

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

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

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

14 **"§ 115C-108. Definition of special education and related services.**

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

31 (a) Special education is specially designed instruction, at no cost to the parent, to
32 meet the unique needs of the child with a disability, including classroom instruction,
33 instruction in physical education, home instruction, instruction in hospitals and
34 institutions, and instruction in other settings. The term includes speech-language
35 pathology if the service consists of specially designed instruction, at no cost to the
36 parent, to meet the unique needs of a child with a disability, and is considered "special
37 education" rather than a "related service" under State standards. The term also includes
38 vocational education and travel training if it consists of specially designed instruction, at
39 no cost to the parent, to meet the unique needs of a child with a disability. As used in
40 this Article:

- 41 (1) "Specially designed instruction" means adapting content or delivery of
42 instruction to address the unique needs of an eligible student that result
43 from the student's disability and to ensure access of the student to the
44 general curriculum, so that he or she can meet the educational

standards within the jurisdiction of the local education agency that apply to all students.

(2) "Travel training" means providing instruction as appropriate, to children with significant cognitive disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment.

(3) "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

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

(1) "Audiology" includes:

a. Identification of children with hearing loss and middle ear dysfunction;

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

c. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing aid orientation, and speech conservation;

d. Creation and administration of programs for prevention of hearing loss;

e. Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

f. Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(2) "Counseling services" means services provided by licensed social workers, psychologists, guidance counselors, or other qualified personnel.

(3) "Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) "Medical services" means services provided by a licensed physician or other appropriately trained or supervised health care provider to

1 determine a child's medically related disability that results in the
2 child's need for special education and related services.

3 (5) "Occupational therapy" is a service provided by a licensed
4 occupational therapist to address the functional needs of an individual
5 as they relate to sensory, motor, postural, and emotional development,
6 adaptive behavior and play, and the performance of self-help skills.
7 These services are designed to develop, improve, restore, or maintain
8 the individual's functional ability to perform tasks in educational
9 settings. In an educational setting, occupational therapy services are
10 provided to enable an identified student to benefit from special
11 education in the least restrictive environment. Occupational therapy
12 services may include:

13 a. Identification, screening, evaluation, intervention, and
14 consultation;

15 b. Adaptation of environments, both human and physical, and
16 selection, design, and fabrication of assistive and orthotic
17 devices and other assistive technology to facilitate development
18 and promote the acquisition of functional skills so that the child
19 can perform tasks in the least restrictive environment;

20 c. Prevention or minimization of the impact of initial or further
21 impairment, delay in development, or loss of functional ability;
22 and

23 d. Provision of in-service education and information to families,
24 school personnel, and community and State agencies to assist
25 with problem solving, program planning, and priority setting.

26 (6) "Orientation and mobility" means services provided by qualified
27 personnel to enable students who are blind or visually impaired to
28 travel safely and independently and to remain oriented to a wide
29 variety of both familiar and unfamiliar indoor and outdoor
30 environments. For young children, orientation and mobility is teaching
31 concept development as it relates to body movement, spatial
32 awareness, knowledge of the environment, attitude toward
33 independence, and travel skills.

34 (7) "Parent counseling and training" means assisting parents in
35 understanding the special needs of their child and providing parents
36 with information about child development. For preschool children with
37 disabilities, parent counseling and training includes family services
38 that would assist parents in securing support that affects the child's
39 development.

40 (8) "Physical therapy" is a service provided by a licensed physical
41 therapist and is concerned with prevention of physical disabilities and
42 with providing rehabilitation services to individuals with disabilities
43 resulting from prenatal causes, birth trauma, illness, or injury. These
44 services are designed to develop or restore neuromuscular or

1 sensorimotor functions, control postural deviations to minimize
2 disabilities, and to develop and to maintain maximal performance
3 levels within the individual's physical capabilities. In an educational
4 setting, physical therapy services are provided to enable an identified
5 student to benefit from special education in the least restrictive
6 environment. Physical therapy services may include:

- 7 a. Development and maintenance of an individual student's
8 physical potential for independence and safety in educationally
9 related activities;
- 10 b. Modification and adaptation of the student's physical
11 environment so that the student may benefit from special
12 education;
- 13 c. Provision of in-service training for school personnel;
- 14 d. Communication with State and community agencies;
- 15 e. Education for parents or guardians; and
- 16 f. Involvement in total program planning for exceptional children.

