



2011 ASSEMBLY BILL 110

April 26, 2011 - Introduced by Representatives LITJENS, FIELDS, WYNN, KNUDSON, NASS, PRIDEMORE, THIESFELDT, VOS, KLEEFISCH, LEMAHIEU, NYGREN, STRACHOTA, BERNIER, BIES, BROOKS, ENDSLEY, FARROW, HONADEL, JACQUE, KNILANS, KOOYENGA, KRAMER, KRUG, KUGLITSCH, T. LARSON, MURSAU, PETRYK, RIVARD, SEVERSON, SPANBAUER, TIFFANY and ZIEGELBAUER, cosponsored by Senators VUKMIR, MOULTON, GALLOWAY and DARLING. Referred to Committee on Education.

1 **AN ACT to amend** 20.255 (2) (cy), 115.77 (1), 115.791 (4), 121.08 (4) (c), 121.08 (4)
2 (d) and 121.54 (3); and **to create** 20.255 (2) (az), 115.7915, 121.05 (1) (a) 4. and
3 121.08 (4) (am) of the statutes; **relating to:** creating the Special Needs
4 Scholarship Program for disabled pupils, granting rule-making authority, and
5 making an appropriation.

Analysis by the Legislative Reference Bureau

This bill establishes a Special Needs Scholarship Program. Under the program, a child with a disability may receive a scholarship to attend a public school located outside the pupil's school district of residence, or a private school, if all of the following conditions are met:

1. The school has notified the Department of Public Instruction (DPI) of its intent to participate in the program and the child has been accepted by the school.
2. If the school is a private school, it is approved as a private school by DPI or is accredited.
3. An individualized education program (IEP) has been completed for the child.
4. The child attended a public school, or did not attend school in this state, in the previous school year.

Upon receipt of an application for a scholarship, DPI must review the child's IEP and determine the amount of the child's scholarship. The amount is the lesser of the cost to the child's school district of residence, or the cost to the school district or private school that the child wishes to attend, of providing regular instruction,

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instructional and pupil support services, special education and related services, and supplementary aids and services to the child. If the child is attending for less than a full school term, DPI must prorate the amount of the scholarship.

DPI pays the scholarship directly to the school or school district that the child will attend. The scholarship continues while the child attends a school eligible to participate in the program until he or she graduates from high school or until the end of the school term in which he or she turns 21, whichever comes first.

Under the bill, a pupil attending a private school, or a public school outside the pupil's school district of residence, under the program is counted for state aid purposes by the pupil's school district of residence. However, the state aid paid to that school district is reduced by the total amount of scholarships paid by DPI for pupils who reside in that school district.

Each private school participating in the program must comply with applicable health and safety laws; hold a valid occupancy permit, if required by the municipality; comply with federal law that prohibits discrimination against any person on the basis of race, color, or national origin; and conduct criminal background investigations of its employees and exclude from employment any person not permitted to hold a teaching license as the result of an offense any any person who might reasonably be believed to pose a threat to the safety of others.

The private school must also annually submit to DPI a school financial report prepared by a certified public accountant. If the private school expects to receive at least \$50,000 in scholarships during a school year, it must either file a surety bond with DPI or provide DPI with information demonstrating that it has the ability to pay an amount equal to the total amount of scholarships that it expects to receive.

The bill provides that if a child attends a private school under the program, his or her school district of residence must provide transportation to and from the school if the school is located at least two miles from the child's residence, the child resides in the private school's attendance area, and the private school is situated within the school district of residence or not more than five miles beyond the boundaries of the school district.

If the child attends a public school under the program, the child's parent is responsible for transporting the child to and from school unless transportation is required in the child's IEP. If the latter applies, the school district that the child attends is responsible for transporting the child. The bill allows a low-income pupil to apply to DPI for reimbursement of transportation costs.

The bill authorizes DPI to bar a school from participating in the program if the school intentionally and substantially misrepresents information required under the bill, routinely fails to comply with financial standards, uses a pupil's scholarship for any purpose other than educational purposes, or fails to refund any scholarship overpayments to the state.

Finally, the bill directs the Legislative Audit Bureau to contract for a study of the program. The results of the study must be reported to the legislature by January 9, 2015.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.255 (2) (az) of the statutes is created to read:

2 20.255 (2) (az) *Special Needs Scholarship Program.* A sum sufficient to pay the
3 special needs scholarships under s. 115.7915.

4 **SECTION 2.** 20.255 (2) (cy) of the statutes is amended to read:

5 20.255 (2) (cy) *Aid for transportation; open enrollment and special needs*
6 *scholarships.* The amounts in the schedule to reimburse parents for the costs of
7 transportation of ~~open enrollment~~ pupils under ss. 115.7915, 118.51 (14) (b), and
8 118.52 (11) (b).

9 **SECTION 3.** 115.77 (1) of the statutes is amended to read:

10 115.77 (1) In sub. (1m) (a) to (d), except as provided in s. 118.51 (12) (a) and (b)
11 2., if a child with a disability is attending a public school in a nonresident school
12 district under s. 115.7915, 118.51, or 121.84 (1) (a) or (4), “local educational agency”
13 means the school district that the child is attending.

