persons standing
8 in loco parentis from availing themselves of or receiving such services
9 or materials.

- 10 (4) It is recognized that children have a variety of characteristics and
11 needs, all of which must be considered if the potential of each child is
12 to be realized; that in order to accomplish this the State must develop a
13 full range of service and education programs, and that a program must
14 actually benefit a child or be designed to benefit a particular child in
15 order to provide such child with appropriate educational and service
16 opportunities. The General Assembly requires that all programs
17 employ least restrictive alternatives as shall be defined by the
18 Departments of Public Instruction and Health and Human Services."

19 **SECTION 14.** G.S. 115C-139 reads as rewritten:

20 **"§ 115C-139. Interlocal cooperation.**

21 (a) The Board, any two or more local educational agencies and any such agency
22 and any State department, agency, or division having responsibility for the education,
23 treatment or habilitation of children with ~~special needs~~disabilities are authorized to enter
24 into interlocal cooperation undertakings pursuant to the provisions of Chapter 160A,
25 Article 20, Part 1 of the General Statutes or into undertakings with a State agency such
26 as the Departments of Public Instruction, Health and Human Services, Juvenile Justice
27 and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the
28 purpose of providing for the special education and related services, treatment or
29 habilitation of such children within the jurisdiction of the agency or unit, and shall do so
30 when it itself is unable to provide the appropriate public special education or related
31 services for these children. In entering into such undertakings, the local agency and
32 State department, agency, or division shall also contract to provide the special education
33 or related services that are most educationally appropriate to the children with ~~special~~
34 ~~needs~~disabilities for whose benefit the undertaking is made, and provide these services
35 by or in the local agency unit or State department, agency, or division located in the
36 place most convenient to these children.

37 (b) Local educational agencies may establish special education and related
38 programs for children with ~~special needs~~disabilities aged birth through four and 19
39 through 21 inclusive."

40 **SECTION 15.** G.S. 115C-140 reads as rewritten:

41 **"§ 115C-140. Contracts with private service-providers.**

42 State departments, agencies and divisions and local educational agencies furnishing
43 special education and related services to children with ~~special needs~~disabilities may
44 contract with private special education facilities or service providers to furnish such

1 services as the public providers are unable to furnish. No contract between any public
2 and private service provider shall be effective until it has received the prior written
3 approval of the Board. The Board shall not withhold its approval of the contract unless
4 the private facilities and providers do not meet the Board's standards established
5 pursuant to G.S. 115C-110(a), (b)(5), and (d)(2)."

6 **SECTION 16.** G.S. 115C-140.1 reads as rewritten:

7 "**§ 115C-140.1. Cost of education of children in group homes, foster homes, etc.**

8 (a) **(Effective until July 1, 2003)** Notwithstanding the provisions of any other
9 statute and without regard for the place of domicile of a parent or guardian, the cost of a
10 free appropriate public education for a child with ~~special-needs~~disabilities who is placed
11 in or assigned to a group home, foster home or other similar facility, pursuant to State
12 and federal law, shall be borne by the local board of education in which the group home,
13 foster home or other similar facility is located. Nothing in this section obligates any
14 local board of education to bear any cost for the care and maintenance of a child with
15 ~~special-needs~~disabilities in a group home, foster home or other similar facility.

16 (a) **(Effective July 1, 2003)** Notwithstanding the provisions of any other statute
17 and without regard for the place of domicile of a parent or guardian, the cost of a free
18 appropriate public education for a child with ~~special-needs~~disabilities who is placed in
19 or assigned to a group home, foster home or other similar facility, pursuant to State and
20 federal law, shall be borne by the local board of education in which the group home,
21 foster home or other similar facility is located. However, the local school administrative
22 unit in which a child is domiciled shall transfer to the local school administrative unit in
23 which the institution is located an amount equal to the actual local cost in excess of
24 State and federal funding required to educate that child in the local school
25 administrative unit for the fiscal year. Nothing in this section obligates any local board
26 of education to bear any cost for the care and maintenance of a child with ~~special~~
27 ~~needs~~disabilities in a group home, foster home or other similar facility.

