

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 927
HOUSE BILL 824

AN ACT TO PROVIDE FOR A SYSTEM OF EDUCATIONAL OPPORTUNITIES FOR ALL CHILDREN REQUIRING SPECIAL EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115 of the General Statutes is amended by a new Subchapter XIII, Article 45 et seq., to read as follows:

"ARTICLE 45.

"State Policy.

"§ 115-360. Policy. — The policy of the State is to provide a free appropriate publicly supported education to every child with special needs. The purpose of this act is to (1) provide for a system of special educational opportunities for all children requiring special education (hereinafter called 'children with special needs'); (2) provide a system for identifying and evaluating the educational needs of all children with special needs; (3) require evaluation of the needs of such children and the adequacy of special education programs before placing children in the programs; (4) require periodic evaluation of the benefits of the programs to the children and of the nature of the children's needs after placement; (5) prevent denials of equal educational opportunity on the basis of physical, emotional, or mental handicap; (6) to assure that the rights of children with special needs and their parents or guardians are protected; (7) insure that there be no inadequacies, inequities, and discrimination with respect to children with special needs; and (8) bring State law, regulations, and practice into conformity with relevant federal law.

"§ 115-361. Children can learn. — The General Assembly finds that all children with special needs are capable of benefitting from appropriate programs of special education and training and that they have the ability to be educated and trained and to learn and develop. Accordingly, the State has a duty to provide them with a free appropriate public education.

"§ 115-362. Definition of special education and related services. — The term 'special education' means specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a special needs child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term also includes speech pathology, audiology, occupational and physical therapy. The term 'related services' means transportation and such developmental, corrective and other supportive services as are required to assist a special needs child to benefit from special education and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes only. The term also includes school social work services, parent counseling and training, providing parents with information about child development and assisting parents in understanding the special needs of their child. Other similar services, materials and equipment may be provided as approved by regulations adopted by the State Board of Education ("the Board").

"§ 115-363. Definition of children with special needs. — The term 'children with special needs' includes, without limitation, all children between the ages of five and 18 who because of permanent or temporary mental, physical or emotional handicaps need special education, are

unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are mentally retarded, epileptic, learning disabled, cerebral palsied, seriously emotionally disturbed, orthopedically impaired, autistic, multiply handicapped, pregnant, hearing-impaired, speech-impaired, blind or visually-impaired, genetically impaired, and gifted and talented.

"§ 115-364. Services mandatory; single-agency responsibility; State and local plans; census and registration. — (a) The Board shall cause to be provided by all city and county school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all city and county school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

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

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Human Resources and the Department of Correction.

All provisions of this Subchapter that are specifically applicable to city and county school administrative units also are applicable to the Department of Human Resources and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to city and county school administrative units by this Subchapter also are imposed on or granted to the Department of Human Resources and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any State-operated or State-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Human Resources and the Department of Correction for the provision of special education and related services and the power to review, revise and approve said departments' plans for special education and related services to those residents.

The Departments of Human Resources and Correction shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Human Resources and Correction. The Board may grant specific exemptions for programs administered by the Department of Human Resources or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on such department and when other procedural due process requirements, substantially equivalent to those of G.S. 115-179.1, are assured in programs of special education and related services furnished to children with special needs served by such department. Further, the Board shall recognize that inpatient and residential special education

programs within the Departments of Human Resources and Correction may require additional program resources than those necessary for optimal operation of such programs in city and county administrative units.

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

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115-360. The plan shall include:

- (1) A census of the children with special needs in the State, as required by G.S. 115-364(j);
- (2) A procedure for diagnosis and evaluation of each such child;
- (3) An inventory of the personnel and facilities available to provide special education for such children;
- (4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;
- (5) Standards for the education of children with special needs;
- (6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and
- (7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall present the plan required by subsection (b) to the Governor and the General Assembly and make it available for public comment pursuant to subsection (l) no later than January 15, 1978. Thereafter, the Board shall annually submit amendments to or revisions of the plan to the Governor and General Assembly and make it available for public comment pursuant to subsection (l) and for public distribution no less than 30 days before January 15 of each year. All such submissions, except for the initial submission of the plan, shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt as soon as practicable after the effective date of this act (but not in any event later than 120 days after the effective date) rules or regulations covering:

- (1) The qualifications of and standards for certification of teachers, aides, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;
- (2) Minimum standards for the individualized education program for each child with special needs who receives special education or related services; and
- (3) Such other rules or regulations as may be necessary or appropriate for carrying out the purposes of this act.

