



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRBs0282/2  
PG:cjs:jm

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2011 ASSEMBLY BILL 110**

February 7, 2012 – Offered by Representative LITJENS.

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, 118.60 (4s), 119.23  
3           (4s), 121.05 (1) (a) 4. and 121.08 (4) (am) of the statutes; **relating to:** creating  
4           the Special Needs Scholarship Program for disabled pupils, granting  
5           rule-making authority, and making an appropriation.

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

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

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

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

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

1 transportation of ~~open enrollment~~ pupils under ss. 115.7915, 118.51 (14) (b), and  
2 118.52 (11) (b).

3 **SECTION 3.** 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 4.** 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 5.** 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, including a charter school, or a private school  
20 located in this state.

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

22 **(1m) SCHOLARSHIP REQUIREMENTS.** Subject to sub. (1r), beginning in the  
23 2012–13 school year, a child with a disability shall receive a scholarship under this  
24 section to attend an eligible school if all of the following apply:

1           (a) The school district in which the eligible public school is located, the eligible  
2 charter school, or the eligible private school notified the department of its intent to  
3 participate in the program under this section. The notice shall specify the number  
4 of pupils who may participate in the program under this section for whom the school  
5 has space.

6           (b) The school, if a private school, is approved by the state superintendent  
7 under s. 118.165 (2) or is accredited by the Wisconsin North Central Association,  
8 Wisconsin Religious and Independent Schools Accreditation, the Independent  
9 Schools Association of the Central States, Wisconsin Evangelical Lutheran Synod  
10 School Accreditation, National Lutheran School Accreditation, the diocese or  
11 archdiocese within which the private school is located, or any other organization  
12 recognized by the National Council for Private School Accreditation as of the August  
13 1 preceding the school term for which the scholarship is awarded.

14           (c) An individualized education program or services plan has been completed  
15 for the child.

16           (d) The child attended a public school, attended a private school under s. 118.60  
17 or 119.23, or did not attend school in this state, for the entire school year immediately  
18 preceding the school year for which the child first receives a scholarship under this  
19 section.

20           (e) The child, or the child's parent on behalf of the child, has submitted an  
21 application to the eligible school, on a form prepared by the department, for a  
22 scholarship under this section to attend the eligible school. The application shall  
23 include the document developed by the department under sub. (2) (a). An application  
24 may be made, and a child may begin attending an eligible school under this section,  
25 at any time during the school year.

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

3 **(1r) LIMIT ON NUMBER OF SCHOLARSHIPS.** The number of scholarships awarded  
4 under this section in any school year may not exceed 5 percent of the total number  
5 of children with disabilities residing in this state in the previous school year, as  
6 determined by the department.

7 **(1s) ACCEPTANCE OF PUPILS.** If an eligible school receives more applications  
8 under sub. (1m) (e) than the number of pupils specified in the notice under sub. (1m)  
9 (a), it shall select pupils on a random basis except that it may give preference to  
10 siblings of pupils who are already attending the eligible school.

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

16 2. Receipt by an applicant of the document developed under subd. 1.,  
17 acknowledged in a format prescribed by the department, constitutes notice that the  
18 applicant has been informed of his or her rights under this section and 20 USC 1400  
19 to 1482. Subsequent acceptance of a scholarship under this section constitutes the  
20 applicant's informed consent to the rights specified in the document.

21 (b) The governing body of an eligible school that accepts a child under sub. (1m)  
22 (f) shall notify the department. Upon being notified, the department shall do all of  
23 the following:

24 1. Notify the school board of the pupil's school district of residence that the pupil  
25 has been awarded a scholarship under this section. The school board shall, within

1 3 days of receiving the notice, provide the department and the governing body of the  
2 eligible school that accepted the pupil with a copy of the pupil's individualized  
3 education program.

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

6 a. Divide the sum of the statewide gross property tax levy for schools in the  
7 previous year and the total amount of general school aid appropriated under s.  
8 20.255 (2) (ae), (ar), and (bb) in the previous fiscal year by the total statewide  
9 membership, as defined in s. 121.004 (5), in the previous school year, and add to the  
10 quotient the result obtained by dividing the amount appropriated under s. 20.255 (2)  
11 (b) in the previous fiscal year by the total full-time equivalent number of children  
12 with disabilities enrolled in public schools in the previous school year.

13 b. The cost to the school district in which the eligible public school is located,  
14 the eligible charter school, or the eligible private school of providing to the pupil  
15 regular instruction, instructional and pupil support services, special education and  
16 related services, and supplementary aids and services, other than costs under s.  
17 115.88 (3) and (4).

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

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

22 5. On behalf of the pupil's parent, pay the scholarship to the school district,  
23 charter school, or private school that the pupil attends from the appropriation under  
24 s. 20.255 (2) (az), except that the department may not pay a scholarship to a private  
25 school unless the pupil's parent has acknowledged receiving the private school's

1 profile under sub. (4) (g) in the manner provided by the department. The scholarship  
2 continues while the pupil attends an eligible school until the pupil graduates from  
3 high school or until the end of the school term in which the pupil attains the age of  
4 21, whichever comes first.

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

8 (b) Upon the request of a parent of a pupil receiving a scholarship, the pupil's  
9 resident school district shall administer the appropriate examinations under s.  
10 118.30 to the pupil at no cost if the school attended by the pupil does not administer  
11 them.