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

32 **SECTION 17.** G.S. 115C-142 reads as rewritten:

33 "**§ 115C-142. Nonreduction.**

34 Notwithstanding any of the other provisions of this Article, it is the intent of the
35 General Assembly that funds appropriated by it for the operation of programs of special
36 education and related services by local school administrative units not be reduced;
37 rather, that adequate funding be made available to meet the special educational and
38 related services needs of children with ~~special-needs,~~disabilities, without regard to
39 which State or local department, agency, or unit has the child in its care, custody,
40 control, or program."

41 **SECTION 18.** G.S. 115C-145 reads as rewritten:

42 "**§ 115C-145. Allocation of federal funds.**

43 At such time as any federal moneys for the special education and related services for
44 children with ~~special-needs~~disabilities are made available, these funds shall be allocated

1 according to a formula designed by the Board not inconsistent with federal laws and
2 regulations. Such formula shall insure equitable distribution of resources based upon the
3 number of children with ~~special needs~~disabilities served by the respective agencies, and
4 shall be implemented as funds are made available from federal and State
5 appropriations."

6 **SECTION 19.** The title of Part 14 of Article 9 of Chapter 115C of the
7 General Statutes reads as rewritten:

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

9 **SECTION 20.** G.S. 115C-146.1 reads as rewritten:

10 "**§ 115C-146.1. Definitions.**

11 The term "preschool ~~handicapped children means all handicapped children:~~children
12 with disabilities" includes without limitation all three- and four-year-olds, and those
13 five-year-olds ineligible for kindergarten:

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

30 **SECTION 21.** G.S. 115C-146.2 reads as rewritten:

31 "**§ 115C-146.2. Entitlement to services.**

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

35 **SECTION 22.** G.S. 115C-146.3 reads as rewritten:

36 "**§ 115C-146.3. Obligation to provide services.**

37 (a) The General Assembly finds:

- 38 (1) That preschool ~~handicapped children~~ with disabilities will benefit from
39 the special education and related services required by this Part;
- 40 (2) That the General Assembly has evaluated the known needs of the State
41 and has endeavored to satisfy those needs in comparison to the social
42 and economic problems of the State;

1 (3) That the funds appropriated to serve these preschool ~~handicapped~~
2 children with disabilities are a reasonable amount to provide such
3 children with special education and related services; and

4 (4) That, therefore, (i) State funds appropriated to implement this Part are
5 the only State funds for public schools that may be used to provide
6 special education and related services to preschool ~~handicapped~~
7 ~~children;~~children with disabilities; and (ii) preschool ~~handicapped~~
8 children with disabilities will continue to be served by all other State
9 funds they are otherwise entitled to.

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

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

16 (d) Related services provided under this Part shall be provided by qualified
17 services providers. The term "qualified services provider" means a person who meets
18 State standards for licensure or State Board of Education standards for certification for a
19 specific profession or discipline.

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

27 **SECTION 23.** G.S. 115C-174.11(b)(2) reads as rewritten:

28 "(2) The tests shall be administered annually to all ninth grade students in
29 the public schools. Students who fail to attain the required minimum
30 standard for graduation in the ninth grade shall be given remedial
31 instruction and additional opportunities to take the test up to and
32 including the last month of the twelfth grade. Students who fail to pass
33 parts of the test shall be retested on only those parts they fail. ~~Students~~
34 ~~in the ninth grade who are enrolled in special education programs or~~
35 ~~who have been officially designated as eligible for participation in~~
36 ~~such programs may be excluded from the testing programs."~~

37 **SECTION 24.** G.S. 115C-81(b)(4) reads as rewritten:

38 "(4) Standards for student performance and promotion based on the
39 mastery of competencies, including standards for graduation, that take
40 into account children with ~~special needs~~ disabilities and, in particular,
41 include appropriate modifications;".