Representatives from the Departments of Human Resources and Correction shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, 1977, and annually thereafter, each local educational agency shall report to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this act, including the following:

- (1) A statement of the extent to which the required education and services will be provided directly by the agency;
- (2) A statement of the extent to which standards in force pursuant to G.S. 115-364(b)(5) and (d)(2) are being met by the agency; and

(3) The means by which the agency will contract to provide, at levels meeting standards in force pursuant to G.S. 115-364(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

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

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

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

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

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

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this act for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except such fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Human Resources shall not prevent that department from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for 'identified' and 'suspected' children with special needs, to be taken in each school year, beginning with the school year 1977-1978. With respect to the census for the school year 1977-1978, the census may be that taken pursuant to Chapter 1293, 1973 Session Laws (Second Session, 1974), as amended. Thereafter, the census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

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

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

(k) The department shall monitor the effectiveness of individualized education programs in meeting the educational needs of children with special needs.

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

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

"ARTICLE 46.

"Nondiscrimination in Education.

"§ 115-370. Compulsory attendance. — No child with special needs between the ages specified by G.S. 115-363 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian(s) reside or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Human Resources, the local educational agency shall confer with the appropriate Department of Human Resources staff for their participation and determination of the appropriateness of placement in said program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115-179.1. Every child with special needs shall be entitled to attend such nonresidential schools or programs and receive from them free appropriate public education.

"§ 115-371. Disciplinary suspensions. — If a local educational agency suspends or expels a child with special needs from a public school program for a period of more than 10 days or for consecutive periods that total more than 10 days because he is or poses a risk of injury to himself or others or because he is or is threatening to substantially disrupt the education of others, the agency, notwithstanding the suspension or expulsion, shall continue to provide the child with essential special education or related services during the period of suspension or expulsion if that period is one in which the child would be receiving special education or training in the unit but for the suspension or expulsion. The parents may appeal, under G.S. 115-179.1, any suspension of more than 10 consecutive days. These limitations on suspension and expulsion shall not interfere with the authority of the Department of Human Resources to release or discharge patients and residents from its programs when the primary purpose of admission has been achieved or when it is no longer feasible or advisable to continue the patient or resident in residence.

"§ 115-372. Diagnosis and evaluation; individualized education program. — (a) All testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with special needs will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

Before taking any action described in subsection (b), below, each local educational agency shall cause a multi-disciplinary diagnosis and evaluation to be made of the child. The local educational agency shall use the diagnosis and evaluation to determine if the child has special needs, diagnose and evaluate those needs, propose special education programs to meet those needs, and provide or arrange to provide such programs. A multi-disciplinary diagnosis and evaluation is one which includes, without limitation, medical (if necessary), psychological (if necessary) and educational assessments and recommendations; such an evaluation may include any other assessments as the Board may, by rule or regulation, require.

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

(c) Referral of any child shall be in writing, signed by the person requesting diagnosis and evaluation, setting forth the reasons for the request; it shall be sent or delivered to the child's teacher, the principal of the school to which the child is, has been or will be assigned, and the superintendent or other chief executive officer of the affected local educational agency.

Within 30 days of such referral, the local educational agency shall send a written notice to the parents or guardian describing the evaluation procedure to be followed and requesting consent for the evaluation. If the parents or guardian consent, the diagnosis and evaluation may be undertaken; if they do not, the local educational agency may obtain a due process hearing on the failure of the parent to consent under Section 115-179.1.

The local educational agency shall provide or cause to be provided a diagnosis and evaluation appropriate to the needs of the child within 30 calendar days after sending the notice unless the parents or guardian have objected to such evaluation. At the end of such diagnosis and evaluation, the local educational agency shall offer a proposal for an educational program appropriate to the child's needs. If this proposal calls for a special educational program, it shall set forth the specific benefits expected from such a program, a method for monitoring the benefits, and a statement regarding conditions which will be considered indicative of the child's readiness for participation in regular classes.

Within 12 months after placement in a special education program, and at least annually thereafter, those people responsible for developing the child's individualized education program shall evaluate the child's progress and, on the basis of previously stated expected benefits, decide whether to continue or discontinue the placement or program. If the reevaluation indicates that the placement or program does not benefit the child, the appropriate reassignment or alteration in the prescribed program shall be recommended to the parents or guardian and their consent requested.

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

(d) The local educational agency shall furnish the results, findings, and proposals based on the diagnosis and evaluation to the parents or guardian in writing in the parents' or guardian's native language or by their dominant mode of communication within 15 calendar days after the diagnosis and evaluation is completed. Within 20 days after the diagnosis and evaluation is completed, it shall cause a conference to be scheduled between one of its staff competent to interpret the report of the diagnosis and evaluation and the child's parents or guardian. The conference shall be held no later than 30 calendar days after the date it is scheduled. At the conference, the report shall be explained to the parents or guardian. The parents or guardian may waive the interpretive conference.

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

(f) Each local educational agency shall prepare an individualized education program for each child found to be a child with special needs. The individualized educational program shall be developed in conformity with P.L. 94-142 and the implementing regulations issued by the Office of Education, Department of Health, Education, and Welfare and shall be implemented in conformity with the timelines set by that department. The term 'individualized educational

program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized education program of each child with special needs at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Human Resources, the individualized education program shall be planned in collaboration with those other individuals responsible for the design of the total treatment and/or habilitation plan; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent.