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

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

16 (b) Hold a valid certificate of occupancy, if required by the municipality in which  
17 the school is located or, if the municipality in which the school is located does not  
18 issue certificates of occupancy, obtain a certificate of occupancy issued by the local  
19 or regional governmental unit with authority to issue certificates of occupancy.

20 (c) Comply with 42 USC 2000d.

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

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

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

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

14 2. File with the department financial information demonstrating that the  
15 private school has the ability to pay an amount equal to the total amount of  
16 scholarships expected to be received by the private school during the school year  
17 under this section.

18 (g) Provide to each applicant under sub. (1m) (e) a profile of the private school's  
19 special education program, in a form prescribed by the department, that includes the  
20 methods of instruction that will be used by the school to provide special education  
21 and related services to the child and the qualifications of the teachers and other  
22 persons who will be providing special education and related services to the child.

23 (h) 1. Implement the child's most recent individualized education program or  
24 services plan, as modified by agreement between the private school and the child's  
25 parent, and related services agreed to by the private school and the child's parent

1 that are not included in the child's individualized education program or services  
2 plan.

3 2. Provide a record of the implementation of the child's individualized  
4 education program or services plan under subd. 1., including an evaluation of the  
5 child's progress, to the school board of the school district in which the child resides  
6 in the form and manner prescribed by the department.

7 (i) Regularly report to the parent of a pupil attending the private school and  
8 receiving a scholarship under this section on the pupil's progress.

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

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

14 **(6) PENALTIES.** (a) The department may bar a school district, charter school,  
15 or private school from participating in the program under this section if the  
16 department determines that the school district, charter school, or private school has  
17 done any of the following:

18 1. Intentionally and substantially misrepresented information required under  
19 sub. (4).

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

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

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

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

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

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

12 2. The percentage of participating pupils who were victimized because of their  
13 special needs at their resident school district and the percentage of such pupils at  
14 their participating school.

15 3. The percentage of participating pupils who exhibited behavioral problems  
16 at their resident school district and the percentage of such pupils at their  
17 participating school.

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

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

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

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

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

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

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

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

8 (b) The calculation and distribution of scholarships.

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

10 **SECTION 6.** 118.60 (4s) of the statutes is created to read:

11 118.60 (4s) Notwithstanding subs. (4), (4m), and (4r), a pupil attending a  
12 private school participating in the program under this section who is receiving a  
13 scholarship under s. 115.7915 shall not be counted as a pupil attending the private  
14 school under this section under sub. (4), (4m), or (4r).

15 **SECTION 7.** 119.23 (4s) of the statutes is created to read:

16 119.23 (4s) Notwithstanding subs. (4), (4m), and (4r), a pupil attending a  
17 private school participating in the program under this section who is receiving a  
18 scholarship under s. 115.7915 shall not be counted as a pupil attending the private  
19 school under this section under sub. (4), (4m), or (4r).

20 **SECTION 8.** 121.05 (1) (a) 4. of the statutes is created to read:

21 121.05 (1) (a) 4. Pupils residing in the school district but attending a public  
22 school in another school district, or a private school, under s. 115.7915.

23 **SECTION 9.** 121.08 (4) (am) of the statutes is created to read:

24 121.08 (4) (am) The amount of state aid that a school district is eligible to be  
25 paid from the appropriation under s. 20.255 (2) (ac) in any school year shall be

1 reduced by the total amount of scholarships paid by the department under s.  
2 115.7915 in that school year for pupils who reside in the school district.

3 **SECTION 10.** 121.08 (4) (c) of the statutes is amended to read:

4 121.08 (4) (c) The amount of state aid that a school district is eligible to be paid  
5 from the appropriation under s. 20.255 (2) (ac) shall also be reduced by an amount  
6 equal to the amount paid to the Second Chance Partnership under s. 115.28 (54) for  
7 pupils enrolled in the school district. The department shall ensure that the amount  
8 of the aid reduction lapses to the general fund and that it does not affect the amount  
9 determined to be received by a school district as state aid under this section for any  
10 other purpose.

11 **SECTION 11.** 121.08 (4) (d) of the statutes, as affected by 2011 Wisconsin Act 32,  
12 is amended to read:

13 121.08 (4) (d) The state superintendent shall ensure that the total amount of  
14 aid reduction under ~~pars. (a), (b), and (br)~~ this subsection lapses to the general fund.

15 **SECTION 12.** 121.54 (3) of the statutes is amended to read:

16 121.54 (3) TRANSPORTATION FOR CHILDREN WITH DISABILITIES. ~~Every~~ Except as  
17 provided in s. 115.7915 (5), every school board shall provide transportation for  
18 children with disabilities, as defined in s. 115.76 (5), to any public or private  
19 elementary or high school, to the school operated by the Wisconsin Center for the  
20 Blind and Visually Impaired or the school operated by the Wisconsin Educational  
21 Services Program for the Deaf and Hard of Hearing or to any special education  
22 program for children with disabilities sponsored by a state tax-supported institution  
23 of higher education, including a technical college, regardless of distance, if the  
24 request for such transportation is approved by the state superintendent. Approval

1 shall be based on whether or not the child can walk to school with safety and comfort.

2 Section 121.53 shall apply to transportation provided under this subsection.

3 (END)