42 **SECTION 25.** G.S. 115C-105.25(b)(4) reads as rewritten:

43 "(b) Subject to the following limitations, local boards of education may transfer
44 and may approve transfers of funds between funding allotment categories:

1 ...

2 (4) Funds allocated for children with ~~special-needs,~~disabilities, for
3 students with limited English proficiency, and for driver's education
4 shall not be transferred.

5"

6 **SECTION 26.** G.S. 115C-238.29F(d)(4) reads as rewritten:

7 "(4) The school shall comply with policies adopted by the State Board of
8 Education for charter schools relating to the education of children with
9 ~~special-needs,~~disabilities."

10 **SECTION 27.** G.S. 115C-238.29H(a) reads as rewritten:

11 "(a) The State Board of Education shall allocate to each charter school:

12 (1) An amount equal to the average per pupil allocation for average daily
13 membership from the local school administrative unit allotments in
14 which the charter school is located for each child attending the charter
15 school except for the allocation for children with ~~special~~needs
16 ~~disabilities~~ and for the allocation for children with limited
17 English proficiency;

18 (2) An additional amount for each child attending the charter school who
19 is a child with ~~special-needs;~~disabilities; and

20 (3) An additional amount for children with limited English proficiency
21 attending the charter school, based on a formula adopted by the State
22 Board.

23 In accordance with G.S. 115C-238.29D(d), the State Board shall allow for annual
24 adjustments to the amount allocated to a charter school based on its enrollment growth
25 in school years subsequent to the initial year of operation.

26 In the event a child with ~~special-needs~~disabilities leaves the charter school and
27 enrolls in a public school during the first 60 school days in the school year, the charter
28 school shall return a pro rata amount of funds allocated for that child to the State Board,
29 and the State Board shall reallocate those funds to the local school administrative unit in
30 which the public school is located. In the event a child with ~~special-needs~~disabilities
31 enrolls in a charter school during the first 60 school days in the school year, the State
32 Board shall allocate to the charter school the pro rata amount of additional funds for
33 children with ~~special-needs,~~disabilities.

34 (a1) Funds allocated by the State Board of Education may be used to enter into
35 operational and financing leases for real property or mobile classroom units for use as
36 school facilities for charter schools and may be used for payments on loans made to
37 charter schools for facilities or equipment. However, State funds shall not be used to
38 obtain any other interest in real property or mobile classroom units. No indebtedness of
39 any kind incurred or created by the charter school shall constitute an indebtedness of the
40 State or its political subdivisions, and no indebtedness of the charter school shall
41 involve or be secured by the faith, credit, or taxing power of the State or its political
42 subdivisions. Every contract or lease into which a charter school enters shall include the
43 previous sentence. The school also may own land and buildings it obtains through
44 non-State sources."

1 **SECTION 28.** G.S. 115C-242 reads as rewritten:

2 "**§ 115C-242. Use and operation of school buses.**

3 Public school buses may be used for the following purposes only, and it shall be the
4 duty of the superintendent of the school of each local school administrative unit to
5 supervise the use of all school buses operated by such local school administrative unit
6 so as to assure and require compliance with this section:

- 7 (1) A school bus may be used for the transportation of pupils enrolled in
8 and employees in the operation of the school to which such bus is
9 assigned by the superintendent of the local school administrative unit.
10 Except as otherwise herein provided, such transportation shall be
11 limited to transportation to and from such school for the regularly
12 organized school day, and from and to the points designated by the
13 principal of the school to which such bus is assigned, for the receiving
14 and discharging of passengers. No pupil or employee shall be so
15 transported upon any bus other than the bus to which such pupil or
16 employee has been assigned pursuant to the provisions of this Article:
17 Provided, that children enrolled in a Headstart program which is
18 housed in a building owned and operated by a local school
19 administrative unit where school is being conducted may be
20 transported on public school buses, so long as the contractual
21 arrangements made cause no extra expense to the State: Provided
22 further, that children with ~~special-needs~~disabilities may be transported
23 to and from the nearest appropriate private school having a special
24 education program approved by the State Board of Education if the
25 children to be transported are or have been placed in that program by a
26 local school administrative unit as a result of the State or the unit's
27 duty to provide such children with a free appropriate public education.
- 28 (2) In the case of illness or injury requiring immediate medical attention
29 of any pupil or employee while such pupil or employee is present at
30 the school in which such pupil is enrolled or such employee is
31 employed, the principal of such school may, in his discretion, permit
32 such pupil or employee to be transported by a school bus to a doctor
33 or hospital for medical treatment, and may, in his discretion, permit
34 such other person as he may select to accompany such pupil.
- 35 (3) The board of education of any local school administrative unit may
36 operate the school buses of such unit one day prior to the opening of
37 the regular school term for the transportation of pupils and employees
38 to and from the school to which such pupils are assigned or in which
39 they are enrolled and such employees are employed, for the purposes
40 of the registration of students, the organization of classes, the
41 distribution of textbooks, and such other purposes as will, in the
42 opinion of the superintendent of the schools of such unit, promote the
43 efficient organization and operation of such public schools.

1 (4) A local board of education which elects to operate a school bus
2 transportation system, shall not be required to provide transportation
3 for any school employee, nor shall such board be required to provide
4 transportation for any pupil living within one and one half miles of the
5 school in which such pupil is enrolled.

6 (5) Local boards of education, under rules and regulations adopted by the
7 State Board of Education, may permit the use and operation of school
8 buses for the transportation of pupils and instructional personnel as the
9 board deems necessary to serve the instructional programs of the
10 schools. Included in the use permitted by this section is the
11 transportation of children with ~~special-needs~~disabilities, such as
12 mentally retarded children and children with physical defects, and
13 children enrolled in programs that require transportation from the
14 school grounds during the school day, such as special vocational or
15 occupational programs. On any such trip, a city or county-owned
16 school bus shall not be taken out of the State.

17 If State funds are inadequate to pay for the transportation approved
18 by the local board of education, local funds may be used for these
19 purposes. Local boards of education shall determine that funds are
20 available to such boards for the transportation of children to and from
21 the school to which they are assigned for the entire school year before
22 authorizing the use and operation of school buses for other services
23 deemed necessary to serve the instructional program of the schools.

24 Children with ~~special-needs~~disabilities may be transported to and
25 from the nearest appropriate private school having a special education
26 program approved by the State Board of Education if the children to be
27 transported have been placed in that program by a local school
28 administrative unit as a result of the State or the unit's duty to provide
29 such children with a free appropriate public education.

30 (6) School buses owned by a local board of education may be used for
31 emergency management purposes in any state of disaster or local state
32 of emergency declared under Chapter 166A of the General Statutes.
33 Under rules and regulations adopted by a local board of education, its
34 school buses may be used with its permission for the purpose of testing
35 emergency management plans; however, neither the State Board of
36 Education nor the local board of education shall be liable for the
37 operating cost, any compensation claims or any tort claims resulting
38 from the test.

39 (7) Uses authorized by G.S. 115C-243."

40 **SECTION 29.** G.S. 115C-250 reads as rewritten:

41 "**§ 115C-250. Authority to expend funds for transportation of children with ~~special~~**
42 **needs~~disabilities~~.**

43 (a) The State Board of Education and local boards of education may expend
44 public funds for transportation of handicapped children with ~~special-needs~~disabilities

1 who are unable because of their handicap to ride the regular school buses and who have
2 been placed in programs by a local school board as a part of its duty to provide such
3 children with a free appropriate education, including its duty under G.S. 115C-115. At
4 the option of the local board of education with the concurrence of the State Board of
5 Education, funds appropriated to the State Board of Education for contract
6 transportation of exceptional children may be used to purchase buses and minibuses as
7 well as for the purposes authorized in the budget. The State Board of Education shall
8 adopt rules and regulations concerning the construction and equipment of these buses
9 and minibuses.

