

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1908

Short Title: Rewrite Special Ed Laws. (Public)

Sponsors: Representatives Glazier, Farmer-Butterfield, Preston, Wiley (Primary Sponsors); Adams, Alexander, B. Allen, Carney, Fisher, Harrison, Insko, Luebke, Parmon, Vinson, Wainwright, and Weiss.

Referred to: Education, if favorable, Appropriations.

May 15, 2006

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS GOVERNING THE EDUCATION OF CHILDREN WITH SPECIAL NEEDS, AND TO MAKE AN APPROPRIATION.

The General Assembly of North Carolina enacts:

SECTION 1. Parts 1-3, 5-6, and 10-14 of Article 9 of Chapter 115C of the General Statutes are repealed.

SECTION 2. Article 9 of Chapter 115C of the General Statutes, as amended by Section 1 of this act, reads as rewritten:

"Article 9.

~~"Special Education-~~ Education of Children with Disabilities.

"Part 1A. General Provisions.

§ 115C-106.1. State goal.

The goal of the State is to provide full educational opportunity to all children with disabilities who reside in the State.

§ 115C-106.2. Purposes.

(a) The purposes of this Article are to (i) ensure that all children with disabilities ages three through 21 have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepares them for further education, employment, and independent living; (ii) ensure that the rights of these children and their parents are protected; and (iii) enable the State Board and local educational agencies to provide for the education of all children with disabilities.

(b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Article is to enable the State Board of Education and local educational agencies to implement IDEA in this State. If this Article is silent or conflicts with IDEA, and if IDEA has specific language that is mandatory, then IDEA controls.

1 **"§ 115C-106.3. Definitions.**

2 The following definitions apply in this Article:

- 3 (1) "Child with a disability" means a child with at least one disability who
4 because of that disability requires special education and related
5 services.
- 6 (2) "Disability" includes mental retardation; hearing impairment,
7 including deafness; speech or language impairment; visual
8 impairment, including blindness; serious emotional disturbance;
9 orthopedic impairment; autism; traumatic brain injury; other health
10 impairments, specific learning disability, or other disability as may be
11 required to be included under IDEA. For a child ages three through
12 seven, this term also includes developmental delay.
- 13 (3) "Dispute" means a disagreement between the parties.
- 14 (4) "Free appropriate public education" means special education and
15 related services that:
- 16 a. Are provided at public expense, under public supervision and
17 direction, and without charge;
- 18 b. Meet the standards of the State Board;
- 19 c. Include an appropriate preschool, elementary school, or
20 secondary school education in the State; and
- 21 d. Are provided in conformity with an individualized education
22 program.
- 23 (5) "Hearing officers" include administrative law judges as defined in
24 G.S. 150B-2(1) and hearing review officers.
- 25 (6) "IDEA" means The Individuals with Disabilities Education
26 Improvement Act, 20 U.S.C. § 1400, et seq. (2004), as amended, and
27 federal regulations adopted under this act.
- 28 (7) "IEP Team" is as defined in IDEA.
- 29 (8) "Individualized education program" or "IEP" means a written
30 statement for each child with a disability that is developed, reviewed,
31 and revised consistent with IDEA.
- 32 (9) "Infant or toddler with a disability" is as defined in IDEA.
- 33 (10) "Least restrictive environment" means to the maximum extent
34 appropriate, children with disabilities are educated with children who
35 are not disabled, and special classes, separate schooling, or other
36 removal of children with disabilities from the regular educational
37 environment occurs only when the nature of the disability is such that
38 education in regular classes with the use of supplementary aids and
39 services cannot be achieved satisfactorily.
- 40 (11) "Local educational agency" includes any of the following that provides
41 special education and related services to children with disabilities:
- 42 a. A local school administrative unit.
- 43 b. A charter school.
- 44 c. The Department of Health and Human Services.

- 1 d. The Department of Correction.
2 e. The Department of Juvenile Justice and Delinquency
3 Prevention.
4 f. Any other State agency or unit of local government.
5 (12) "Mediation" means an informal process conducted by a mediator with
6 the objective of helping parties voluntarily settle their dispute.
7 (13) "Mediator" means a neutral person who acts to encourage and
8 facilitate a resolution of a dispute.
9 (14) "Parent" means:
10 a. A natural, adoptive, or foster parent;
11 b. A guardian, but not the State if the child is a ward of the State;
12 c. An individual acting in the place of a natural or adoptive parent,
13 including a grandparent, stepparent, or other relative, and with
14 whom the child lives;
15 d. An individual who is legally responsible for the child's welfare;
16 or
17 e. A surrogate if one is appointed under G.S. 115C-109.2.
18 (15) "Parties" means the local educational agency and the parents.
19 (16) "Petition" means a request for a due process hearing as provided for
20 under IDEA.
21 (17) "Preschool child with a disability" means a child with one or more
22 disabilities who meets all of the following criteria:
23 a. Has reached the child's third birthday and whose parents have
24 requested services from the public schools.
25 b. Is not eligible to enroll in public kindergarten.
26 c. Because of the disability, needs special education and related
27 services in order to prepare the child to benefit from the educational
28 programs provided by the public schools, beginning with kindergarten.
29 (18) "Related services" is as defined in IDEA.
30 (19) "Rules" include rules, policies, and procedures.
31 (20) "Special education" means specially designed instruction, at no cost to
32 parents, to meet the unique needs of a child with a disability. The term
33 includes instruction in physical education and instruction conducted in
34 a classroom, the home, a hospital or institution, and other settings.

35 "Part 1B. Provision of Free Appropriate Public Education.

36 "§ 115C-107.1. Free appropriate public education; ages.

- 37 (a) A free appropriate public education shall be made available to the following:
38 (1) All children with disabilities who reside in the State, who are the ages
39 of three through 21, and who require special education and related
40 services.
41 (2) Any child with a disability who is receiving special education and
42 related services until the end of the school year in which that child
43 reaches the age of 22.

1 (3) Children with disabilities who require special education and related
2 services and who are suspended or expelled from school.

3 (b) A free appropriate public education is not required to be provided to infants
4 and toddlers with disabilities. However, early intervention services shall be made
5 available to these children under G.S. 143B-139.61.

6 (c) If funds are made available, the State Board and the Secretary of Health and
7 Human Services may adopt an agreement to allow the continuation of early intervention
8 services for children with a disability who are at least three years old but before they
9 enter kindergarten or are eligible to enter kindergarten. If an agreement is adopted under
10 this subsection, then a free appropriate public education is not required to be provided to
11 any child with a disability who continues to receive early intervention services in
12 accordance with that agreement.

13 (d) Nothing in this Article requires a free appropriate public education to be
14 made available to any individual aged 18 through 21 who, in the educational placement
15 immediately before that individual's incarceration in an adult correctional facility, was
16 not actually identified as being a child with a disability and did not have an IEP.

17 **"§ 115C-107.2. Duties of State Board of Education.**

18 (a) The State Board of Education shall adopt rules to ensure that:

19 (1) The requirements of this Article and IDEA are met.

20 (2) All educational programs under the supervision of any local
21 educational agency for children with disabilities meet all of the
22 following requirements:

23 a. The programs are under the general supervision of individuals
24 in the State who are responsible for educational programs for
25 children with disabilities.

26 b. The programs meet the State Board's educational standards.

27 c. With respect to homeless children, the programs meet the
28 requirements of 20 U.S.C. § 1431, McKinney-Vento Homeless
29 Assistance Act.

30 (b) The rules adopted under subsection (a) of this section shall include rules that:

31 (1) Establish standards for the programs of special education to be
32 administered by local educational agencies and by the State Board.

33 (2) Ensure that children with disabilities are educated in the least
34 restrictive environment.

35 (3) Ensure that local school administrative units make available special
36 education and related services to all preschool children with
37 disabilities whose parents request these services.

38 (4) Provide for public hearings, adequate notice of these hearings, and an
39 opportunity for comment from the general public before the adoption
40 of the rules required by this Article.

41 (5) Are required in order to receive federal funding under IDEA.

42 (6) Provide that, where a local educational agency finds that appropriate
43 services are available from other public agencies or private

1 organizations, the local educational agency may contract for those
2 services rather than provide them directly.

3 (7) Enable local educational agencies to identify, evaluate, place, and
4 make other educational decisions for children with disabilities.

5 (8) Provide procedural safeguards for children with disabilities and their
6 parents.