17 (9) "Psychological services" include:

- 18 a. Administering psychological tests or procedures, educational
19 tests, and other procedures such as observations and interviews,
20 in order to determine a student's strengths and educational,
21 social, behavioral, or developmental needs; for preschool
22 children psychological assessment may include administering
23 psychological tests or criterion-referenced, curriculum-based,
24 and other educational tests, as well as conducting other
25 assessment procedures such as observations, interviews,
26 structured interactions, and play assessments as deemed
27 appropriate by the psychologist;
- 28 b. Interpreting assessment results;
- 29 c. Obtaining, integrating, and interpreting information about a
30 child's behavior and environmental conditions related to
31 learning and development;
- 32 d. Consulting with parents, teachers, and other school personnel in
33 planning programs and services to meet the identified needs of
34 children, including, but not limited to, placement, effective
35 learning/teaching strategies, and personal and social skills;
- 36 e. Planning and managing a program of psychological services
37 including psychological counseling for children and parents;
- 38 f. Referring children and families to community agencies and
39 services when appropriate;
- 40 g. Screening and early identification of children with disabilities;
- 41 h. Developing strategies for the prevention of learning and
42 behavior problems; and
- 43 i. Assisting in developing positive behavioral strategies.

44 (10) "Recreation" includes:

- 1 a. Assessment of leisure functions;
2 b. Therapeutic recreation services;
3 c. Recreation programs in schools and community agencies; and
4 d. Leisure education.
5 (11) "School health services" are services provided by a qualified school
6 nurse or other qualified person.
7 (12) "Social work services in schools" include:
8 a. Preparing a social or developmental history for a child with a
9 disability;
10 b. Group and individual counseling with the child and family;
11 c. Working with those problems in a child's living situation
12 (home, school, and community) that affect the child's
13 adjustment in school;
14 d. Mobilizing school and community resources to enable the child
15 to receive benefit from his or her educational program; and
16 e. Assisting in developing positive behavioral intervention
17 strategies.
18 (13) "Speech-language pathology" includes:
19 a. Identification of children with speech-language disorders;
20 b. Diagnosis and appraisal of specific speech-language disorders;
21 c. Referral for medical or other professional attention necessary
22 for the habilitation of speech-language disorders;
23 d. Provision of speech-language services for the habilitation or
24 prevention of communicative disorders; and
25 e. Counseling and guidance of parents, children, and teachers
26 regarding speech-language disorders.
27 (14) "Transportation" includes:
28 a. Travel to and from school and between schools;
29 b. Travel in and around school buildings; and
30 c. Specialized equipment (such as special or adaptive buses, lifts,
31 and ramps), if required to provide special transportation for a
32 child with a disability.

33 **§ 115C-109. Definition of children with special needs-disabilities.**

34 The term "children with special needs-disabilities" includes, without limitation, all
35 children from age five through age 20-21 who because of permanent or temporary
36 mental, physical or emotional handicaps-disabilities need special education, are unable
37 to have all their needs met in a regular class without special education or related
38 services, or are unable to be adequately educated in the public schools. ~~It includes those~~
39 ~~who are mentally retarded, epileptic, learning disabled, cerebral palsied, seriously~~
40 ~~emotionally disturbed, orthopedically impaired, autistic, multiply handicapped,~~
41 ~~pregnant, hearing impaired, speech impaired, blind or visually impaired, and other~~
42 ~~health impaired. It includes those who are autistic, behaviorally emotionally disabled,~~
43 ~~deaf-blind, hearing impaired, mentally disabled, multihandicapped, orthopedically~~

1 impaired, other health impaired, specific-learning disabled, speech-language impaired,
2 traumatic brain injured, and visually impaired.