10 The Departments of Health and Human Services, Juvenile Justice and Delinquency
11 Prevention, and Correction may also expend public funds for transportation of
12 handicapped children with ~~special-needs~~disabilities who are unable because of their
13 handicap to ride the regular school buses and who have been placed in programs by one
14 of these agencies as a part of that agency's duty to provide such children with a free
15 appropriate public education.

16 If a local area mental health center places a child with ~~special-needs~~disabilities in an
17 educational program, the local area mental health center shall pay for the transportation
18 of the child, if handicapped and unable because of the handicap to ride the regular
19 school buses, to the program.

20 (b) Funds appropriated for the transportation of children with ~~special~~
21 ~~needs~~disabilities may be used to pay transportation safety assistants employed in
22 accordance with the provisions of G.S. 115C-245(e) for buses to which children with
23 ~~special-needs~~disabilities are assigned."

24 **SECTION 30.** G.S. 115C-397.1 reads as rewritten:

25 **"§ 115C-397.1. Management and placement of disruptive students.**

26 If, after a teacher has requested assistance from the principal two or more times due
27 to a student's disruptive behavior, the teacher finds that the student's disruptive behavior
28 continues to interfere with the academic achievement of that student or other students in
29 the class, then the teacher may refer the matter to a school-based committee. The
30 teacher may request that additional classroom teachers participate in the committee's
31 proceedings. For the purposes of this section, the committee shall notify the student's
32 parent, guardian, or legal custodian and shall encourage that person's participation in the
33 proceedings of the committee concerning the student. A student is not required to be
34 screened, evaluated, or identified as a child with ~~special-needs~~disabilities under this
35 section. The committee shall review the matter and shall take one or more of the
36 following actions: (i) advise the teacher on managing the student's behavior more
37 effectively, (ii) recommend to the principal the transfer of the student to another class
38 within the school, (iii) recommend to the principal a multidisciplinary diagnosis and
39 evaluation of the student, (iv) recommend to the principal that the student be assigned to
40 an alternative learning program, or (v) recommend to the principal that the student
41 receive any additional services that the school or the school unit has the resources to
42 provide for the student. If the principal does not follow the recommendation of the
43 committee, the principal shall provide a written explanation to the committee, the
44 teacher who referred the matter to the committee, and the superintendent, of any actions

1 taken to resolve the matter and of the reason the principal did not follow the
2 recommendation of the committee.

3 This section shall be in addition to the supplemental to disciplinary action taken in
4 accordance with any other law. The recommendation of the committee is final and shall
5 not be appealed under G.S. 115C-45(c). Nothing in this section shall authorize a student
6 to refer a disciplinary matter to this committee or to have the matter of the student's
7 behavior referred to this committee before any discipline is imposed on the student."

8 **SECTION 31.** G.S. 7B-1301(d)(1) reads as rewritten:

9 "(d) Programs contracted for under this Article are intended to prevent abuse and
10 neglect of juveniles. Abuse and neglect prevention programs are defined to be those
11 programs and services which impact on juveniles and families before any substantiated
12 incident of abuse or neglect has occurred. These programs may include, but are not
13 limited to:

14 (1) Community-based educational programs on prenatal care, perinatal
15 bonding, child development, basic child care, care of children with
16 ~~special needs, disabilities,~~ and coping with family stress; and".

17 **SECTION 32.** G.S. 7B-3904 reads as rewritten:

18 **"§ 7B-3904. Medical assistance.**

19 (a) A child with ~~special needs-disabilities~~ who is a resident of this State who is
20 the subject of an adoption assistance agreement with another state shall be accepted as
21 being entitled to receive medical assistance certification from this State upon the filing
22 in the department of social services of the county in which the child resides a certified
23 copy of the adoption assistance agreement obtained from the adoption assistance state.