7 (9) Designate a person in the Department of Public Instruction who is
8 charged with receiving and responding to notices or other legal
9 documents under Part 1D of this Article.

10 (10) Support and facilitate local educational agency and school-level
11 system improvement designed to enable children with disabilities to
12 meet the challenging State student academic achievement standards.

13 (c) Rules adopted under this section shall be consistent with IDEA and shall
14 comply with G.S. 115C-12(19). Local educational agencies, parents, and other
15 individuals concerned with the education of children with disabilities shall be consulted
16 in the development of rules adopted under this Article.

17 (d) The State Board shall develop forms for local educational agencies to use in
18 order to comply with this Article. The forms must comply with G.S. 115C-12(19) and
19 may be in an electronic format.

20 (e) The State Board shall provide technical assistance to local educational
21 agencies at their request.

22 (f) The State Board shall develop any plans that meet the criteria of IDEA and
23 are required to be submitted to the United States Department of Education.

24 (g) The State Board shall make available to hearing officers training related to
25 IDEA and its legal interpretations in order to facilitate hearings and reviews under
26 G.S. 115C-109.6.

27 **§ 115C-107.3. Child find.**

28 (a) The Board shall require an annual census of children with disabilities,
29 subdivided for "identified" and "suspected" children with disabilities, to be taken in
30 each school year. Suspected children are those in the formal process of being evaluated
31 or identified as children with disabilities. The census shall be conducted annually and
32 shall be completed by October 15, submitted to the Governor and General Assembly
33 and made available to the public by January 15 annually.

34 (b) In taking the census, the Board requires the cooperation, participation, and
35 assistance of all local educational agencies. Therefore, each local educational agency
36 shall cooperate and participate with and assist the Board in conducting the census.

37 (c) The census shall include the number of children identified and suspected with
38 disabilities, their age, the nature of their disability, their county or city of residence,
39 their local school administrative unit residence, whether they are being provided special
40 educational or related services and if so by what local educational agency, the identity
41 of each local educational agency having children with disabilities in its care, custody,
42 management, jurisdiction, control, or programs, the number of children with disabilities
43 being served by each local educational agency, and any other information or data that

1 the Board requires. The census shall be of children with disabilities between the ages
2 three through 21.

3 **"§ 115C-107.4. Monitoring and enforcement.**

4 (a) The State Board shall monitor all local educational agencies to determine
5 compliance with this Article and IDEA. The State Board also shall monitor the
6 effectiveness of IEPs in meeting the educational needs of children with disabilities.

7 (b) The State Board shall implement an effective and efficient system of
8 incentives and sanctions for local educational agencies in order to improve results for
9 children with disabilities and meet the requirements of this Article and IDEA. The
10 system, which must be based on a continuum of recognition and sanctions, shall:

11 (1) Identify and recognize local educational agencies that achieve or
12 exceed targets and indicators as determined by the State Board,
13 demonstrate significant improvement over time, and show growth on
14 targets and indicators as determined by each local educational agency.

15 (2) Provide consequences for local educational agencies that are
16 substantially noncompliant with statutory and regulatory requirements
17 under this Article and IDEA.

18 (c) The system of incentives developed under subsection (b) of this section may
19 include commendations, public recognition, allocation of grant funds if available, and
20 any other incentives as considered appropriate by the State Board.

21 (d) The system of sanctions developed under subsection (b) of this section shall
22 include the following:

23 (1) Level One – Needs Assistance: When the State Board determines (i) a
24 local school educational agency has been in noncompliance for two
25 years and (ii) that agency needs assistance in implementing the
26 requirements of this Article and IDEA, the State Board shall take one
27 or more of the following actions:

28 a. The Board may direct the local educational agency to allocate
29 additional time and resources for technical assistance and
30 guidance related to areas of noncompliance.

31 b. The Board may impose special conditions on that agency's
32 application for IDEA funds.

33 c. The Board may direct how that local educational agency utilizes
34 IDEA funds to address the remaining findings of
35 noncompliance. The local educational agency must track the
36 use of these funds to show how the funds are targeted to address
37 areas of noncompliance.

38 (2) Level Two – Needs Intervention: If the State Board determines (i) that
39 the local educational agency has been in noncompliance for three years
40 and (ii) that agency needs assistance in implementing this Article and
41 IDEA, the following apply:

42 a. The Board may take any of the actions described in subdivision
43 (1) of this subsection.

1 b. The Board shall withhold, in whole or in part, any further
2 payments of IDEA funds to the agency.

3 c. The Board shall require the agency to enter into a compliance
4 agreement.

5 (3) Level Three – Needs Substantial Intervention: In addition to the
6 sanctions described in subdivisions (1) and (2) of this subsection, if at
7 any time the State Board determines a local educational agency (i)
8 needs substantial intervention in implementing the requirements of this
9 Article and IDEA, or (ii) has established a substantial failure to
10 comply with this Article and IDEA, the Board shall take one or more
11 of the following actions:

12 a. The Board shall direct the agency to implement a compliance
13 agreement, billed to that agency.

14 b. The Board shall recover IDEA funds.

15 c. The Board shall refer the agency for appropriate enforcement
16 under State or federal law.

17 (e) In addition to the consequences required under subsections (b) and (d) of this
18 section, the State Board shall develop sanctions for local educational agencies that fail
19 to implement a corrective action or hearing decision.

20 "§ 115C-107.5. Annual reports.

21 The State Board shall report annually to the Joint Legislative Education Oversight
22 Committee on the implementation of this Article and the educational performance of
23 children with disabilities. Each annual report shall include a copy of the following
24 documents that were submitted, received, or made public during the year: (i) the most
25 recent State performance plan and any amendments to that plan submitted to the
26 Secretary of Education, (ii) compliance and monitoring reports submitted to the
27 Secretary of Education, (iii) the annual report submitted to the Secretary of Education
28 on the performance of the State under its performance plan, and (iv) any other
29 information required under IDEA to be made available to the public. In addition, the
30 annual report shall include an analysis of the educational performance of children with
31 disabilities in the State and a summary of disputes under Part 1D of this Chapter. The
32 report shall be filed no later than October 15 each year and may be filed electronically.

33 "§ 115C-107.6. Duties of local educational agencies.

34 (a) Each local educational agency, in providing for the education of children with
35 disabilities within its jurisdiction, must comply with IDEA and the rules adopted by the
36 State Board under this Article. In addition, each local educational agency shall have in
37 effect policies, procedures, and programs that are consistent with this Article, IDEA,
38 and rules adopted by the State Board.

39 (b) No local educational agency shall prohibit a child with a disability from
40 enrolling in a public school or public program of special education or related services to
41 which that child would otherwise be eligible to attend based solely on the fact that the
42 child has a disability. If it appears the child should receive a program of free appropriate
43 public education in a program operated by or under the supervision of the Department
44 of Health and Human Services or the Department of Juvenile Justice and Delinquency

1 Prevention, the local school administrative unit shall confer with the appropriate
2 Department of Health and Human Services or Department of Juvenile Justice and
3 Delinquency Prevention staff for their participation and determination of the
4 appropriateness of placement in that program and development of the child's
5 individualized education program.

6 (c) No matriculation or tuition fees or other fees or charges shall be required or
7 asked of children with disabilities or their parents except those fees or charges that are
8 required uniformly of all public school pupils. The provision of a free appropriate public
9 education within the facilities of the Department of Health and Human Services and the
10 Department of Juvenile Justice and Delinquency Prevention shall not prevent that
11 Department from charging for other services or treatment.

12 (d) Each child with a disability shall be educated in accordance with that child's
13 IEP and in the least restrictive environment for that child.

14 (e) Each local educational agency shall use the forms developed under
15 G.S. 115C-107.2(d).

16 **"§ 115C-107.7. Discipline.**

17 The policies and procedures for the discipline of students with disabilities shall be
18 consistent with federal laws and regulations.

19 "Part 1C. Interagency Coordination.

20 **"§ 115C-108.1. State Board lead agency.**

21 (a) The Board shall cause all local educational agencies to provide special
22 education and related services to children with disabilities in their care, custody,
23 management, jurisdiction, control, or programs. In this regard, all local school
24 administrative units and all other local educational agencies providing special education
25 and related services shall explore available local resources and determine whether the
26 services are currently being offered by an existing public or private agency.

