



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2011 Assembly Bill 110**

**Assembly Substitute  
Amendment 1, as Amended**

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**Assembly Substitute Amendment 1** establishes a Special Needs Scholarship Program.

### **Scholarship Requirements**

Under the substitute amendment, a child with a disability must receive a scholarship to attend an eligible school, defined as a public school, including a charter 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 and the notice specifies the number of scholarship pupils for which the school has space.
2. If the school is a private school, it is approved as a private school by DPI or is accredited by the entities listed in the substitute amendment.
3. An Individualized Education Plan (IEP) or services plan as provided under federal law has been completed for the child.
4. The child attended a public school, a private school in the parental choice program, or did not attend school in this state, for the entire previous school year.
5. The child has been accepted to the school.

The substitute amendment specifies that if an eligible school receives more applications than the number of pupils for which it has space, the school must select pupils on a random basis, except that it may give preference to siblings of pupils who already attend the school.

The substitute amendment requires that the scholarship application be submitted to an eligible school on a form prepared by DPI and the application must include a document prepared by DPI

regarding the pupil's rights. The substitute amendment specifies that the document must compare the rights of a child with a disability and his or her parent under state and federal special education law to the rights of a child with a disability under the special needs scholarship program and federal special education law. The substitute amendment further specifies that receipt of this document by a scholarship applicant and acknowledged in a format prescribed by DPI constitutes notice that this applicant has been informed of his or her rights, and that subsequent acceptance of a scholarship constitutes the applicant's informed consent to the rights specified in the document.

### **Limit on Number of Scholarships**

The substitute amendment provides that the number of scholarships awarded in any school year may not exceed 5% of the total number of children with disabilities residing in this state in the previous school year, as determined by DPI.

### **Amount of a Pupil's Scholarship**

The substitute amendment requires DPI to determine the amount of a pupil's scholarship, which must be the lesser of either of the following:

1. Divide the sum of the statewide gross property tax levy for schools in the previous year and the total amount of general school aid appropriated in the previous fiscal year by the total statewide membership in the previous school year, and add to the quotient the result obtained by dividing the amount appropriated for special education categorical aid in the previous fiscal year by the total full-time equivalent number of children with disabilities enrolled in public schools in the previous school year.
2. The cost to the school district in which the eligible public school is located, the eligible charter school, or the eligible private school of providing to the pupil regular instruction, instructional and pupil support services, special education and related services, and certain other supplementary aids and services.

Under the substitute amendment, the amount of general state aid that a school district is eligible to be paid in any school year is reduced by the total amount of scholarships paid by DPI for pupils who reside in that school district. The substitute amendment creates a sum sufficient appropriation to pay the scholarships.

The substitute amendment provides that on behalf of the pupil's parent, DPI must pay the scholarship directly to the school district, charter school, or private school 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.

### **Private School Duties**

The substitute amendment requires each private school participating in the program to do all of the following:

1. Comply with applicable health and safety laws.
2. Hold a valid occupancy permit.
3. Comply with federal law that prohibits discrimination against any person on the basis of race, color, or national origin.
4. 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.
5. Annually submit to DPI a school financial report prepared by a certified public accountant.
6. If the private school expects to receive at least \$50,000 in scholarships during a school year, either file a surety bond with DPI or provide DPI with information demonstrating that the private school has the ability to pay an amount equal to the total amount of scholarships that it expects to receive during the school year.
7. Provide to each applicant a profile of the private school's special education program in a form prescribed by DPI that includes the methods of instruction that will be used by the school to provide special education and related services to the child and the qualifications of the teachers and other persons who will be providing special education and related services to the child. The substitute amendment provides that DPI may not pay a scholarship to a private school unless the pupil's parent has acknowledged receiving the private school's profile in the manner provided by DPI.
8. Implement the child's most recent IEP or services plan as defined under federal law, as modified by agreement between the private school and the child's parent, and related services agreed to by the private school and the parent that are not included in the IEP or services plan.
9. Provide a record of the implementation of the child's IEP or services plan, including an evaluation of the child's progress, to the school board of the school district where the child resides in the form and manner prescribed by DPI.