3 **"§ 115C-110. Services mandatory; single-agency responsibility; State and local**
4 **plans; census and registration.**

5 (a) The Board shall cause to be provided by all local school administrative units
6 and by all other State and local governmental agencies providing special education
7 services or having children with ~~special-needs~~disabilities in their care, custody,
8 management, jurisdiction, control, or programs, special education and related services
9 appropriate to all children with ~~special-needs~~disabilities. In this regard, all local school
10 administrative units and all other State and local governmental agencies providing
11 special education and related services shall explore available local resources and
12 determine whether the services are currently being offered by an existing public or
13 private agency.

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

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

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

1 and the power to review, revise and approve any plans for special education and related
2 services to those residents.

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

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

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

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

42 ~~(c) The Board shall annually submit amendments to or revisions of the plan~~
43 ~~required by subsection (b) to the Governor and General Assembly and make it available~~
44 ~~for public comment pursuant to subdivision (1) and for public distribution no less than~~

1 ~~30 days before January 15 of each year. All such submissions shall set forth in detail the~~
2 ~~progress made in the implementation of the plan.~~

3 (d) The Board shall adopt rules covering:

4 (1) The qualifications of and standards for certification of teachers,
5 teacher assistants, speech clinicians, school psychologists, and others
6 involved in the education and training of children with ~~special~~
7 ~~needs;disabilities;~~

8 (2) Minimum standards for the individualized educational program for all
9 children with ~~special needs other than for the pregnant children, and~~
10 ~~for the educational program for the pregnant children, who receive~~
11 ~~special education and related services;disabilities; and~~

12 (3) Any other rules as may be necessary or appropriate for carrying out the
13 purposes of this Article. Representatives from the Departments of
14 Health and Human Services, Correction, and Juvenile Justice and
15 Delinquency Prevention shall be involved in the development of the
16 standards outlined under this subsection.

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

22 (1) A statement of the extent to which the required education and services
23 will be provided directly by the agency;

24 (2) A statement of the extent to which standards in force pursuant to G.S.
25 115C 110(b)(5) and (d)(2) are being met by the agency; and

26 (3) The means by which the agency will contract to provide, at levels
27 meeting standards in force pursuant to G.S. 115C 110(b)(5) and (d)(2),
28 all special education and related services not provided directly by it or
29 by the State.

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

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

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

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

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

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

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

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

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

38 (k) The Department shall monitor the effectiveness of individualized education
39 programs in meeting the educational needs of all children with ~~special-needs other than~~
40 ~~pregnant children, and of educational programs in meeting the educational needs of the~~
41 ~~pregnant children, disabilities.~~

42 (l) The Board shall provide for procedures assuring that in carrying out the
43 requirements of this Article procedures are established for consultation with individuals
44 involved in or concerned with the education of children with ~~special-needs,~~disabilities,

1 including parents or guardians of such children, and there are public hearings, adequate
2 notice of such hearings, and an opportunity for comment available to the general public
3 prior to the adoption of the policies, procedures, and rules or regulations required by this
4 Article.

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

7 "Part 2. Nondiscrimination in Education.

8 "**§ 115C-111. Free appropriate education for all children with ~~special~~
9 needs-disabilities.**

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

26 "**§ 115C-112:** Repealed by Session Laws 1995 (Regular Session, 1996), c. 716, s. 20.

27 "**§ 115C-113. Diagnosis and evaluation; individualized education program.**

28 (a) Before taking any action described in subsection (b), below, each local
29 educational agency shall ~~cause a multi-disciplinary diagnosis and evaluation to be made~~
30 ~~of the child. The State Board of Education shall establish special, simplified procedures~~
31 ~~for the diagnosis and evaluation of the pregnant child, which procedures shall focus on~~
32 ~~the particular needs of the pregnant child and shall exclude those procedures which are~~
33 ~~not pertinent to the pregnant.~~ conduct evaluations and determine eligibility consistent
34 with federal regulations. The local educational agency shall use the diagnosis and
35 evaluation to determine if the child has ~~special-needs~~disabilities, diagnose and evaluate
36 those needs, propose special education programs to meet those needs, and provide or
37 arrange to provide such programs. A multi-disciplinary diagnosis and evaluation is one
38 which includes, without limitation, medical (if necessary), psychological (if necessary)
39 and educational assessments and recommendations; such an evaluation may include any
40 other assessments as the Board may, by rule or regulation, require.