§ 115-373. Records; privacy and expunction. — (a) No local educational agency may release to any persons other than the eligible student, his parents or guardian or any surrogate parent any records, data or information on any child with special needs except (1) as permitted by the prior written consent of the student, his parents or guardian or surrogate parent (2) as required or permitted by federal law, (3) school officials within the local education agency who have legitimate educational interests, (4) school officials of other local education agencies in which the student intends to enroll, (5) certain authorized representatives of the State and federal government who are determining eligibility of the child for aid, as provided under P.L. 93-380 or other federal law.

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

(c) The student, his parents or guardians or surrogate parent shall have the right to add to the records, data and information written explanations or clarifications thereof, and to cause the expunction of incorrect, outdated, misleading or irrelevant entries. If a local educational agency refuses to expunge incorrect, outdated, misleading or irrelevant entries after having been asked to do so by the parent, such person may obtain a due process hearing, under G.S. 115-179.1, on the agency's refusal, and must request the hearing within 30 days after the agency's refusal.

§ 115-374. Private school placements. — The Board shall (i) adopt policies and procedures to assure that handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized educational program) at no cost to their parents or guardian, provided such children have been placed in or referred to such schools or facilities by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this act or any other applicable law requiring the provision of special education and related services to all handicapped children within the State, and (ii) in all such instances the Board shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies. The State and local educational agencies shall be excused from payment of the costs of special education and related services in a private school if a child is placed in that school by his parents or guardian against the advice of the State or a local educational agency.

"ARTICLE 47.

"State and Local Relationships.

§ 115-380. Interlocal cooperation. — (a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having

responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings pursuant to the provisions of G.S. 160A, Article 20, Part 1, or into undertakings with a State agency such as the Departments of Public Instruction, Human Resources, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide the appropriate public special education or related services for such children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to (1) provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and (2) provide such services by or in the local agency unit or State department, agency, or division located in the place most convenient to such children.

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

"§ 115-381. Contracts with private service providers. — State departments, agencies and divisions and local educational agencies furnishing special education and related services to children with special needs may contract with private special education facilities or service providers to furnish such services as the public providers are unable to furnish. No contract between any public and private service provider shall be effective until it has received the prior written approval of the Board. The Board shall not withhold its approval of the contract unless the private facilities and providers do not meet the Board's standards established pursuant to G.S. 115-364(a), (b)(5), and (d)(2).

"ARTICLE 48.

"Employment of the Handicapped.

"§ 115-390. Employment of the handicapped. — The Board and each local educational agency shall make positive efforts to employ and advance in employment qualified handicapped individuals.

"ARTICLE 49.

"Rules and Regulations.

"§ 115-400. Board rules and regulations. — The Board shall adopt rules and regulations for the administration of this act. The Board shall provide technical assistance to the various concerned agencies at their request.

"ARTICLE 50.

"Non-Reduction Provisions.

"§ 115-410. Non-reduction. — Notwithstanding any of the other provisions of this act, it is the intent of the General Assembly that funds appropriated by it for the operation of programs of special education and related services by city and county school administrative units not be reduced; rather, that adequate funding be made available to meet the special educational and related services needs of children with special needs, without regard to which State or local department, agency, or unit has the child in its care, custody, control, or program.

"ARTICLE 51.

"Budget Analysis and Departmental Funding.

"§ 115-420. Budget analysis. — The Division of Fiscal Research shall conduct an annual budget analysis of the budgets of the Departments of Human Resources and Correction to determine what funds are expended by those departments for programs of special education and related services for children with special needs, aged birth through 21, and shall submit a report of its analysis to the General Assembly, the Governor, and the State Board of Education and the Departments of Human Resources and Correction no later than October 1, of each year, beginning with the year 1977.

"§ 115-421. Departmental requests. — All budget requests for funding of new or existing or for the expansion of existing programs of special education and related services for children

with special needs, aged birth through 21, to be furnished or provided by the Departments of Human Resources or Correction shall be submitted by those departments to the Board for review and comment prior to presentation by the respective department to the Advisory Budget Committee, effective for the fiscal year beginning July 1, 1978, and annually thereafter.

"§ 115-422. Allocation of federal funds. — At such time as any federal monies for the special education and related services for children with special needs are made available, these funds shall be allocated according to a formula designed by the Board not inconsistent with federal laws and regulations. Such formula shall insure equitable distribution of resources based upon the number of children with special needs served by the respective agencies, and shall be implemented as funds are made available from federal and State appropriations."

Sec. 2. G.S. 115-1.1(c), G.S. 115-1.2, Section 7 of Chapter 1293, 1973 Session Laws, Second Session, 1974, as amended, and G.S. 115-315.1 through G.S. 115-315.6 are repealed.

Sec. 3. Nothing herein contained shall be construed to obligate the General Assembly to make additional appropriations to implement the provisions of this act.

Sec. 4. This act shall become effective July 1, 1977.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.