



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2515/6
PG:sac&eev:jf

2013 BILL

1 **AN ACT** *to amend* 20.255 (2) (ac), 20.255 (2) (cy), 115.77 (1), 115.791 (4), 118.305
2 (1) (h) and 121.54 (3); and *to create* 20.255 (2) (az), 115.7915, 118.40 (2r) (e) 5.,
3 118.60 (4s) and 119.23 (4s) of the statutes; **relating to:** creating a 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, beginning in the 2014-15 school year, a child with a disability may receive a scholarship to attend a public school located outside the pupil's school district of residence, a charter school, or a private school, if all of the following conditions are met:

1. The child has applied to attend a public school outside of his or her school district of residence under the Open Enrollment Program and was rejected by the school board of the nonresident school district or was prohibited from attending school in a nonresident school district by the school board of the child's resident school district.
2. 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.
3. If the school is a private school, it is approved as a private school by DPI or is accredited.
4. An individualized education program (IEP) has been completed for the child.

BILL

5. With certain exceptions, the child attended a public school in this state in the previous school year.

The bill directs DPI to develop a document, for inclusion with an application, comparing the rights of a child with a disability and his or her parent under state and federal handicapped education law with the rights of a child with a disability under the program created by this bill and federal handicapped education law.

A school that accepts a child under the program must notify DPI. Upon receipt of the notice, DPI must notify the school board of the pupil's school district of residence and determine the amount of the child's scholarship. The amount is the lesser of the cost to the school the child is attending under the scholarship of providing regular instruction, instructional and pupil support services, special education and related services, and supplementary aids and services to the child, plus the per pupil operating and debt service costs, or an amount equal to the statewide cost per public school pupil plus the state aid per child with a disability. 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, the total amount appropriated as state school equalization aid is reduced by the total amount of scholarships paid by DPI to schools and school districts under the program, as described above. A pupil attending a private school, a public school outside the pupil's school district of residence, or an independent charter school under the program is not counted for state aid purposes by the pupil's school district of residence.

Each private school participating in the program must comply with applicable health and safety laws; hold a valid certificate of occupancy if the municipality in which the school is located issues such certificates; comply with federal law that prohibits discrimination against any person on the basis of race, color, or national origin; 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 and any person who might reasonably be believed to pose a threat to the safety of others; provide to each applicant a profile of the school's special education program; implement the child's most recent IEP; and comply with the restrictions on the use of seclusion and physical restraint that currently apply to public and charter schools.

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 25 percent of 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

BILL

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, 2017.

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) (ac) of the statutes is amended to read:

2 20.255 (2) (ac) *General equalization aids.* The amounts in the schedule for the
3 payment of educational aids under ss. 121.08, 121.09, 121.095, 121.105, and 121.137
4 and subch. VI of ch. 121, less the amount appropriated under par. (az).

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

6 20.255 (2) (az) *Special Needs Scholarship Program.* A sum sufficient to pay the
7 special needs scholarships under s. 115.7915.

8 **SECTION 3.** 20.255 (2) (cy) of the statutes, as affected by 2013 Wisconsin Act 20,
9 is amended to read:

10 20.255 (2) (cy) *Aid for transportation; open enrollment ~~and~~, course options, and*
11 *special needs scholarships.* The amounts in the schedule to reimburse parents for

BILL

1 the costs of transportation of pupils under ss. 115.7915, 118.51 (14) (b), and 118.52
2 (11) (b).

3 **SECTION 4.** 115.77 (1) of the statutes is amended to read:

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

8 **SECTION 5.** 115.791 (4) of the statutes is amended to read:

9 115.791 (4) Subject to s. 115.77 (1m) (d) and (e), this section does not require
10 a local educational agency to pay the cost of education, including special education
11 and related services, of a child with a disability at a private school or facility,
12 including a child with a disability attending a private school under s. 115.7915, if the
13 local educational agency made a free appropriate public education available to the
14 child and the child’s parents elected to place the child in a private school or facility.