27 (b) The jurisdiction of the Board with respect to the design and content of special
28 education programs or related services for children with disabilities extends to and over
29 the Department of Health and Human Services, the Department of Juvenile Justice and
30 Delinquency Prevention, and the Department of Correction.

31 (c) All provisions of this Article that are specifically applicable to local school
32 administrative units also are applicable to the Department of Health and Human
33 Services, the Department of Juvenile Justice and Delinquency Prevention, and the
34 Department of Correction and their divisions and agencies; all duties, responsibilities,
35 rights, and privileges specifically imposed on or granted to local school administrative
36 units by this Article also are imposed on or granted to the Department of Health and
37 Human Services, the Department of Juvenile Justice and Delinquency Prevention, and
38 the Department of Correction and their divisions and agencies. However, with respect to
39 children with disabilities who are residents or patients of any State-operated or
40 State-supported residential treatment facility, including a school for the deaf, school for
41 the blind, mental hospital or center, mental retardation center, or in a facility operated
42 by the Department of Juvenile Justice and Delinquency Prevention, the Department of
43 Correction or any of their divisions and agencies, the Board may contract with the
44 Department of Health and Human Services, the Department of Juvenile Justice and

1 Delinquency Prevention, and the Department of Correction for the provision of special
2 education and related services and the power to review, revise, and approve any plans
3 for special education and related services to those residents.

4 (d) The Departments of Health and Human Services, Correction, and Juvenile
5 Justice and Delinquency Prevention shall submit to the Board their plans for the
6 education of children with disabilities in their care, custody, or control. The Board may
7 grant specific exemptions for programs administered by the Department of Health and
8 Human Services, the Department of Juvenile Justice and Delinquency Prevention, or the
9 Department of Correction when compliance by them with the Board's standards would,
10 in the Board's judgment, impose undue hardship on that department and when other
11 procedural due process requirements, substantially equivalent to those required under
12 this Article and IDEA, are assured in programs of special education and related services
13 furnished to children with disabilities served by that department. Further, the Board
14 shall recognize that inpatient and residential special education programs within the
15 Departments of Health and Human Services, Correction, and Juvenile Justice and
16 Delinquency Prevention may require more program resources than those necessary for
17 optimal operation of these programs in local school administrative units.

18 (e) When a specified special education or related service is being offered by a
19 local public or private resource, a local educational agency shall negotiate for the
20 purchase of that service or shall present full consideration of alternatives and its
21 recommendations to the Board. In this regard, a new or additional program for special
22 education or related services shall be developed with the approval of the Board only
23 when that service is not being provided by existing public or private resources or the
24 service cannot reasonably be purchased from existing providers. Further, the Board
25 shall support and encourage joint and collaborative special education planning and
26 programming at local levels to include local school administrative units and the
27 programs and agencies of the Departments of Health and Human Services, Correction,
28 and Juvenile Justice and Delinquency Prevention.

29 **"§ 115C-108.2. Interlocal cooperation.**

30 The Board, any two or more local educational agencies, and any other agency and
31 any State department, agency, or division having responsibility for the education,
32 treatment, or habilitation of children with disabilities may enter into interlocal
33 cooperative undertakings under Part 1 of Article 20 of Chapter 160A of the General
34 Statutes or into undertakings with a State agency such as the Departments of Public
35 Instruction, Health and Human Services, Juvenile Justice and Delinquency Prevention,
36 or Correction, or their divisions, agencies, or units, for the purpose of providing for the
37 special education and related services, treatment, or habilitation of these children within
38 the jurisdiction of the agency or unit, and shall do so when it is unable to provide the
39 appropriate public special education or related services for these children. In entering
40 into such undertakings, the local agency and State department, agency, or division shall
41 also contract to provide the special education or related services that are educationally
42 appropriate to the children with disabilities for whose benefit the undertaking is made,
43 and provide these services by or in the local agency unit or State department, agency, or
44 division located in the place most convenient to these children.

1 "Part 1D. Procedural Safeguards.

2 **"§ 115C-109.1. Handbook for parents.**

3 The State Board of Education shall make available to parents a handbook of
4 procedural safeguards. This handbook for parents shall be made available at least once
5 each school year, except that a copy also shall be given to the parent (i) upon the initial
6 referral or parental request for an evaluation; (ii) upon the first occurrence of the filing
7 of a petition under G.S. 115C-109.6 and IDEA; (iii) upon the parent's request; and (iv)
8 upon any revision to the content of the handbook. This handbook for parents shall
9 include a full explanation of the procedural safeguards under this Article and IDEA, be
10 written in the native language of the parent unless it clearly is not feasible to do so, be
11 written in an easily understood manner, and include information required under IDEA
12 to be included.

13 The State Board shall place a current copy of the handbook for parents on its
14 Internet Web site.

15 **"§ 115C-109.2. Adult children with disabilities; surrogate parents.**

16 (a) When a child with a disability reaches the age of 18, all of the following
17 apply:

18 (1) Notices required under this Article shall be provided to both the child
19 and the child's parent.

20 (2) All other rights accorded to parents under this Article and IDEA
21 transfer to the child.

22 (3) The local educational agency shall notify the child and the child's
23 parent of these transfer rights.

24 (b) Notwithstanding subsection (a) of this subsection, the State Board shall
25 establish procedures appointing a parent of a child with a disability to represent the
26 educational interests of the child throughout the period of eligibility of the child when
27 the child reaches the age of 18, has not been determined to be incompetent, but has been
28 determined not to have the ability to provide informed consent with respect to the
29 educational program of the child.

30 (c) A reasonable effort must be made to appoint a surrogate for a child with a
31 disability within 30 days of a determination that one of the following conditions exists
32 and that the child needs a surrogate:

33 (1) The parents of that child are not known;

34 (2) The parents, after reasonable efforts, cannot be located; or

35 (3) The child is a ward of the State.

36 (d) A person must be eligible under IDEA to be appointed as a child's surrogate.

37 **"§ 115C-109.3. Access to records; opportunity for parents to participate in**
38 **meetings.**

39 (a) Each local educational agency shall provide an opportunity for the parents of
40 a child with a disability to examine all records relating to that child and to participate in
41 meetings with respect to the identification, evaluation, and educational placement of the
42 child, and the provision of a free appropriate public education to that child.

43 (b) Local educational agencies may release the records of a child with a disability
44 only as permitted under State or federal law. The parents of a child with a disability may

1 have access to the child's records and may read, inspect, and copy all and any records,
2 data, and information maintained by a local educational agency with respect to that
3 child. Parents, upon their request, are entitled to have those records, data, and
4 information fully explained, interpreted, and analyzed for them by the staff of the
5 agency, unless specifically prohibited by court order. If a request is made under this
6 subsection, the local educational agency shall honor the request within not more than 45
7 days after it is made or in time for the individual who made the request to prepare for a
8 meeting under subsection (a) of this section, whichever is sooner.

9 (c) The student and the student's parents may add written explanations or
10 clarifications to the records, data, and information and may request the expunction of
11 incorrect, outdated, misleading, or irrelevant entries. If a local educational agency
12 refuses to expunge incorrect, outdated, misleading, or irrelevant entries after having
13 been asked to do so by the parent, the parent may appeal that decision under
14 G.S. 115C-45(c)(2).

15 **§ 115C-109.4. Mediation.**

16 (a) It is the policy of this State to encourage local educational agencies and
17 parents to seek mediation involving any dispute under this Article, including matters
18 arising before or after filing a petition under G.S. 115C-109.6.

19 (b) Mediation under this section must meet the following requirements:

20 (1) The mediation must be voluntary on the part of both parties.

21 (2) Mediation shall not be used to deny or delay a parent's right to an
22 impartial hearing under G.S. 115C-109.6, or to deny any other rights
23 afforded under this Article or IDEA.

24 (3) The mediation shall be conducted by a qualified and impartial
25 mediator who is trained in effective mediation techniques.

26 (c) The State Board may establish procedures to offer to parties that do not
27 choose to use the mediation process an opportunity to meet with a disinterested party, as
28 provided under IDEA, who can encourage the use and explain the benefits of the
29 mediation process to the parties. This meeting must be at a time and location convenient
30 to the parents.

31 (d) The State Board shall maintain a list of qualified mediators who are
32 knowledgeable in laws and regulations relating to the provision of special education and
33 related services. When mediation is requested, the Exceptional Children Division of the
34 Department of Public Instruction shall assign a mediator from this list of mediators.