24 (b) The Division of Medical Assistance shall consider the holder of a medical
25 assistance certification under this section to be entitled to the same medical benefits
26 under the laws of this State as any other holder of a medical assistance certification and
27 shall process and make payment on claims on account of that holder in the same manner
28 and under the same conditions and procedures that apply to other recipients of medical
29 assistance.

30 (c) The provisions of this section apply only to medical assistance for children
31 under adoption assistance agreements from states that have entered into a compact with
32 this State under which the other state provides medical assistance to children with
33 ~~special needs-disabilities~~ under adoption assistance agreements made by this State."

34 **SECTION 33.** G.S. 108A-49(b) reads as rewritten:

35 "(b) Adoption assistance payments for certain adoptive children shall be granted
36 in accordance with the rules of the Social Services Commission to adoptive parents who
37 adopt a child eligible to receive foster care maintenance payments or supplemental
38 security income benefits; provided, that the child cannot be returned to his or her
39 parents; and provided, that the child has ~~special needs-disabilities~~ which create a
40 financial barrier to adoption. A county department of social services shall pay, at a
41 minimum, the monthly graduated adoption assistance payments for eligible children as
42 set by the General Assembly. A county department of social services may make
43 adoption assistance payments in excess of the monthly graduated rates set by the
44 General Assembly."

1 **SECTION 34.** G.S. 108A-70.22 reads as rewritten:

2 "**§ 108A-70.22. Allocation of federal and State funds for Program; consultation**
3 **with Joint Legislative Health Care Oversight Committee.**

4 The Department of Health and Human Services, after having consulted with and
5 received advice from the Joint Legislative Health Care Oversight Committee established
6 under G.S. 120-70.110, shall from total funds available to the Department for Program
7 implementation, allocate and adjust, as needed, funds to pay the North Carolina
8 Teachers' and State Employees' Major Medical Plan in accordance with G.S.
9 108A-70.23 and Part 5 of Article 3 of Chapter 135 of the General Statutes, and funds to
10 pay for eligible services provided for children with ~~special-needs~~disabilities in
11 accordance with G.S. 108A-70.23."

12 **SECTION 35.** G.S. 108A-70.23 reads as rewritten:

13 "**§ 108A-70.23. Services for children with ~~special-needs~~disabilities established;**
14 **definition; eligibility; services; limitation; recommendations; no**
15 **entitlement.**

16 (a) ~~{Special Needs Services Authorized. }~~Services Authorized. – The
17 Department shall, from federal funds received and State funds appropriated for the
18 Program, pay for services for children with ~~special-needs~~disabilities as authorized under
19 this section. As used in this section, the term "children with ~~special-needs~~disabilities"
20 or "~~special-needs child~~" means children who have been diagnosed as having one or
21 more of the following conditions which in the opinion of the diagnosing physician (i) is
22 likely to continue indefinitely, (ii) interferes with daily routine, and (iii) require
23 extensive medical intervention and extensive family management:

- 24 (1) Birth defect, including genetic, congenital, or acquired disorders;
- 25 (2) Developmental disability as defined under G.S. 122C-3;
- 26 (3) Mental or behavioral disorder; or
- 27 (4) Chronic and complex illnesses.

28 (b) Eligibility for Services. – In order to be eligible for services under this section
29 a ~~special-needs~~ child with disabilities must be enrolled in the Program.

30 (c) Services Provided. – The services authorized to be provided to children
31 eligible under this section are as follows:

- 32 (1) The same level of services as provided for ~~special-needs~~ children with
33 disabilities under the Medical Assistance Program as authorized in the
34 Current Operations Appropriations Act except that no services for
35 long-term care shall be provided under this section, and except that
36 services for respite care shall be provided only under emergency
37 circumstances; and
- 38 (2) Only those services eligible under this section that are not covered or
39 otherwise provided under Part 5 of Article 3 of Chapter 135 of the
40 General Statutes.