15 **SECTION 6.** 115.7915 of the statutes is created to read:

16 **115.7915 Special Needs Scholarship Program. (1) DEFINITION.** In this
17 section:

18 (a) “Eligible school” means a public school located in this state but outside the
19 pupil’s school district of residence; a charter school located in this state, including a
20 virtual charter school; or a private school located in this state.

21 (b) “Services plan” has the meaning given in 34 CFR 300.37.

22 **(1m) SCHOLARSHIP REQUIREMENTS.** Beginning in the 2014–15 school year, a child
23 with a disability shall receive a scholarship under this section to attend an eligible
24 school if all of the following apply:

BILL

1 (a) The child applied to attend a public school in one or more nonresident school
2 districts under s. 118.51 for the same school year for which he or she is submitting
3 an application under par. (f), and all of the following occurred:

4 1. The child was rejected by the school boards of all the nonresident school
5 districts to which he or she applied under s. 118.51 (3) (a), (3m) (a), or (7); or was
6 prohibited from attending public school in all the nonresident school districts to
7 which he or she applied under s. 118.51 (3m) (d), (7), or (12) (b) 1.

8 2. If the child's parent appealed any school board decision under subd. 1., the
9 department affirmed the decision.

10 (b) The school district in which the eligible public school is located, the eligible
11 charter school, or the eligible private school notified the department of its intent to
12 participate in the program under this section. The notice shall specify the number
13 of pupils who may participate in the program under this section for whom the school
14 has space.

15 (c) The eligible school, if a private school, is approved by the state
16 superintendent under s. 118.165 (2) or is accredited by the Wisconsin North Central
17 Association, Wisconsin Religious and Independent Schools Accreditation, the
18 Independent Schools Association of the Central States, Wisconsin Evangelical
19 Lutheran Synod School Accreditation, National Lutheran School Accreditation, the
20 diocese or archdiocese within which the private school is located, or any other
21 organization recognized by the National Council for Private School Accreditation, as
22 of the August 1 preceding the school term for which the scholarship is awarded.

23 (d) An individualized education program or services plan has been completed
24 for the child.

BILL

1 (e) The child attended a public school in this state for the entire school year
2 immediately preceding the school year for which the child first receives a scholarship
3 under this section.

4 (f) The child, or the child's parent on behalf of the child, has submitted an
5 application to the eligible school, on a form prepared by the department, for a
6 scholarship under this section to attend the eligible school. The application shall
7 include the document developed by the department under sub. (2) (a). An application
8 may be made, and a child may begin attending an eligible school under this section,
9 at any time during the school year.

10 (g) The child has been accepted by the school district in which the eligible public
11 school is located, the eligible charter school, or the eligible private school.

12 **(1s) ACCEPTANCE OF PUPILS.** If an eligible school receives more applications
13 under sub. (1m) (f) than the number of pupils specified in the notice under sub. (1m)
14 (b), it shall select pupils on a random basis except that it may give preference to
15 siblings of pupils who are already attending the eligible school.

16 **(2) DEPARTMENT DUTIES.** (a) 1. The department shall develop a document for
17 inclusion with an application under sub. (1m) (f), and revise it as necessary,
18 comparing the rights of a child with a disability and of his or her parent under this
19 subchapter, other than this section, and 20 USC 1400 to 1482, with the rights of a
20 child with a disability and of his or her parent under this section and 20 USC 1400
21 to 1482.

22 2. Receipt by an applicant of the document developed under subd. 1.,
23 acknowledged in a format prescribed by the department, constitutes notice that the
24 applicant has been informed of his or her rights under this section and 20 USC 1400

BILL

1 to 1482. Subsequent acceptance of a scholarship under this section constitutes the
2 applicant's informed acknowledgment of the rights specified in the document.

3 (b) The governing body of an eligible school that accepts a child under sub. (1m)
4 (g) shall notify the department. Upon being notified, the department shall do all of
5 the following:

6 1. Notify the school board of the pupil's school district of residence that the pupil
7 has been awarded a scholarship under this section. The school board shall, within
8 3 days of receiving the notice, provide the department and the governing body of the
9 eligible school that accepted the pupil with a copy of the pupil's individualized
10 education program.