35 (e) The State shall bear the cost of the mediation process, including the costs of
36 meetings described under subsection (b) of this section, unless the parties opt to select a
37 mediator other than the mediator assigned under subsection (c) of this section or if the
38 parties opt to use an alternative method of dispute resolution.

39 (f) Each session in the mediation process shall be scheduled in a timely manner
40 and shall be held in a location that is convenient to the parties to the dispute.

41 (g) Evidence of statements made and conduct occurring in a mediation are
42 confidential, are not subject to discovery, and are inadmissible in any proceeding in the
43 action or other actions on the same claim. However, no evidence otherwise discoverable
44 is inadmissible merely because it is presented or discussed in a mediation. Mediators

1 shall not be compelled in any civil proceeding to testify or produce evidence concerning
2 statements made and conduct occurring in a mediation.

3 (h) When resolution is reached to resolve the dispute through the mediation
4 process, the parties shall execute a legally binding agreement that:

5 (1) Sets forth the agreement.

6 (2) States that all discussions that occurred during the mediation process
7 are confidential and may not be used as evidence in any subsequent
8 impartial hearing under G.S. 115C-109.6 or in any civil proceeding.

9 (3) Is signed by both the parent and a representative of the local
10 educational agency who has the authority to bind that agency.

11 (4) Is enforceable in any State administrative forum, any State court of
12 competent jurisdiction, or in a district court of the United States.

13 (i) In addition to mediation as provided by this section, the parties may
14 participate in a mediated settlement conference as provided by G.S. 150B-23.1. In
15 addition, the parties may agree to use other dispute resolution methods or to use
16 mediation in other circumstances, including after a request for formal administrative
17 review is filed, to the extent permitted under State and federal law.

18 **"§ 115C-109.5. Prior written notice.**

19 (a) The local educational agency shall provide prompt written notice to parents
20 whenever that agency proposes to initiate or change, or refuses to initiate or change (i)
21 the identification, evaluation, or educational placement of a child, or (ii) the provision of
22 a free appropriate public education to a child with a disability. The local educational
23 agency shall document that all required notices have been sent to and received by
24 parents.

25 (b) This prior written notice shall be in the native language of the parents, unless
26 it clearly is not feasible to translate it, and shall contain all of the following information:

27 (1) A description of the action proposed or refused by the local
28 educational agency.

29 (2) An explanation of why the local educational agency proposes or
30 refuses to take the action and a description of each evaluation
31 procedure, assessment, record, or report that agency used as a basis for
32 the proposed or refused action.

33 (3) A statement that the parent of a child with a disability has protection
34 under the procedural safeguards of this Article and IDEA and, if this
35 notice is not the initial referral for evaluation, the means by which a
36 copy of the procedural safeguards can be obtained.

37 (4) Sources for parents to contact to obtain assistance in understanding
38 this Article and IDEA.

39 (5) A description of other options considered by the IEP Team and the
40 reason why those options were rejected.

41 (6) A description of the factors that are relevant to the local educational
42 agency's proposal or refusal.

43 (7) Any other information required to be included under IDEA.

44 **"§ 115C-109.6. Impartial due process hearings.**

1 (a) Any party may file with the Office of Administrative Hearings a petition to
2 request an impartial hearing with respect to any matter relating to the identification,
3 evaluation, or educational placement of a child, or the provision of a free appropriate
4 public education of a child, or a manifestation determination. The party filing the
5 petition must notify the other party and the person designated under
6 G.S. 115C-107.2(b)(9) by simultaneously serving them with a copy of the petition.

7 (b) Notwithstanding any other law, the party shall file a petition under subsection
8 (a) of this section that includes the information required under IDEA and that sets forth
9 an alleged violation that occurred not more than one year before the party knew or
10 reasonably should have known about the alleged action that forms the basis of the
11 petition. The issues for review under this section are limited to those set forth in
12 subsection (a) of this section. The party requesting the hearing may not raise issues that
13 were not raised in the petition unless the other party agrees otherwise.

14 (c) The one-year restriction in subsection (b) of this section shall not apply to a
15 parent if the parent was prevented from requesting the hearing due to (i) specific
16 misrepresentations by the local educational agency that it had resolved the problem
17 forming the basis of the petition, or (ii) the local educational agency's withholding of
18 information from the parent that was required under State or federal law to be provided
19 to the parent.

20 (d) The hearing shall be conducted in the county where the child attends school
21 or is entitled to enroll under G.S. 115C-366, unless the parties mutually agree to a
22 different venue.

23 (e) The hearing shall be closed to the public unless the parent requests in writing
24 that the hearing be open to the public.

25 (f) Subject to G.S. 115C-109.7, the decision of the administrative law judge
26 shall be made on substantive grounds based on a determination of whether the child
27 received a free appropriate public education. Following the hearing, the administrative
28 law judge shall issue a written decision regarding the issues set forth in subsection (a) of
29 this section. The decision shall contain findings of fact and conclusions of law.
30 Notwithstanding Chapter 150B of the General Statutes, the decision of the
31 administrative law judge becomes final and is not subject to further review unless
32 appealed to the Review Officer under G.S. 115C-109.9.

33 (g) A copy of the administrative law judge's decision shall be served upon each
34 party and a copy shall be furnished to the attorneys of record. The written notice shall
35 contain a statement informing the parties of the availability of appeal and the 30-day
36 limitation period for appeal as set forth in G.S. 115C-109.9.

37 (h) In addition to the petition, the parties shall simultaneously serve a copy of all
38 pleadings, agreements, and motions under this Part with the person designated by the
39 State Board under G.S. 115C-107.2(b)(9). The Office of Administrative Hearings shall
40 simultaneously serve a copy of all orders and decisions under this Part with the person
41 designated by the State Board under G.S. 115C-107.2(b)(9).

42 (i) Nothing in this section shall be construed to preclude a parent from filing a
43 separate due process petition on an issue separate from a petition already filed.

1 (j) Notwithstanding Chapter 150B of the General Statutes, the State Board,
2 through the Exceptional Children Division, and the State Office of Administrative
3 Hearings shall develop and enter into a binding memorandum of understanding to
4 ensure compliance with the statutory and regulatory procedures and timelines applicable
5 under IDEA to due process hearings and to hearing officers' decisions, and to ensure the
6 parties' due process rights to a fair and impartial hearing. This memorandum of
7 understanding shall be amended if subsequent changes to IDEA are made. The
8 procedures and timelines shall be made part of the Board's procedural safeguards that
9 are made available to parents and the public under G.S. 115C-109.1 and 115C-109.5.

10 **"§ 115C-109.7. Resolution session.**

11 (a) Within 15 days of receiving notice of the parent's petition filed under
12 G.S. 115C-109.6 and before the opportunity for an impartial hearing, the local
13 educational agency shall convene a meeting with the parent and the relevant members
14 of the IEP Team who have specific knowledge of the facts identified in the petition.
15 This meeting shall include a representative of the agency who has decision-making
16 authority on behalf of that agency and may not include an attorney of the local
17 educational agency unless the parent is accompanied by an attorney. If the parent plans
18 to be accompanied by an attorney under this section, the parent must give prior written
19 notice of this fact to the agency. The purposes of the meeting are (i) for the parent to
20 have an opportunity to discuss the petition and the facts that form the basis of the
21 petition and (ii) for the local educational agency to have the opportunity to resolve the
22 dispute.

23 (b) The parent and the local educational agency jointly may agree in writing to
24 waive the meeting under subsection (a) of this section or to use the mediation process
25 described in G.S. 115C-109.4.

26 (c) If the local educational agency does not resolve the dispute to the satisfaction
27 of the parents within 30 days of the agency's receipt of the petition, the impartial
28 hearing under G.S. 115C-109.6 may occur and all of the applicable timelines for that
29 hearing shall commence.

30 (d) If a resolution is reached to resolve the dispute at a meeting under subsection
31 (a) of this section, the parties shall execute a legally binding agreement that is:

- 32 (1) Signed by both the parent and a representative of the local educational
33 agency who has the authority to bind the agency;
- 34 (2) Enforceable in any State court of competent jurisdiction or in a district
35 court of the United States; and
- 36 (3) Filed with the person designated by the State Board to receive notices
37 and with the Office of Administrative Hearings.

38 (e) If the parties execute an agreement under subsection (d) of this section, either
39 party may void the agreement by providing written notice within three business days of
40 the agreement's execution to the person designated by the State Board to receive notices,
41 the Office of Administrative Hearings, and the other party. Notwithstanding subsection
42 (c) of this section, upon receipt of this notice, the impartial hearing under
43 G.S. 115C-109.6 may occur and all of the applicable timelines for that hearing shall
44 commence.

1 **"§ 115C-109.8. Procedural issues.**

2 (a) In matters alleging a procedural violation, the hearing officer may find that a
3 child did not receive a free appropriate public education only if the procedural
4 inadequacies (i) impeded the child's right to a free appropriate public education; (ii)
5 significantly impeded the parents' opportunity to participate in the decision-making
6 process regarding the provision of a free appropriate public education to the parents'
7 child; or (iii) caused a deprivation of educational benefits.

8 (b) A hearing officer may order a local educational agency to comply with
9 procedural requirements under this Article and IDEA.

10 **"§ 115C-109.9. Review by review officer; appeals.**

11 (a) Any party aggrieved by the findings and decision of a hearing officer under
12 G.S. 115C-109.6 or 115C-109.8 may appeal the findings and decision within 30 days
13 after receipt of notice of the decision by filing a written notice of appeal with the person
14 designated by the State Board under G.S. 107.2(b)(9) to receive notices. The State
15 Board, through the Exceptional Children Division, shall appoint a Review Officer from
16 a pool of review officers approved by the State Board of Education. The Review Officer
17 shall conduct an impartial review of the findings and decision appealed under this
18 section. The Review Officer conducting this review shall make an independent decision
19 upon completion of the review. The decision of the Review Officer becomes final
20 unless an aggrieved party brings a civil action under subsection (d) of this section. A
21 copy of the decision shall be served upon each party and a copy shall be furnished to the
22 attorneys of record and the Office of Administrative Hearings. The written notice shall
23 contain a statement informing the parties of the right to file a civil action and the 30-day
24 limitation period for filing a civil action under subsection (d) of this section.

25 (b) A Review Officer shall be an educator or other professional who is
26 knowledgeable about special education and who possesses other qualifications as may
27 be established by the State Board of Education. No person may be appointed as a
28 Review Officer if that person is an employee of the State Board of Education, the
29 Department of Public Instruction, or the local educational agency that has been involved
30 in the education or care of the child whose parents have filed the petition.

31 (c) The State Board may enforce the final decision of the administrative law
32 judge under G.S. 115C-109.6, if not appealed under this section, or the final decision of
33 the Review Officer, by ordering a local educational agency:

- 34 (1) To provide a child with appropriate education;
35 (2) To place a child in a private school that is approved to provide special
36 education and that can provide the child an appropriate education; or
37 (3) To reimburse parents for reasonable private school placement costs in
38 accordance with this Article and IDEA when it is determined that the
39 local educational agency did not offer or provide the child with
40 appropriate education and the private school in which the parent
41 placed the child was an approved school and did provide the child an
42 appropriate education.

43 (d) Any party that does not have the right to appeal under this Part and any party
44 who is aggrieved by the decision of the Review Officer under this section may institute

1 a civil action in State court within 30 days after receipt of the notice of the decision or in
2 federal court as provided in 20 U.S.C. § 1415.

3 (e) Except as provided under IDEA, upon the filing of a petition under
4 G.S. 115C-109.6 and during the pendency of any proceedings under this Part, the child
5 must remain in the child's then-current educational placement or, if applying for initial
6 admission to a public school, the child must be placed in the public school.
7 Notwithstanding this subsection, the parties may agree in writing to a different
8 educational placement for the child during the pendency of any proceedings under this
9 Part.

10 "Part 1E. Special Education and Related Services Personnel.

11 "**§ 115C-110.1. Teacher qualifications.**

12 The Board shall adopt rules covering the qualifications of and standards for
13 certification of teachers, teacher assistants, speech clinicians, school psychologists, and
14 others involved in the education and training of children with disabilities.

15 "**§ 115C-110.2. Interpreters/transliterators.**

16 Each interpreter or transliterator employed by a local educational agency to provide
17 services to hearing-impaired students must annually complete 15 hours of job-related
18 training that has been approved by the local educational agency.

19 "**§ 115C-110.3 through 106.5. [Reserved]**

20 "Part 1F. Budgeting; Funds.

21 "**§ 115C-111.1. Out-of-state students; eligibility for State funds.**

22 Notwithstanding any policy or rule adopted by the State Board of Education, if a
23 local school administrative unit provides services to a student under a current IEP from
24 another state while a determination is being made regarding the student's eligibility for
25 services as a child with disabilities in North Carolina, the local school administrative
26 unit is entitled to receive State funding to serve the student while the determination is
27 being made. If the student is later determined not to qualify for services in North
28 Carolina, the local school administrative unit is not be required to repay State funds
29 received while the determination is being made.

30 "**§ 115C-111.2. Contracts with private service providers.**

31 Local educational agencies furnishing special education and related services to
32 children with disabilities may contract with private special education facilities or service
33 providers to furnish any of these services that the public providers are unable to furnish.
34 No contract between any public and private service provider is effective until it has
35 received the prior written approval of the Board. The Board shall not withhold its
36 approval of the contract unless the private facilities and providers do not meet the
37 Board's standards established under this Article.

38 "**§ 115C-111.3. Cost of education of children in group homes, foster homes, etc.**

39 (a) Notwithstanding any other State law and without regard for the place of
40 domicile of a parent, the cost of a free appropriate public education for a child with
41 disabilities who is placed in or assigned to a group home or foster home, under State
42 and federal law, shall be borne by the local board of education in which the group home
43 or foster home is located. However, the local school administrative unit in which a child
44 is domiciled shall transfer to the local school administrative unit in which the institution

1 is located an amount equal to the actual local cost in excess of State and federal funding
2 required to educate that child in the local school administrative unit for the fiscal year
3 after all State and federal funding has been exhausted.

4 (b) The State Board of Education shall use State and federal funds appropriated
5 for children with disabilities to establish a reserve fund to reimburse local boards of
6 education for the education costs of children assigned to group homes or other facilities
7 as provided in subsection (a) of this section. Local school administrative units may
8 submit a Special State Reserve Program application for foster home or group home
9 children whose special education and related services costs exceed the per child group
10 home allocation.

11 (c) The Department shall review the current cost of children with disabilities
12 served in the local school administrative units with group homes or foster homes to
13 determine the actual cost of services.

14 **"§ 115C-111.4. Nonreduction.**

15 Notwithstanding any of the other provisions of this Article, it is the intent of the
16 General Assembly that funds appropriated by it for the operation of programs of special
17 education and related services by local school administrative units not be reduced;
18 rather, that adequate funding be made available to meet the special educational and
19 related services needs of children with disabilities, without regard to which local
20 educational agency has the child in its care, custody, control, or program.

21 **"§ 115C-111.5. Allocation of federal funds.**

22 Whenever any federal moneys for the special education and related services for
23 children with disabilities are made available, these funds shall be allocated according to
24 a formula designed by the Board consistent with federal laws and regulations. This
25 formula shall insure equitable distribution of resources based upon the number of
26 children with disabilities served by the respective agencies, and shall be implemented as
27 funds are made available from federal and State appropriations.

28 **"§ 115C-111.6. Obligation to provide services for preschool children with**
29 **disabilities.**

30 State funds appropriated to the public schools to implement preschool services for
31 children with disabilities under this Article and IDEA shall be used to provide special
32 education and related services to preschool children with disabilities. These State funds
33 shall be used to supplement and not supplant existing federal, State, and local funding
34 for the public schools.

35 Preschool children with disabilities will continue to be served by all other State
36 funds to which they are otherwise entitled.

37 "Part 1G. Council on Educational Services for Exceptional Children.

38 **"§ 115C-112.1. Establishment; organization; powers and duties.**

39 (a) There is hereby established an Advisory Council to the State Board of
40 Education to be called the Council on Educational Services for Exceptional Children.

41 (b) The Council shall consist of a minimum of 24 members to be appointed as
42 follows: four ex officio members; one individual with a disability and one representative
43 of a private school appointed by the Governor; one member of the Senate and one
44 parent of a child with a disability appointed by the President Pro Tempore; one member

1 of the House of Representatives and one parent of a child with a disability appointed by
2 the Speaker of the House; and 14 members appointed by the State Board of Education.
3 The State Board shall appoint members who represent individuals with disabilities,
4 teachers, local school administrative units, institutions of higher education that prepare
5 special education and related services personnel, administrators of programs for
6 children with disabilities, charter schools, parents of children with disabilities, a State or
7 local official who carries out activities under the federal McKinney-Vento Homeless
8 Assistance Act, vocational, community, or business organizations concerned with the
9 provision of transition services, and others as required by IDEA. The majority of
10 members on the Council shall be individuals with disabilities or parents of children with
11 disabilities. The Council shall designate a chairperson from among its members. The
12 designation of the chairperson is subject to the approval of the State Board of
13 Education. The Board shall adopt rules to carry out this subsection.

14 Ex officio members of the Council shall be the following:

- 15 (1) The Secretary of Health and Human Services or the Secretary's
16 designee.
- 17 (2) The Secretary of Juvenile Justice and Delinquency Prevention or the
18 Secretary's designee.
- 19 (3) The Secretary of Correction or the Secretary's designee.
- 20 (4) The Superintendent of Public Instruction or the Superintendent's
21 designee.

22 The term of appointment for all members except those appointed by the State Board
23 of Education is two years. The term for members appointed by the State Board of
24 Education is four years. No person shall serve more than two consecutive four-year
25 terms.

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

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

34 (d) The Council shall:

- 35 (1) Advise the Board with respect to unmet needs within the State in the
36 education of children with disabilities.
- 37 (2) Comment publicly on rules, policies, and procedures proposed by the
38 Board regarding the education of children with disabilities.
- 39 (3) Assist the Board in developing evaluations and reporting on data to the
40 Secretary of Education under the federal Individuals with Disabilities
41 Education Act (IDEA), as amended.
- 42 (4) Advise the State Board in developing corrective action plans to
43 address findings identified in federal monitoring reports required under

1 the federal Individuals with Disabilities Education Act (IDEA), as
2 amended.

3 (5) Advise the State Board in developing and implementing policies
4 relating to the coordination of services for children with disabilities.

5 (6) Carry out any other responsibility as designated by federal law or the
6 State Board."

7 **SECTION 3.(a)** G.S. 115C-81(b) reads as rewritten:

8 "(b) The Basic Education Program shall include course requirements and
9 descriptions similar in format to materials previously contained in the standard course of
10 study and it shall provide:

11 (1) A core curriculum for all students that takes into account the special
12 needs of ~~children and includes appropriate modifications for the~~
13 ~~learning disabled, the academically or intellectually gifted students,~~
14 ~~and the students with discipline and emotional problems;~~children;

15 (2) A set of competencies, by grade level, for each curriculum area;

16 (3) A list of textbooks for use in providing the curriculum;

17 (4) Standards for student performance and promotion based on the
18 mastery of competencies, including standards for graduation, that take
19 into account children with ~~special needs disabilities~~ and, in particular,
20 include appropriate modifications;

21 (5) A program of remedial education;

22 (6) Required support programs;

23 (7) A definition of the instructional day;

24 (8) Class size recommendations and requirements;

25 (9) Prescribed staffing allotment ratios;

26 (10) Material and equipment allotment ratios;

27 (11) Facilities guidelines that reflect educational program appropriateness,
28 long-term cost efficiency, and safety considerations; and

29 (12) Any other information the Board considers appropriate and necessary.

30 The State Board shall not adopt or enforce any rule that requires Algebra I as a
31 graduation standard or as a requirement for a high school diploma for any student whose
32 individualized education program (i) identifies the student as learning disabled in the
33 area of mathematics and (ii) states that this learning disability will prevent the student
34 from mastering Algebra I."

35 **SECTION 3.(b)** G.S. 115C-105.25(b)(4) reads as rewritten:

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

38 ...

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

42 ..."

43 **SECTION 3.(c)** G.S. 115C-149 reads as rewritten:

1 **"§ 115C-149. Policy. Chemically dependent children excluded from provisions of**
2 **Article 9.**

3 The General Assembly of North Carolina hereby declares that the policy of the State
4 is to ensure that an appropriate education is provided for drug and alcohol addicted
5 children; however, drug and alcohol addicted children are not "children with ~~special~~
6 ~~needs-disabilities~~" within the meaning of ~~G.S. 115C-109~~ G.S. 115C-106.3(1) unless
7 because of some other condition they meet that definition."

8 **SECTION 3.(d)** G.S. 115C-233 reads as rewritten:

9 **"§ 115C-233. Operation of summer schools.**

10 Each local school administrative unit may establish and maintain summer schools.
11 Such summer schools as may be established shall be administered by local boards of
12 education and shall be conducted in accordance with standards developed by the State
13 Board of Education. The standards so developed shall specify the requirements for
14 approved curriculum, the qualifications of the personnel, the length of the session, and
15 the conditions under which students may be granted credit for courses pursued during a
16 summer school. In determining the eligibility of students for admission to summer
17 schools, boards of education shall be governed by ~~the provisions of G.S. 115C-116,~~
18 Article 9 of this Chapter, and G.S. 115C-366(b) and 115C-367 to 115C-370. Boards of
19 education of local school administrative units may provide for summer schools from
20 funds made available for that purpose by the State Board of Education, funds
21 appropriated to the local school administrative unit by the tax-levying authority, and
22 from any other revenues available for the purpose."

23 **SECTION 3.(e)** G.S. 115C-238.29F(d)(4) reads as rewritten:

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

27 **SECTION 3.(f)** G.S. 115C-238.29H(a) reads as rewritten:

28 **"§ 115C-238.29H. State and local funds for a charter school.**

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

- 30 (1) An amount equal to the average per pupil allocation for average daily
31 membership from the local school administrative unit allotments in
32 which the charter school is located for each child attending the charter
33 school except for the allocation for children with ~~special-needs~~
34 disabilities and for the allocation for children with limited English
35 proficiency;
- 36 (2) An additional amount for each child attending the charter school who
37 is a child with ~~special-needs-disabilities;~~ and
- 38 (3) An additional amount for children with limited English proficiency
39 attending the charter school, based on a formula adopted by the State
40 Board.

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

1 In the event a child with ~~special-needs-disabilities~~ leaves the charter school and
2 enrolls in a public school during the first 60 school days in the school year, the charter
3 school shall return a pro rata amount of funds allocated for that child to the State Board,
4 and the State Board shall reallocate those funds to the local school administrative unit in
5 which the public school is located. In the event a child with ~~special-needs-disabilities~~
6 enrolls in a charter school during the first 60 school days in the school year, the State
7 Board shall allocate to the charter school the pro rata amount of additional funds for
8 children with ~~special-needs-disabilities~~."

9 **SECTION 3.(g)** G.S. 115C-242 reads as rewritten:

10 **"§ 115C-242. Use and operation of school buses.**

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

15 (1) A school bus may be used for the transportation of pupils enrolled in
16 and employees in the operation of the school to which such bus is
17 assigned by the superintendent of the local school administrative unit.
18 Except as otherwise herein provided, such transportation shall be
19 limited to transportation to and from such school for the regularly
20 organized school day, and from and to the points designated by the
21 principal of the school to which such bus is assigned, for the receiving
22 and discharging of passengers. No pupil or employee shall be so
23 transported upon any bus other than the bus to which such pupil or
24 employee has been assigned pursuant to the provisions of this Article:
25 Provided, that children enrolled in a Headstart program which is
26 housed in a building owned and operated by a local school
27 administrative unit where school is being conducted may be
28 transported on public school buses, so long as the contractual
29 arrangements made cause no extra expense to the State: Provided
30 further, that children with ~~special-needs-disabilities~~ may be transported
31 to and from the nearest appropriate private school having a special
32 education program approved by the State Board of Education if the
33 children to be transported are or have been placed in that program by a
34 local school administrative unit as a result of the State or the unit's
35 duty to provide such children with a free appropriate public education.

36 ...

37 (5) Local boards of education, under rules ~~and regulations~~ adopted by the
38 State Board of Education, may permit the use and operation of school
39 buses for the transportation of pupils and instructional personnel as the
40 board deems necessary to serve the instructional programs of the
41 schools. Included in the use permitted by this section is the
42 transportation of children with ~~special-needs, such as mentally retarded~~
43 ~~children and children with physical defects, disabilities,~~ and children
44 enrolled in programs that require transportation from the school

1 grounds during the school day, such as special vocational or
2 occupational programs. On any such trip, a city or county-owned
3 school bus shall not be taken out of the State.

4 If State funds are inadequate to pay for the transportation approved
5 by the local board of education, local funds may be used for these
6 purposes. Local boards of education shall determine that funds are
7 available to such boards for the transportation of children to and from
8 the school to which they are assigned for the entire school year before
9 authorizing the use and operation of school buses for other services
10 deemed necessary to serve the instructional program of the schools.

11 Children with ~~special-needs-disabilities~~ may be transported to and
12 from the nearest appropriate private school having a special education
13 program approved by the State Board of Education if the children to be
14 transported have been placed in that program by a local school
15 administrative unit as a result of the State or the unit's duty to provide
16 ~~such-those~~ children with a free appropriate public education.

17 ..."

18 SECTION 3.(h) G.S. 115C-250 reads as rewritten:

19 "§ 115C-250. Authority to expend funds for transportation of children with special
20 ~~needs-disabilities.~~

21 (a) The State Board of Education and local boards of education may expend
22 public funds for transportation of ~~handicapped~~-children with ~~special-needs-disabilities~~
23 who are unable because of their ~~handicap-disability~~ to ride the regular school buses and
24 who have been placed in programs by a local school board as a part of its duty to
25 provide ~~such-these~~ children with a free appropriate ~~education, including its duty under~~
26 ~~G.S. 115C-115. education under Article 9 of this Chapter.~~ At the option of the local
27 board of education with the concurrence of the State Board of Education, funds
28 appropriated to the State Board of Education for contract transportation of ~~exceptional~~
29 children with disabilities may be used to purchase buses and minibuses as well as for
30 the purposes authorized in the budget. The State Board of Education shall adopt rules
31 ~~and regulations~~ concerning the construction and equipment of these buses and
32 minibuses.

33 The Departments of Health and Human Services, Juvenile Justice and Delinquency
34 Prevention, and Correction may also expend public funds for transportation of
35 ~~handicapped~~-children with ~~special-needs-disabilities~~ who are unable because of their
36 ~~handicap-disability~~ to ride the regular school buses and who have been placed in
37 programs by one of these agencies as a part of that agency's duty to provide ~~such-these~~
38 children with a free appropriate public ~~education.~~education under Article 9 of this
39 Chapter.

40 If a local area mental health center places a child with ~~special-needs-a disability~~ in an
41 educational program, the local area mental health center shall pay for the transportation
42 of the ~~child, if handicapped and unable because of the handicap~~ child who is unable due
43 to the disability, to ride the regular school ~~buses,~~buses to the program.

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

5 **SECTION 3.(i)** G.S. 115C-366.2 reads as rewritten:

6 "**§ 115C-366.2. Applicability to certain persons.**

7 For the purposes of G.S. 115C-366 and 115C-366.1 for any person who is a resident
8 of a place which is not the person's place of domicile, because: (i) of the residence of a
9 parent, guardian, or legal custodian who is a student, employee or faculty member, of a
10 college or university, or a visiting scholar at the National Humanities Center; or (ii) the
11 child is placed in or assigned to a group home, foster home, or other similar facility or
12 institution, other than a child covered by ~~G.S. 115C-140.1(a);~~ G.S. 115C-111.3(a); or
13 (iii) the child resides with a legal custodian who is not the child's parent or guardian, or
14 (iv) the child resides in a pre-adoptive home following placement by a county
15 department of social services or a licensed child-placing agency, those sections shall be
16 applied by substituting the word "residing" for the word "domiciled," by substituting the
17 word "residence" for the word "domicile," and by substituting the word "residents" for
18 the word "domiciliaries." For purposes of this section, "legal custodian" means the
19 person or agency that has been awarded legal custody of the child by a court.

20 This section shall not be construed to affect the ability of any person to acquire a
21 new domicile."

22 **SECTION 3.(j)** G.S. 115C-367 reads as rewritten:

23 "**§ 115C-367. Assignment on certain bases prohibited.**

24 No person shall be refused admission to or be excluded from any public school in
25 this State on account of race, creed, color or national origin. No school attendance
26 district or zone shall be drawn for the purpose of segregating persons of various races,
27 creeds, colors or national origins from the community.

28 Where local school administrative units have divided the geographic area into
29 attendance districts or zones, pupils shall be assigned to schools within such attendance
30 districts: Provided, however, that the board of education of a local school administrative
31 unit may assign any pupil to a school outside of such attendance district or zone in order
32 that such pupil may attend a school of a specialized kind including but not limited to a
33 vocational school or school operated for, or operating programs for, pupils mentally or
34 physically handicapped, or for any other reason which the board of education in its sole
35 discretion deems sufficient.

36 The provisions of ~~G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116 Part 1D~~
37 of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370
38 shall not apply to a temporary assignment due to the unsuitability of a school for its
39 intended purpose nor to any assignment or transfer necessitated by overcrowded
40 conditions or other circumstances which, in the sole discretion of the school board,
41 require assignment or reassignment.

42 The provisions of ~~G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116 Part 1D~~
43 of Article 9 of this Chapter, G.S. 115C-366(b), and G.S. 115C-367 to G.S. 115C-370
44 shall not apply to an application for the assignment or reassignment by the parent,

1 guardian or person standing in loco parentis of any pupil or to any assignment made
2 pursuant to a choice made by any pupil who is eligible to make such choice pursuant to
3 the provisions of a freedom of choice plan voluntarily adopted by the board of education
4 of a local school administrative unit."

5 **SECTION 3.(k)** G.S. 115C-371 reads as rewritten:

6 "**§ 115C-371. Assignment to special education programs.**

7 Assignment of students to special education programs is subject to ~~the provisions of~~
8 ~~G.S. 115C-116.~~ Article 9 of this Chapter."

9 **SECTION 3.(l)** G.S. 115C-391 reads as rewritten:

10 "**§ 115C-391. Corporal punishment, suspension, or expulsion of pupils.**

11 ...

12 (d1) A local board of education or superintendent shall suspend for 365 calendar
13 days any student who:

14 (1) Brings onto educational property or to a school-sponsored curricular or
15 extracurricular activity off educational property, or

16 (2) Possesses on educational property or at a school-sponsored curricular
17 or extracurricular activity off educational property,

18 a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), 14-269.2(g), and 14-269.2(h).
19 The local board of education upon recommendation by the superintendent may modify
20 this suspension requirement on a case-by-case basis that includes, but is not limited to,
21 the procedures established under Article 9 of this Chapter for the discipline of students
22 with disabilities and may also provide, or contract for the provision of, educational
23 services to any student suspended pursuant to this subsection in an alternative school
24 setting or in another setting that provides educational and other services.

25 ...

26 (d3) A local board of education or superintendent shall suspend for 365 calendar
27 days any student who, by any means of communication to any person or group of
28 persons, makes a report, knowing or having reason to know the report is false, that there
29 is located on educational property or at a school-sponsored curricular or extracurricular
30 activity off educational property any device designed to destroy or damage property by
31 explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals,
32 places, or displays any device, machine, instrument, or artifact on educational property
33 or at a school-sponsored curricular or extracurricular activity off educational property,
34 so as to cause any person reasonably to believe the same to be a bomb or other device
35 capable of causing injury to persons or property. The local board upon recommendation
36 by the superintendent may modify either suspension requirement on a case-by-case
37 basis that includes, but is not limited to, the procedures established under Article 9 of
38 this Chapter for the discipline of students with disabilities and may also provide, or
39 contract for the provision of, educational services to any student suspended under this
40 subsection in an alternative school setting or in another setting that provides educational
41 and other services. For purposes of this subsection and subsection (d1) of this section,
42 the term "educational property" has the same definition as in G.S. 14-269.2(a)(1).

43 ...

1 (g) Notwithstanding the provisions of this section, the policies and procedures for
2 the discipline of students with disabilities shall be consistent with Article 9 of this
3 Chapter and with federal laws and regulations.

4 ..."