14 **SECTION 4.** 115.791 (4) of the statutes is amended to read:

15 115.791 (4) Subject to s. 115.77 (1m) (d) and (e), this section does not require
16 a local educational agency to pay the cost of education, including special education
17 and related services, of a child with a disability at a private school or facility,
18 including a child with a disability attending a private school under s. 115.7915, if the
19 local educational agency made a free appropriate public education available to the
20 child and the child’s parents elected to place the child in a private school or facility.

21 **SECTION 5.** 115.7915 of the statutes is created to read:

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1 **115.7915 Special Needs Scholarship Program. (1) DEFINITION.** In this
2 section, “eligible school” means a public school located outside the pupil’s school
3 district of residence or a private school.

4 **(1m) SCHOLARSHIP REQUIREMENTS.** Beginning in the 2011–12 school year, a child
5 with a disability shall receive a scholarship under this section to attend an eligible
6 school if all of the following apply:

7 (a) The school district in which the eligible public school is located or the eligible
8 private school notified the state superintendent of its intent to participate in the
9 program under this section.

10 (b) The school, if a private school, is approved by the state superintendent
11 under s. 118.165 (2) or is accredited by the Wisconsin North Central Association, the
12 Wisconsin Religious and Independent Schools Accreditation, the Independent
13 Schools Association of the Central States, the Archdiocese of Milwaukee, or any
14 other organization recognized by the National Council for Private School
15 Accreditation as of the August 1 preceding the school term for which the scholarship
16 is awarded.

17 (c) An individualized education program has been completed for the child.

18 (d) The child attended a public school, or did not attend school in this state, in
19 the school year immediately preceding the school year for which the child first
20 receives a scholarship under this section.

21 (e) The child, or the child’s parent on behalf of the child, has submitted an
22 application to the department, on a form prepared by the department, for a
23 scholarship under this section to attend the eligible school. An application may be
24 made, and a child may begin attending an eligible school under this section, at any
25 time during the school year.

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1 (f) The child has been accepted by the school district in which the eligible public
2 school is located or the eligible private school.

3 (2) DEPARTMENT DUTIES. Upon receipt of an application under sub. (1m) (e), the
4 department shall do all of the following:

5 (a) Notify the school board of the pupil's school district of residence that the
6 pupil has requested a scholarship under this section. The school board shall, within
7 3 days of receiving the notice, provide the department with a copy of the pupil's
8 individualized education program.

9 (b) Review the pupil's individualized education program provided under par.
10 (a) and determine the amount of the pupil's scholarship. The amount shall be the
11 lesser of the following:

12 1. The cost to the pupil's school district of residence of providing to the pupil
13 regular instruction, instructional and pupil support services, special education and
14 related services, and supplementary aids and services.

15 2. The cost to the school district in which the eligible public school is located
16 or the eligible private school of providing the instruction and services specified in
17 subd. 1.

18 (bm) Prorate the amount determined under par. (b) for a pupil attending an
19 eligible school for less than a full school term.

20 (c) Notify the parent of the scholarship amount, as determined under par. (b)
21 or (bm), accompanied by an explanation of how the amount was determined.

22 (d) On behalf of the pupil's parent, pay the scholarship to the school district or
23 private school that the pupil attends from the appropriation under s. 20.255 (2) (az).
24 The scholarship shall continue while the pupil attends an eligible school until the

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1 pupil graduates from high school or until the end of the school term in which the pupil
2 attains the age of 21, whichever comes first.

3 (3) SCHOOL BOARD DUTIES. (a) Annually, each school board shall notify the
4 parents of each child with a disability enrolled in the school district of the program
5 under this section.

6 (b) Upon the request of a parent of a pupil receiving a scholarship, the pupil's
7 resident school district shall administer the appropriate examinations under s.
8 118.30 to the pupil at no cost if the school attended by the pupil does not administer
9 them.

10 (4) PRIVATE SCHOOL DUTIES. Each private school participating in the program
11 under this section shall do all of the following:

12 (a) Comply with all health and safety laws or codes that apply to private
13 schools.

14 (b) Hold a valid occupancy permit, if required by the municipality in which the
15 school is located.

16 (c) Annually certify to the department that it complies with 42 USC 2000d.

17 (d) Conduct criminal background investigations of its employees and exclude
18 from employment any person not permitted to hold a teaching license as the result
19 of an offense and any person who might reasonably be believed to pose a threat to the
20 safety of others.

21 (e) Annually submit to the department a school financial information report,
22 prepared by a certified public accountant, that complies with uniform financial
23 accounting standards established by the department by rule. The report shall be
24 accompanied by an auditor's statement that the report is free of material
25 misstatements and fairly represents pupil costs. The report shall be limited in scope

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1 to those records that are necessary for the department to make payments to
2 participating schools.

3 (f) If the participating school expects to receive at least \$50,000 in scholarships
4 under this section during a school year, do one of the following before the beginning
5 of the school year:

6 1. File with the department a surety bond payable to the state in an amount
7 equal to the total amount of scholarships expected to be received by the school during
8 the school year under this section.