11 2. Determine the amount of the pupil's scholarship. The amount shall be the
12 lesser of the following:

13 a. Divide the sum of the statewide gross property tax levy for schools in the
14 previous year and the total amount of general school aid appropriated under s.
15 20.255 (2) (ac), (ar), and (bb) in the previous fiscal year by the total statewide
16 membership, as defined in s. 121.004 (5), in the previous school year, and add to the
17 quotient the result obtained by dividing the amount appropriated under s. 20.255 (2)
18 (b) in the previous fiscal year by the total number of children with disabilities
19 enrolled in public schools in the previous school year, as determined for federal aid
20 purposes under 20 USC 1400 to 1482.

21 b. The cost to the school district in which the eligible public school is located,
22 the eligible charter school, or the eligible private school of providing to the pupil
23 regular instruction, instructional and pupil support services, special education and
24 related services, and supplementary aids and services, other than costs under s.

BILL

1 115.88 (3) and (4); and the operating and debt service cost per pupil, as described in
2 s. 118.60 (4) (d).

3 3. Prorate the amount determined under subd. 2. for a pupil attending an
4 eligible school for less than a full school term.

5 4. Notify the parent of the scholarship amount, as determined under subd. 2.
6 or 3., accompanied by an explanation of how the amount was determined.

7 5. On behalf of the pupil's parent, pay the scholarship to the school district,
8 charter school, or private school that the pupil attends from the appropriation under
9 s. 20.255 (2) (az), except that the department may not pay a scholarship to a private
10 school unless the pupil's parent has acknowledged receiving the private school's
11 profile under sub. (4) (g) in the manner provided by the department. Except as
12 provided in par. (c), the scholarship continues while the pupil attends an eligible
13 school until the pupil graduates from high school or until the end of the school term
14 in which the pupil attains the age of 21, whichever comes first.

15 6. If the pupil is attending a private school under this section, pay the
16 scholarship to the private school under subd. 5. according to the payment schedule
17 specified in s. 119.23 (4) (c).

18 (c) If an individualized education program team, upon reevaluation of a child
19 under sub. (3) (c), unanimously determines that the child is no longer a child with
20 a disability, the child is ineligible to receive a special needs scholarship, as calculated
21 under sub. (2) (b) 2., beginning in the school term following the determination. If the
22 child continues to attend the private school, the department shall pay to the private
23 school, on behalf of the pupil's parent, an amount equal to the appropriate amount
24 paid per pupil to a private school participating in a parental choice program in the
25 same school year under s. 118.60 or 119.23. The department shall make the payment

BILL

1 from the appropriation under s. 20.255 (2) (az) according to the payment schedule
2 specified in s. 119.23 (4) (c).

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 (c) If a child attends a private school under this section, the school board of the
11 child's school district of residence shall ensure that the child's individualized
12 education program team reevaluates the child as provided in s. 115.782 (4).

13 **(4) PRIVATE SCHOOL DUTIES.** Each private school participating in the program
14 under this section or receiving a payment under sub. (2) (c) shall do all of the
15 following:

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

18 (b) Hold a valid certificate of occupancy, if required by the municipality in which
19 the school is located. If the municipality in which the school is located does not issue
20 certificates of occupancy, the private school shall obtain a certificate of occupancy
21 issued by the local or regional governmental unit with authority to issue certificates
22 of occupancy or submit to the department a letter or form from the municipality in
23 which the private school is located that explains that the municipality does not issue
24 certificates of occupancy.

25 (c) Comply with 42 USC 2000d.

BILL

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

5 (e) Annually submit to the department a school financial information report,
6 prepared by a certified public accountant, that complies with uniform financial
7 accounting standards established by the department by rule. The report shall be
8 accompanied by an auditor's statement that the report is free of material
9 misstatements and fairly represents pupil costs. The report shall be limited in scope
10 to those records that are necessary for the department to make payments to the
11 private school.

12 (f) If the private school expects to receive at least \$50,000 in scholarships under
13 this section during a school year, do one of the following before the beginning of the
14 school year:

15 1. File with the department a surety bond payable to the state in an amount
16 equal to 25 percent of the total amount of scholarships expected to be received by the
17 private school during the school year under this section.