5 **SECTION 3.(m)** G.S. 115C-397.1 reads as rewritten:

6 "**§ 115C-397.1. Management and placement of disruptive students.**

7 If, after a teacher has requested assistance from the principal two or more times due
8 to a student's disruptive behavior, the teacher finds that the student's disruptive behavior
9 continues to interfere with the academic achievement of that student or other students in
10 the class, then the teacher may refer the matter to a school-based committee. The
11 teacher may request that additional classroom teachers participate in the committee's
12 proceedings. For the purposes of this section, the committee shall notify the student's
13 parent, guardian, or legal custodian and shall encourage that person's participation in the
14 proceedings of the committee concerning the student. ~~A student is not required to be~~
15 ~~screened, evaluated, or identified as a child with special needs under this section.~~
16 Nothing in this section requires a student to be screened, evaluated, or identified as a
17 child with a disability under Article 9 of this Chapter. The committee shall review the
18 matter and shall take one or more of the following actions: (i) advise the teacher on
19 managing the student's behavior more effectively, (ii) recommend to the principal the
20 transfer of the student to another class within the school, (iii) recommend to the
21 principal a multidisciplinary ~~diagnosis and~~ evaluation of the student, (iv) recommend to
22 the principal that the student be assigned to an alternative learning program, or (v)
23 recommend to the principal that the student receive any additional services that the
24 school or the school unit has the resources to provide for the student. If the principal
25 does not follow the recommendation of the committee, the principal shall provide a
26 written explanation to the committee, the teacher who referred the matter to the
27 committee, and the superintendent, of any actions taken to resolve the matter and of the
28 reason the principal did not follow the recommendation of the committee.

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

34 **SECTION 3.(n)** G.S. 122C-3(13c) reads as rewritten:

35 "(13c) "Eligible infants and toddlers" means children with or at risk for
36 developmental delays or atypical development until:

- 37 a. They have reached their third birthday;
- 38 b. Their parents have requested to have them receive services in
39 the preschool program for ~~handicapped~~ children with
40 disabilities established pursuant to Part 14 of Article IX under
41 Article 9 of Chapter 115C of the General Statutes; and
- 42 c. They have been placed in the program by the local educational
43 agency.

1 In no event shall a child be considered an eligible toddler after the
2 beginning of the school year immediately following the child's third
3 ~~birthday-birthday~~, unless the Secretary and the State Board enter into
4 an agreement under G.S. 115C-106.4(c)."

5 **SECTION 3.(o)** The caption to Part 13A of Chapter 143B of the General
6 Statutes reads as rewritten:

7 "Part 13A. Interagency Coordinating Council for ~~Handicapped-Children~~ with
8 Disabilities from Birth to Five Years of Age."

9 **SECTION 3.(p)** The caption to G.S. 143B-179.6 reads as rewritten:

10 "**§ 143B-179.6. Interagency Coordinating Council for ~~Handicapped-Children~~ with**
11 **Disabilities from Birth to Five Years of Age; agency cooperation."**

12 **SECTION 3.(q)** G.S. 143B-216.40 reads as rewritten:

13 "**§ 143B-216.40. Establishment; operations.**

14 There are established, and there shall be maintained, the following schools for the
15 deaf: the Eastern North Carolina School for the Deaf at Wilson (K-12) and the North
16 Carolina School for the Deaf at Morganton (K-12). The Department of Health and
17 Human Services shall be responsible for the operation and maintenance of the schools.

18 The Board of Directors of the North Carolina Schools for the Deaf shall advise the
19 Department and shall adopt rules ~~and regulations~~ concerning the schools as provided in
20 ~~G.S. 115C-124 and 143B-173.~~ G.S. 143B-173 and G.S. 143B-216.40."

21 **SECTION 4.(a)** Article 25A of Chapter 115C of the General Statutes is
22 amended by adding the following new section to read:

23 "**§ 115C-375.5. Education for Pregnant and Parenting Students.**

24 (a) Pregnant and parenting students shall receive the same educational instruction
25 or its equivalent as other students. A local school administrative unit may provide
26 programs to meet the special scheduling and curriculum needs of pregnant and
27 parenting students. However, student participation in these programs shall be voluntary
28 and the instruction and curriculum must be comparable to that provided other students.

29 (b) Local boards of education shall adopt a policy to ensure that pregnant and
30 parenting students are not discriminated against or excluded from school or any
31 program, class, or extracurricular activity because they are pregnant or parenting
32 students. The policy shall include, at a minimum, all of the following:

33 (1) Local school administrative units shall use, as needed, supplemental
34 funds from the At-Risk Student Services allotment to support
35 programs for pregnant and parenting students.

36 (2) Notwithstanding Part 1 of Article 26 of this Chapter, pregnant and
37 parenting students shall be given excused absences from school for
38 pregnancy and related conditions for the length of time the student's
39 physician finds medically necessary. This includes absences due to the
40 illness or medical appointment during school hours of a child of whom
41 the student is the custodial parent.

42 (3) Homework and make-up work shall be made available to pregnant and
43 parenting students to ensure that they have the opportunity to keep

1 current with assignments and avoid losing course credit because of
2 their absence from school."

3 **SECTION 4.(b)** This section applies beginning with the 2006-2007 school
4 year.

5 **SECTION 5.** Article 3 of Chapter 150B of the General Statutes is amended
6 by adding the following new section to read:

7 **"§ 150B-22.1. Special education petitions.**

8 (a) Notwithstanding any other provision of this Chapter, timelines and other
9 procedural safeguards required to be provided under IDEA and Article 9 of Chapter
10 115C of the General Statutes must be followed in an impartial due process hearing
11 initiated when a petition is filed under G.S. 115C-109.6 with the Office of
12 Administrative Hearings.

13 (b) The administrative law judge who conducts a hearing under G.S. 115C-109.6
14 shall not be a person who has a personal or professional interest that conflicts with the
15 judge's objectivity in the hearing. Furthermore, the judge must possess knowledge of,
16 and the ability to understand, IDEA and legal interpretations of IDEA by federal and
17 state courts. The judges are encouraged to participate in training developed and
18 provided by the State Board of Education under G.S. 115C-107.2(h).

19 (c) For the purpose of this section, the term "IDEA" means The Individuals with
20 Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq. (2004), as amended,
21 and its regulations."

22 **SECTION 6.(a)** The State Board of Education, through the Division of
23 Exceptional Children, and the Office of Administrative Hearings shall develop its
24 memorandum of understanding as required under G.S. 115C-109.6(j), as created in
25 Section 2 of this act, by October 31, 2006. The memorandum of understanding shall
26 establish procedures and timelines that are efficient and meet the criteria of IDEA so
27 that impartial hearings are expeditiously handled. At the same time, the procedures and
28 timelines should recognize there are some complicated issues that may require
29 additional time to resolve. In particular, this memorandum should address at least the
30 following:

- 31 (1) The reasons, number of days, and means for providing notice to
32 parties.
- 33 (2) When a petition is initiated for the purpose of determining when a
34 decision shall be reached. Specifically, this shall address when
35 mediation is begun before and after a petition is filed and when no
36 mediation is begun.
- 37 (3) Whether mediated conferences subject to Chapter 150B of the General
38 Statutes are appropriate under IDEA and, if so, when they should
39 occur and how will they affect the timelines.
- 40 (4) The number of extensions to be allowed and the basis on which an
41 extension may be granted.
- 42 (5) The standard of review for cases going to review officers.

- 1 (6) Any other procedural or tolling issue that the State Board of Education
2 or the Office of Administrative Hearings considers necessary to
3 address.

4 **SECTION 6.(b)** The State Board and the Office of Administrative Hearings
5 shall report jointly to the House Select Committee on the Education of Students with
6 Disabilities by November 15, 2006, on the memorandum of understanding. This report
7 shall make any recommendations as to funding issues that must be resolved or statutory
8 changes that are needed, or both, in order to implement the memorandum of
9 understanding.

10 **SECTION 7.** The State Board of Education shall ensure that the Allotment
11 Policy Manual includes, in fiscal year 2006-2007 and thereafter, the following language
12 related to local education agencies' use of funds allotted for textbooks:

13 "Local Education Agencies (LEAs) shall use their State textbook funds to provide,
14 to the same extent as is provided to nondisabled students, textbooks for students with
15 disabilities. LEAs also shall, at a minimum, provide teachers of children with
16 disabilities with the same teachers' editions provided to teachers of nondisabled
17 students."

18 **SECTION 8.** There is appropriated from the General Fund to the State
19 Board of Education for children with disabilities the sum of ten million nine hundred
20 eighty-one thousand seven hundred seventy-six dollars (\$10,981,776) for the 2006-2007
21 fiscal year in order to increase the per child with disabilities allocation.

22 **SECTION 9.** Sections 7 and 8 of this act become effective July 1, 2006. The
23 remainder of this act is effective when it becomes law.