41 All testing and evaluation materials and procedures utilized for the purposes of
42 evaluation and placement of children with ~~special-needs~~disabilities will be selected and
43 administered so as not to be racially or culturally discriminatory. Such materials or
44 procedures shall be provided and administered in the child's native language or mode of

1 communication, unless it clearly is not feasible to do so, and no single procedure shall
2 be the sole criterion for determining an appropriate educational program for a child.

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

9 (c) Referral of any child shall be in writing, signed by the person requesting
10 diagnosis and evaluation, setting forth the reasons for the request; it shall be sent or
11 delivered to one of the following: the child's teacher, the principal of the school to
12 which the child is, has been or will be assigned, or the superintendent of the affected
13 local educational agency or his designee. The local educational agency shall send a
14 written notice to the parent or guardian describing the evaluation procedure to be
15 followed and requesting consent for the evaluation. If the parents or guardian consent,
16 the diagnosis and evaluation may be undertaken; if they do not, the local educational
17 agency may obtain a due process hearing pursuant to G.S. 115C-116 on the failure of
18 the parent or guardian to consent.

19 The local educational agency shall provide or cause to be provided, as soon as
20 possible after receiving consent for evaluation, a diagnosis and evaluation appropriate to
21 the needs of the child unless the parents or guardian have objected to such evaluation. If
22 at the conclusion of the evaluation, the child is determined to be a child with ~~special~~
23 ~~needs, disabilities,~~ the local educational agency shall within 30 calendar days convene an
24 individualized education program committee. The purpose of the meeting shall be to
25 propose the special education and related services for the child. An interpretation of the
26 multi-disciplinary diagnosis and evaluation will be made to the parent or guardian
27 during the meeting. The proposal shall set forth the specific benefits expected from such
28 a program, a method for monitoring the benefits, and a statement regarding conditions
29 ~~which that~~ will be considered indicative of the child's readiness for participation in
30 regular classes.

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

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

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

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

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

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

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

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

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

44 **"§ 115C-113.1. Surrogate parents.**

1 In the case of a child whose parent or guardian is unknown, whose whereabouts
2 cannot be determined after reasonable investigation, or who is a ward of the State, the
3 local educational agency shall appoint a surrogate parent for the child. The surrogate
4 parent shall be appointed from a group of persons approved by ~~the Superintendent of~~
5 ~~Public Instruction,~~ the Secretary of Health and Human ~~Services,~~Services and the
6 Secretary of Juvenile Justice and Delinquency Prevention, but in no case shall the
7 person appointed be ~~an employee of the local educational agency or directly involved in~~
8 ~~the education or care of the child. The Superintendent shall ensure that local educational~~
9 ~~agencies appoint a surrogate parent for every child in need of a surrogate parent.~~a
10 person ineligible under applicable law.

11 **"§ 115C-114. Records; privacy and expunction.**

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

21 (b) The eligible student, his parents or guardian or surrogate parent shall have the
22 right to read, inspect and copy all and any records, data and information maintained by a
23 local educational agency with respect to the student, and, upon their request, shall be
24 entitled to have those records, data and information fully explained, interpreted and
25 analyzed for them by the staff of the agency. The parent or guardian or surrogate parent
26 may demand that his request must be honored within not more than 45 days after it is
27 made.

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

35 **"§ 115C-115. Placements in private schools, out-of-state schools and schools in**
36 **other local educational agencies.**

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

- 38 (1) There be no cost to the parents or guardian for the placement of a child
39 in a private school, out-of-state school or a school in another local
40 education agency if the child was so placed by the Board or by the
41 appropriate local educational agency as the means of carrying out the
42 requirement of this Article or any other applicable law requiring the
43 provision of special education and related services to children within
44 the State.

- 1 (2) No child shall be placed by the Board or by the local educational
2 agency in a private or out-of-state school unless the Board has
3 determined that the school meets standards that apply to State and
4 local educational agencies and that the child so placed will have all the
5 rights he would have if served by a State or local educational agency.
- 6 (3) If the placement of the child in a private school, out-of-state school or
7 a school in another local educational agency determined by the
8 Superintendent of Public Instruction to be the most cost-effective way
9 to provide an appropriate education to that child and the child is not
10 currently being educated by the Department of Health and Human
11 Services, the Department of Juvenile Justice and Delinquency
12 Prevention, or the Department of Correction, the State will bear a
13 portion of the cost of the placement of the child. The local school
14 administrative unit shall pay an amount equal to what it receives per
15 pupil from the State Public School Fund and from other State and
16 federal funds for children with ~~special-needs~~disabilities for that child.
17 The State shall pay the full cost of any remainder up to a maximum of
18 fifty percent (50%) of the total cost.

19 "Part 3. Appeals.

20 **"§ 115C-116. Notice of decisions; mediation, administrative review, and judicial**
21 **review of disagreements.**

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

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

- 37 (1) Purpose. – The purpose of mediation is to clarify the concerns of the
38 parents and to resolve disputes.
- 39 (2) Definitions. – As used in this subsection, the following terms have the
40 following meanings:
- 41 a. "Dispute" means a disagreement between the parties that is
42 subject to review under subsection (c) of this section.

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

- 1 (11) Mediator's fees. – If mediation is requested before a request for formal
2 administrative review is filed, the local educational agency shall pay
3 the mediator's fees for one mediation session. If resolution is not
4 reached in that session, the parties must agree to continue the
5 mediation. The local educational agency shall pay any mediator fees
6 for subsequent mediation sessions unless the parties agree otherwise.
- 7 (12) Mediated settlement conference after a request for administrative
8 review. – In addition to mediation as provided by this subsection, the
9 parties may participate in a mediated settlement conference as
10 provided by G.S. 150B-23.1.
- 11 (13) Promotion of other settlement procedures. – The parties may agree to
12 use other dispute resolution methods or to use mediation in other
13 circumstances, including after a request for formal administrative
14 review is filed, to the extent permitted under State and federal law.
- 15 (c) Right of Review. – The parent, guardian, or surrogate parent may obtain
16 review of proposed decisions on the following grounds:
- 17 (1) The child has not been identified or has been incorrectly identified as a
18 child with ~~special needs; disabilities;~~
- 19 (2) The child's individualized education plan is not appropriate to meet his
20 needs;
- 21 (3) The child's individualized education plan is not being implemented; or
22 (4) The child is otherwise being denied a free, appropriate education.
- 23 In addition, a local educational agency may obtain review as provided by this section if
24 a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child
25 for the purpose of determining whether the child is a child with ~~special needs; disabilities~~
26 or for the purpose of developing a free appropriate educational program for the child.
- 27 (d) Administrative Review. – Except as otherwise provided in this section, the
28 administrative review shall be initiated and conducted in accordance with Article 3 of
29 Chapter 150B of the General Statutes, the Administrative Procedure Act.
- 30 (e) Scope of Review. – The issues for review shall be limited to those set forth in
31 subsection (c).
- 32 (f) Venue of Hearing. – The hearing shall be conducted in the county where the
33 child attends school or is entitled to enroll pursuant to G.S. 115C-366.
- 34 (g) Hearing Closed. – The hearing shall be closed to the public unless the parent,
35 guardian, or surrogate parent, requests in writing that the hearing be open to the public.
- 36 (h) Decision of the Administrative Law Judge. – Following the hearing, the
37 administrative law judge shall make a decision regarding the issues set forth in
38 subsection (c). The decision shall contain findings of fact and conclusions of law.
39 Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of
40 the administrative law judge becomes final and not subject to further review unless
41 appealed to the Review Officer as provided in subsection (i). A copy of the
42 administrative law judge's decision shall be served upon each party and a copy shall be
43 furnished to the attorneys of record. The written notice shall contain a statement

1 informing the parties of the availability of appeal and the 30-day limitations period for
2 appeal as set forth in subsection (i).

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

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

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

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

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

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

43 "Part 5. Council on Educational Services for Exceptional Children.

44 "**§ 115C-121. Establishment; organization; powers and duties.**

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

3 ~~(b) The Council shall consist of 23 members to be appointed as follows: five ex~~
4 ~~officio members; two members appointed by the Governor; two members of the Senate~~
5 ~~appointed by the President Pro Tempore; two members of the House of Representatives~~
6 ~~appointed by the Speaker of the House; and 12 members appointed by the State Board~~
7 ~~of Education. Of those members of the Council appointed by the State Board one~~
8 ~~member shall be selected from each congressional district within the State, and the~~
9 ~~members so selected shall be composed of at least one person representing each of the~~
10 ~~following: handicapped individuals, parents or guardians of children with special needs,~~
11 ~~teachers of children with special needs, and State and local education officials and~~
12 ~~administrators of programs for children with special needs. The Council shall designate~~
13 ~~a chairperson from among its members. The designation of the chairperson is subject to~~
14 ~~the approval of the State Board of Education. The board shall promulgate rules or~~
15 ~~regulations to carry out this subsection.~~

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

- 17 (1) ~~The Secretary of the Department of Health and Human Services or the~~
18 ~~Secretary's designee;~~
19 (1a) ~~A representative of the Department of Juvenile Justice and~~
20 ~~Delinquency Prevention, appointed by the Governor;~~
21 (2) ~~The Secretary of the Department of Correction or the Secretary's~~
22 ~~designee;~~
23 (3) ~~A representative from The University of North Carolina Planning~~
24 ~~Consortium for Children with Special Needs; and~~
25 (4) ~~The Superintendent of Public Instruction or the Superintendent's~~
26 ~~designee.~~

27 ~~The term of appointment for all members except those appointed by the State Board~~
28 ~~of Education shall be for two years. The term for members appointed by the State Board~~
29 ~~of Education shall be for four years. No person shall serve more than two consecutive~~
30 ~~four year terms. The initial term of office of the person appointed from the 12th~~
31 ~~Congressional District shall commence on January 3, 1993, and expire on June 30,~~
32 ~~1996.~~

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

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

39 ~~(e) The Council shall meet in offices provided by the Department of Public~~
40 ~~Instruction on a date to be agreed upon by the members of the Council from meeting to~~
41 ~~meeting: Provided, however, that the Council shall meet no less than once every three~~
42 ~~months. The Department of Public Instruction shall provide the necessary secretarial~~
43 ~~and clerical staff and supplies to accomplish the objectives of the Council.~~

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

3 (1) ~~Advise the Board with respect to unmet needs within the State in the~~
4 ~~education of children with special needs, as defined in this Chapter.~~

5 (2) ~~Comment publicly on rules and regulations proposed for issuance by~~
6 ~~the Board regarding special education and related services and the~~
7 ~~procedures for issuing State and federal funds for special education~~
8 ~~and related services.~~

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

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

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

19 "Part 6. Range of Services Available.

20 "**§ 115C-122. Early childhood development program; evaluation and placement of**
21 **children.**

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

24 (1) The State shall provide for a comprehensive early childhood
25 development program by emphasizing preventative and remedial
26 measures designed to provide the services which will enable children
27 to develop to the maximum level their physical, mental, social, and
28 emotional potentials and to strengthen the role of the family as the first
29 and most fundamental influence on child development. The General
30 Assembly finds that the complexity of early childhood development
31 precludes the enactment of legislation which is of a sufficiently
32 comprehensive nature to encompass all possible implications. The
33 Departments of Public Instruction and Health and Human Services
34 shall, therefore, jointly develop an early childhood development
35 program plan with flexibility sufficient to meet the State's policy as set
36 forth in this subdivision. Said plan shall provide for the operation of a
37 statewide early childhood development program no later than June 30,
38 1983.

39 (2) The State requires a system of educational opportunities for all
40 children with ~~special needs~~disabilities and requires the identification
41 and evaluation of the needs of children and the adequacy of various
42 education programs before placement of children, and shall provide for
43 periodic evaluation of the benefits of programs to the individual child
44 and the nature of the child's needs thereafter.

- 1 (3) The State shall prevent denial of equal educational and service
2 opportunity on the basis of national origin, sex, economic status, race,
3 religion, and physical, mental, social or emotional ~~handicap~~ disability
4 in the provision of services to any child. Each local school
5 administrative unit shall develop program plans to meet the
6 educational requirements of children with ~~special needs~~ disabilities and
7 each local human services agency shall develop program plans to meet
8 the human service requirements of children with ~~special~~
9 ~~needs~~ disabilities in accordance with program standards and in a
10 planning format as shall be prescribed by the State Board of Education
11 and the Department of Health and Human Services respectively.

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

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

37 "Part 10. State and Local Relationships.

38 "**§ 115C-139. Interlocal cooperation.**

39 (a) The Board, any two or more local educational agencies and any such agency
40 and any State department, agency, or division having responsibility for the education,
41 treatment or habilitation of children with ~~special needs~~ disabilities are authorized to enter
42 into interlocal cooperation undertakings pursuant to the provisions of Chapter 160A,
43 Article 20, Part 1 of the General Statutes or into undertakings with a State agency such
44 as the Departments of Public Instruction, Health and Human Services, Juvenile Justice

1 and Delinquency Prevention, or Correction, or their divisions, agencies, or units, for the
2 purpose of providing for the special education and related services, treatment or
3 habilitation of such children within the jurisdiction of the agency or unit, and shall do so
4 when it itself is unable to provide the appropriate public special education or related
5 services for these children. In entering into such undertakings, the local agency and
6 State department, agency, or division shall also contract to provide the special education
7 or related services that are most educationally appropriate to the children with ~~special~~
8 ~~needs~~disabilities for whose benefit the undertaking is made, and provide these services
9 by or in the local agency unit or State department, agency, or division located in the
10 place most convenient to these children.

11 (b) Local educational agencies may establish special education and related
12 programs for children with ~~special-needs~~disabilities aged birth through four and 19
13 through 21 inclusive.

14 **"§ 115C-140. Contracts with private service-providers.**

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

23 **"§ 115C-140.1. Cost of education of children in group homes, foster homes, etc.**

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

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

36 "Part 11. Rules and Regulations.

37 **"§ 115C-141. Board rules and regulations.**

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

41 "Part 12. Nonreduction Provision.

42 **"§ 115C-142. Nonreduction.**

43 Notwithstanding any of the other provisions of this Article, it is the intent of the
44 General Assembly that funds appropriated by it for the operation of programs of special

1 education and related services by local school administrative units not be reduced;
2 rather, that adequate funding be made available to meet the special educational and
3 related services needs of children with ~~special needs;~~disabilities, without regard to
4 which State or local department, agency, or unit has the child in its care, custody,
5 control, or program.

6 "Part 13. Budget Analysis and Departmental Funding.

7 "§ 115C-143: Repealed by Session Laws 1981 (Regular Session, 1982), c. 1282, s. 29.

8 "§ 115C-144: Repealed by Session Laws 1997-18, s. 7.

9 "§ 115C-145. **Allocation of federal funds.**

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

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

17 "§ 115C-146.1. **Definitions.**

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

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

37 "§ 115C-146.2. **Entitlement to services.**

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

41 "§ 115C-146.3. **Obligation to provide services.**

42 (a) The General Assembly finds:

- 43 (1) That preschool ~~handicapped children~~ with disabilities will benefit from
44 the special education and related services required by this Part;

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

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

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

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

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

30 **"§ 115C-146.4. Rules.**

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

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

42 "Article 9C.

43 "Pregnant Children.

44 **"§ 115C-150.13. Educational programs for pregnant children.**

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

12 **SECTION 3.** This act is effective when it becomes law.