18 2. File with the department financial information demonstrating that the
19 private school has the ability to pay an amount equal to the total amount of
20 scholarships expected to be received by the private school during the school year
21 under this section.

22 (g) Provide to each applicant under sub. (1m) (f) a profile of the private school's
23 special education program, in a form prescribed by the department, that includes the
24 methods of instruction that will be used by the school to provide special education

BILL

1 and related services to the child and the qualifications of the teachers and other
2 persons who will be providing special education and related services to the child.

3 (h) 1. Implement the child’s most recent individualized education program or
4 services plan, as modified by agreement between the private school and the child’s
5 parent, and related services agreed to by the private school and the child’s parent
6 that are not included in the child’s individualized education program or services
7 plan.

8 2. Provide a record of the implementation of the child’s individualized
9 education program or services plan under subd. 1., including an evaluation of the
10 child’s progress, to the school board of the school district in which the child resides
11 in the form and manner prescribed by the department.

12 (i) Regularly report to the parent of a child attending the private school and
13 receiving a scholarship under this section on the child’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, charter school,
20 or private school from participating in the program under this section if the
21 department determines that the school district, charter school, or private school has
22 done any of the following:

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

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

BILL

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, within 60 days, any scholarship overpayments.

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

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

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

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

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

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

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

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

BILL

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

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

4 (c) The contract under par. (a) shall require that the results of the study be
5 reported to the appropriate standing committees of the legislature under s. 13.172
6 (3) by January 9, 2017.

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

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

11 (b) The calculation and distribution of scholarships.

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

13 **SECTION 7.** 118.305 (1) (h) of the statutes is amended to read:

14 118.305 (1) (h) “School” means a public school, including a charter school, and
15 a private school participating in the program under s. 115.7915.

16 **SECTION 8.** 118.40 (2r) (e) 5. of the statutes is created to read:

17 118.40 (2r) (e) 5. A pupil attending a charter school under this subsection who
18 is receiving a scholarship under s. 115.7915 shall not be counted as a pupil attending
19 the charter school under subd. 2n. or 2p.

20 **SECTION 9.** 118.60 (4s) of the statutes is created to read:

21 118.60 (4s) Notwithstanding subs. (4), (4m), and (4r), a pupil attending a
22 private school participating in the program under this section who is receiving a
23 scholarship under s. 115.7915 shall not be counted as a pupil attending the private
24 school under this section under sub. (4), (4m), or (4r).

25 **SECTION 10.** 119.23 (4s) of the statutes is created to read:

BILL

1 119.23 (4s) Notwithstanding subs. (4), (4m), and (4r), a pupil attending a
2 private school participating in the program under this section who is receiving a
3 scholarship under s. 115.7915 shall not be counted as a pupil attending the private
4 school under this section under sub. (4), (4m), or (4r).

5 **SECTION 11.** 121.54 (3) of the statutes is amended to read:

6 121.54 (3) TRANSPORTATION FOR CHILDREN WITH DISABILITIES. ~~Every~~ Except as
7 provided in s. 115.7915 (5), every school board shall provide transportation for
8 children with disabilities, as defined in s. 115.76 (5), to any public or private
9 elementary or high school, to the school operated by the Wisconsin Center for the
10 Blind and Visually Impaired or the school operated by the Wisconsin Educational
11 Services Program for the Deaf and Hard of Hearing or to any special education
12 program for children with disabilities sponsored by a state tax–supported institution
13 of higher education, including a technical college, regardless of distance, if the
14 request for such transportation is approved by the state superintendent. Approval
15 shall be based on whether or not the child can walk to school with safety and comfort.
16 Section 121.53 shall apply to transportation provided under this subsection.

17 **SECTION 12. Nonstatutory provisions.**

18 (1) Notwithstanding section 115.7915 (1m) (a) of the statutes, as created by this
19 act, if a child or his or her parents on behalf of the child apply to attend an eligible
20 school in the 2014–15 school year under section 115.7915 of the statutes, as created
21 by this act, within 90 days after the effective date of this subsection, the child
22 satisfies the eligibility requirements under section 115.7915 (1m) (a) (intro.) and (e)
23 of the statutes, as created by this act, if all of the following conditions are met:

