

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 2260

By: Representative Biviano

For An Act To Be Entitled

AN ACT TO ESTABLISH THE SPECIAL NEEDS SCHOLARSHIP PROGRAM; TO PROVIDE FUNDING FOR STUDENTS WITH DISABILITIES TO ATTEND A SCHOOL OF THE PARENTS' CHOICE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE SPECIAL NEEDS SCHOLARSHIP PROGRAM AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 6, Chapter 18, is amended to add an additional subchapter to read as follows:

Subchapter 19 - Special Needs Scholarship Program

6-18-1901. Scholarship established.

(a) A special needs scholarship program is established to provide students with disabilities the option to attend:

(1) A public school other than the one to which the student is assigned; or

(2) An eligible private school of the parent's choice.

(b) The Department of Education shall establish a toll-free telephone number or website that provides parents, public schools, and private schools with information about the program.



(c) A school district shall inform the parent of a public school student with a disability enrolled in the school district of the options available under this subchapter and of the information available on the department's toll-free telephone number or website.

6-18-1902. Definitions.

As used in this subchapter:

(1) "Accommodation plan" means the documentation of efforts of a public school to provide equal access and fairness in general education to a student with a disability under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as it existed on January 1, 2013;

(2) "Individualized education program" means a written statement for a student with a disability that is developed, reviewed, and revised under § 6-41-217 and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as it existed on January 1, 2013;

(3) "Parent" means a person with the authority to act on behalf of the child, including without limitation the child's:

- (A) Biological or adoptive parent;
- (B) Guardian; or
- (C) Custodian;

(4) "Student with a disability" means a student enrolled in a public school in kindergarten through grade twelve (K-12) who is documented as having one (1) or more of the following:

- (A) An intellectual disability;
- (B) A speech impairment;
- (C) A language impairment;
- (D) A hearing impairment, including without limitation deafness;
- (E) A visual impairment, including without limitation blindness;
- (F) A dual sensory impairment;
- (G) An orthopedic impairment;
- (H) Another health impairment;
- (I) An emotional or behavioral disability;
- (J) A specific learning disability, including without limitation dyslexia, dyscalculia, or developmental aphasia;

- (K) A traumatic brain injury;
- (L) A developmental delay; or
- (M) Autism spectrum disorder; and

(5) "Written" means documentation in paper, digital, or electronic form.

6-18-1903. Student eligibility.

(a) The parent of a student with a disability may request a special needs scholarship for the student to attend a private school under this subchapter if:

(1)(A) Except as provided in subdivision (a)(1)(B) of this section, an individualized education program or an accommodation plan was developed for the student and was in effect before the parent submits a request for a special needs scholarship to the Department of Education.

(B) The provisions of subdivision (a)(1)(A) of this section do not apply if the student meets all other eligibility requirements and:

(i) The student is a child of a member of the armed forces of the United States who transfers to a school in this state from out of state or from a foreign country because of a permanent change of station orders of the parent; or

(ii) For the 2013-2014 school year, the student transferred to an eligible private school during the 2012-2013 school year but did not have an individualized education program or accommodation plan in effect on October 1, 2012;

(2) For the entire school year preceding the school year for which the student is seeking a special needs scholarship, the student:

(A) Has attended a public school in this state; and

(B) Was counted by the school district for funding purposes, regardless of whether or not the student had an individualized education program at that school; and

(3) The parent has:

(A) Selected:

(i) A public school other than the public school the student is assigned; or

(ii) A private school from the Department of

Education's list of approved schools; and

(B) Obtained acceptance for admission of the student from the school of the parent's choice.

(b)(1) Annually by December 1, a parent shall submit his or her written request for a scholarship or renewal of a scholarship to the department in the manner and using the form required by rules of the State Board of Education.

(2) Within ten (10) days of receipt of a request for a special needs scholarship, the department shall notify the student's resident school district that the department has received the request.

(3) The department shall approve or reject the request under § 6-18-1904 and notify the parent of its decision.

(c) After receiving a special needs scholarship, a student remains eligible until the student first:

- (1) Returns to his or her assigned public school;
- (2) Graduates from high school;
- (3) Attains twenty-two (22) years of age; or
- (4) Fails to:

(A) Attend school throughout the school year, unless excused by the school for illness or other good cause; and

(B) Fully comply with the code of conduct for the school.

(d) The student remains eligible for a special needs scholarship if the parent removes the student from a private school and enrolls the student in another eligible private school.

(e) A parent shall comply with the parental involvement requirements of the private school.

6-18-1904. Special needs scholarship awards.

(a) Annually beginning with the 2013-2014 school year, the Department of Education shall:

(1) Review and approve, renew, or reject a request for a special needs scholarship received from a parent under § 6-18-1903;

(2) Calculate the maximum special needs scholarship for a student who meets the eligibility requirements of this subchapter; and

(3) Reserve or retain from the Public School Fund the total cost of all scholarships for all eligible students in the state.