9 2. File with the department financial information demonstrating that the
10 school has the ability to pay an amount equal to the total amount of scholarships
11 expected to be received by the school during the school year under this section.

12 (g) Regularly report to the parent of a pupil attending the school and receiving
13 a scholarship under this section on the pupil's progress.

14 **(5) TRANSPORTATION.** (a) *Private school.* Section 121.54 applies to the
15 transportation of a pupil to and from the private school he or she is attending under
16 this section.

17 (b) *Public school.* Section 118.51 (14) applies to the transportation of a pupil
18 to and from the public school he or she is attending under this section.

19 **(6) PENALTIES.** (a) The department may bar a school district or private school
20 from participating in the program under this section if the department determines
21 that the school district or private school has done any of the following:

22 1. Intentionally and substantially misrepresented information required under
23 sub. (4).

24 2. Routinely failed to comply with the standards under sub. (4) (e) or (f).

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1 3. Used a pupil's scholarship for any purpose other than educational purposes
2 or rebated, refunded, or shared a pupil's scholarship with a parent or pupil.

3 4. Failed to refund to the state, in a timely manner, any scholarship
4 overpayments.

5 (b) If the department bars a school district or private school from participating
6 in the program under this section, it shall notify all pupils eligible to participate in
7 the program and their parents as quickly as possible. A pupil who is receiving a
8 scholarship and attending a school district or private school barred from the program
9 may attend another participating school district or private school under the
10 scholarship.

11 **(7) STUDY.** (a) The legislative audit bureau shall contract for a study of the
12 program under this section with one or more researchers who have experience
13 evaluating school choice programs. The study shall evaluate all of the following:

14 1. The level of satisfaction with the program expressed by participating pupils
15 and their parents.

16 2. The percentage of participating pupils who were victimized because of their
17 special needs at their resident school district and the percentage of such pupils at
18 their participating school.

19 3. The percentage of participating pupils who exhibited behavioral problems
20 at their resident school district and the percentage of such pupils at their
21 participating school.

22 4. The average class size at participating pupils' resident school districts and
23 at their participating schools.

24 5. The fiscal impact of the program on the state and on resident school districts.

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1 (b) The contract under par. (a) shall require the researchers who conduct the
2 study to do all of the following:

3 1. Apply appropriate analytical and behavioral science methodologies to
4 ensure public confidence in the study.

5 2. Protect the identity of participating schools and pupils.

6 (c) The contract under par. (a) shall require that the results of the study be
7 reported to the appropriate standing committees of the legislature under s. 13.172
8 (3) by January 9, 2015.

9 **(8) RULES.** The department shall promulgate rules to implement and
10 administer this section, including rules relating to all of the following:

11 (a) The eligibility and participation of eligible schools, including timelines that
12 maximize pupil and school participation.

13 (b) The calculation and distribution of scholarships.

14 (c) The application and approval procedures for pupils and eligible schools.

15 **SECTION 6.** 121.05 (1) (a) 4. of the statutes is created to read:

16 121.05 **(1)** (a) 4. Pupils residing in the school district but attending a public
17 school in another school district, or a private school, under s. 115.7915.

18 **SECTION 7.** 121.08 (4) (am) of the statutes is created to read:

19 121.08 **(4)** (am) The amount of state aid that a school district is eligible to be
20 paid from the appropriation under s. 20.255 (2) (ac) in any school year shall be
21 reduced by the total amount of scholarships paid by the department under s.
22 115.7915 in that school year for pupils who reside in the school district.

23 **SECTION 8.** 121.08 (4) (c) of the statutes is amended to read:

24 121.08 **(4)** (c) The amount of state aid that a school district is eligible to be paid
25 from the appropriation under s. 20.255 (2) (ac) shall also be reduced by an amount

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1 equal to the amount paid to the Second Chance Partnership under s. 115.28 (54) for
2 pupils enrolled in the school district. The department shall ensure that the amount
3 of the aid reduction lapses to the general fund and that it does not affect the amount
4 determined to be received by a school district as state aid under this section for any
5 other purpose.

6 **SECTION 9.** 121.08 (4) (d) of the statutes is amended to read:

7 121.08 (4) (d) The state superintendent shall ensure that the total amount of
8 aid reduction under ~~pars. (a) and (b)~~ this subsection lapses to the general fund.

9 **SECTION 10.** 121.54 (3) of the statutes is amended to read:

10 121.54 (3) TRANSPORTATION FOR CHILDREN WITH DISABILITIES. ~~Every~~ Except as
11 provided in s. 115.7915 (5), every school board shall provide transportation for
12 children with disabilities, as defined in s. 115.76 (5), to any public or private
13 elementary or high school, to the school operated by the Wisconsin Center for the
14 Blind and Visually Impaired or the school operated by the Wisconsin Educational
15 Services Program for the Deaf and Hard of Hearing or to any special education
16 program for children with disabilities sponsored by a state tax-supported institution
17 of higher education, including a technical college, regardless of distance, if the
18 request for such transportation is approved by the state superintendent. Approval
19 shall be based on whether or not the child can walk to school with safety and comfort.
20 Section 121.53 shall apply to transportation provided under this subsection.

21

(END)