41 (d) Limitation. – Funds may be expended for services under this section only if
42 the ~~special-needs~~ child with disabilities is enrolled in the Program, the services provided
43 under this section are not provided under Part 5 of Article 3 of Chapter 135 of the

1 General Statutes, and the child meets the definition of a ~~special-needs~~ child with
2 disabilities under this section.

3 (e) Case Management Services. – The Department shall develop procedures for
4 the provision of case management services by the Department to eligible ~~special-needs~~
5 ~~children.~~ children with disabilities. Case management services shall be developed to
6 ensure to the maximum extent possible that services are provided in the most efficient
7 and effective manner considering the ~~special-needs~~ disabilities of the child. The cost of
8 providing case management services for children with ~~special-needs~~ disabilities shall be
9 paid from funds available for services under this section.

10 (f) Recommendations by Commission on Children With Special Health Care
11 Needs. – In implementing this section the Department shall consider the
12 recommendations of the Commission on Children With Special Health Care Needs
13 established under Article 71 of Chapter 143 of the General Statutes. The Department, in
14 consultation with the Commission on Children With Special Health Care Needs shall
15 develop procedures for providing respite care services under emergency circumstances.

16 (g) No Entitlement. – Nothing in this section shall be construed as entitling any
17 person to services under this section."

18 **SECTION 36.** G.S. 110-91(11) reads as rewritten:

19 **"§ 110-91. Mandatory standards for a license.**

20 All child care facilities shall comply with all State laws and federal laws and local
21 ordinances that pertain to child health, safety, and welfare. Except as otherwise
22 provided in this Article, the standards in this section shall be complied with by all child
23 care facilities. However, none of the standards in this section apply to the school-age
24 children of the operator of a child care facility but do apply to the preschool-age
25 children of the operator. Children 13 years of age or older may receive child care on a
26 voluntary basis provided all applicable required standards are met. The standards in this
27 section, along with any other applicable State laws and federal laws or local ordinances,
28 shall be the required standards for the issuance of a license by the Secretary under the
29 policies and procedures of the Commission except that the Commission may, in its
30 discretion, adopt less stringent standards for the licensing of facilities which provide
31 care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time
32 basis.

33 ...

34 (11) Staff Development. – The Commission shall adopt minimum standards
35 for ongoing staff development for facilities but limited to the following
36 topic areas:

- 37 a. Planning a safe, healthy learning environment;
- 38 b. Steps to advance children's physical and intellectual
39 development;
- 40 c. Positive ways to support children's social and emotional
41 development;
- 42 d. Strategies to establish productive relationships with families;
- 43 e. Strategies to manage an effective program operation;
- 44 f. Maintaining a commitment to professionalism;

- 1 g. Observing and recording children's behavior;
2 h. Principles of child growth and development; and
3 i. Learning activities that promote inclusion of children with
4 ~~special needs; disabilities.~~

5 These standards shall include annual requirements for ongoing staff
6 development appropriate to job responsibilities. A person may carry
7 forward in-service training hours that are in excess of the previous
8 year's requirement to meet up to one-half of the current year's required
9 in-service training hours.

10 "

11 **SECTION 37.** G.S. 143-318.14A(a)(13) reads as rewritten:

12 "(a) Except as provided in subsection (e) below, all official meetings of
13 commissions, committees, and standing subcommittees of the General Assembly
14 (including, without limitation, joint committees and study committees), shall be held in
15 open session. For the purpose of this section, the following also shall be considered to
16 be "commissions, committees, and standing subcommittees of the General Assembly":

17 ...

18 (13) The Commission on Children with ~~Special Needs; Disabilities;~~"

19 **SECTION 38.** This act is effective when it becomes law.