### **Penalties**

The substitute amendment authorizes DPI to bar a school district, charter school, or private school from participating in the program if DPI determines that the school district or school intentionally and substantially misrepresented information required under the substitute amendment, routinely failed to comply with the financial report and financial standards, used a pupil's scholarship for any purpose

other than educational purposes, or rebated, refunded, or shared a pupil's scholarship with a parent or pupil, or failed to refund in a timely manner any scholarship overpayments to the state.

### **Study**

The substitute amendment directs the Legislative Audit Bureau to contract for a study of the program that evaluates items specified in the substitute amendment. The results of the study must be reported to the Legislature by January 9, 2015.

### **Rulemaking**

Under the substitute amendment, DPI is directed to promulgate rules to implement and administer the scholarship program, including rules relating to the eligibility and participation of eligible schools, including timelines that maximize pupil and school participation, the calculation and distribution of scholarships, and the application and approval procedures for pupils and eligible schools.

### **Transportation**

The substitute amendment 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.

The substitute amendment provides that 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 transportation is required in an IEP, the school district that the child attends is responsible for transporting the child. The substitute amendment allows a low-income pupil to apply to DPI for reimbursement of transportation costs.

**Assembly Amendment 2 to Assembly Substitute Amendment 1** clarifies the provision in the substitute amendment relating to the limit on the number of scholarships. Specifically, the amendment provides that the total number of scholarship recipients in any school year may not exceed 5% of the total number of children with disabilities residing in this state in the previous school year, as determined by DPI.

**Assembly Amendment 11 to Assembly Substitute Amendment 1** does all of the following:

- Changes the definition of an "eligible school" to mean a public school located in this state but outside the pupil's school district of residence, a charter school located in this state, including a charter school located in the pupil's school district of residence and a virtual charter school, or a private school located in this state.
- Adds that a child may have attended a charter school for the entire school year immediately preceding the school year for which the child first receives a special needs scholarship.

- Adds operating and debt services costs per pupil, as described under the statute applicable to the parental choice program, to the second formula under which a scholarship amount is calculated.
- Provides that if a child attends a private school under the special needs scholarship program, the school board of the child's school of residence must ensure that the child's IEP team reevaluates the child as provided under current law.
- Directs that if the IEP team determines that the child is no longer a child with a disability, the child is ineligible to receive a special needs scholarship beginning in the school term following the determination.
- Specifies that each participating private school must annually submit to DPI a school financial information report, prepared by a certified public accountant that complies with uniform financial accounting standard established by the DPI rule that currently applies to the parental choice program.
- Changes the requirement that the surety bond amount payable to the state be in an amount "equal to" the total amount of scholarships expected to be received by the private school during the school year to an amount "25 percent of" the total amount of scholarships expected to be received by the private school during the school year.
- Requires DPI to promulgate rules in a manner consistent with federal law, requiring the school board of a school district participating in the special needs scholarship program to spend its federal equitable share funds on children with disabilities who are enrolled by their parents in private schools other than under the special needs scholarship program.
- Adds a requirement that DPI ensure that the amount of the state aid reduction for a school district does not affect the amount received by the school district as state aid for any other purpose.

**Assembly Amendment 12 to Assembly Substitute Amendment 1** adds a requirement that whenever a pupil receives a special needs scholarship, DPI and the school board of the pupil's school district of residence must count the scholarship amount toward federal maintenance-of-effort requirements.

### **LEGISLATIVE HISTORY**

On March 6, 2012, the Assembly adopted Assembly Amendment 2, Assembly Amendment 11, and Assembly Amendment 12 to Assembly Substitute Amendment 1 on voice votes. The Assembly then adopted Assembly Substitute Amendment 1 on a voice vote. On March 14, 2012, the Assembly passed Assembly Bill 110, as amended, on a vote of Ayes, 55; Noes, 39.

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