(b) A special needs scholarship is calculated as:

(1) The lesser of:

(A) The per student foundation funding amount under § 6-20-2305 for the applicable school year; or

(B) The amount of tuition and fees for the private school; less

(2) An amount up to two and one-half percent (2 1/2%) of the amount calculated under subdivision (b)(1) of this section, which the department may retain as a fee for administrative services rendered under this subchapter.

(c) If the special needs scholarship request is granted after the beginning of a school year, the amount of the special needs scholarship shall be prorated to reflect the number of days remaining in the current school year.

(d) After awarding a special needs scholarship, the department shall:

(1) Notify a private school of the amount of a special needs scholarship within ten (10) days after approving a request for the special needs scholarship; and

(2) Pay the special needs scholarship award as follows:

(A) The department shall pay the first installment of a special needs scholarship award after the department verifies the student's acceptance of admission and enrollment; and

(B) Upon verification from the private school of the student's continued enrollment and attendance at the private school, the department shall make quarterly payments up to the full amount of the special needs scholarship.

(e) The department shall make payments by a warrant:

(1) Payable to the parent; and

(2)(A) Mailed by the department to the private school that the parent chooses.

(B)(i) The parent shall restrictively endorse the warrant to the private school for deposit into the account of the private school.

(ii) If the parent fails to comply with subdivision (e)(2)(B)(i) of this section, the special needs scholarship is forfeited and shall be returned to the department.

(f) A private school may apply the special needs scholarship to:

(1) Tuition and fees, including without limitation an assessment fee required by the private school; and

(2) The cost of providing services and therapies to address the disabilities of the student.

(g) Before renewing a special needs scholarship, the department shall check the list of participating scholarship students with the public school enrollments before each scholarship payment to avoid duplication.

(h) The department is not responsible for any additional costs associated with special education and related services incurred by the private school for the student, including without limitation the cost of teachers, equipment, material, and special costs associated with a special education class.

6-18-1905. Private school eligibility.

(a) To be eligible to participate in the special needs scholarship program, a private school shall submit an application to the Department of Education in the manner and on the form specified by rules of the State Board of Education.

(b) The application shall include without limitation the grade levels and services available at the private school for students with disabilities.

(c) The department shall approve a private school as eligible to participate in the special needs scholarship program upon determining that the private school:

(1) Meets the accreditation requirements set by the state board or an accrediting association approved by the state board;

(2) Demonstrates fiscal soundness by:

(A) Operating for one (1) school year; or

(B) Providing the department with a statement by a certified public accountant confirming that the private school is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year by serving the estimated number of students with revenues from tuition and other sources that may be reasonably expected; or

(C) Providing a surety bond or letter of credit for the amount equal to the special needs scholarship funds for any quarter; and

(3) Certifies that:

(A) It does not discriminate against students or

applicants on the basis of gender, national origin, race, ethnicity, religion, disability, or academic or athletic eligibility;

(B) Its school facilities meet state and local health and safety laws and codes;

(C) It will be academically accountable to the parent for meeting the educational needs of the student;

(D) It employs or contracts with teachers who:

(i) Hold a baccalaureate degree or higher;

(ii) Have at least three (3) years of teaching experience in public or private schools; or

(iii) Have special skills, knowledge, or expertise that qualifies them to provide instruction in subjects taught; and

(E) It adheres to the tenets of its published disciplinary procedures before the expulsion of a scholarship student.

(d) The department shall:

(1) Require an annual, notarized, sworn statement by participating private schools certifying compliance with state laws; and

(2) Retain all records received from a participating private school until the private school is no longer receiving special needs scholarship funds.

(e) Annually by November 1, the department shall publish on its website a list of private schools eligible to participate in the special needs scholarship program.

6-18-1906. Suspension or revocation of private school eligibility.

(a) Except as provided under subsection (b) of this section, the Department of Education shall suspend or revoke the eligibility of a private school to participate in the special needs scholarship program if the department determines that the private school has failed to comply with the standards under this section.

(b)(1) Before suspending or revoking a private school's eligibility, the department may issue a notice of noncompliance if:

(A) The noncompliance is correctable within a reasonable amount of time; and

(B) The health, safety, or welfare of the students is not threatened.

(2) A notice of noncompliance shall specify the period of time within which the private school shall provide evidence of compliance before the department takes action to suspend or revoke participation in the scholarship program.

(c)(1) If the department intends to suspend or revoke the eligibility of a private school to participate in the scholarship program, the department shall notify the:

(A) Private school of the proposed action in writing by certified mail and regular mail to the private school's address of record with the department; and

(B) Parents of students attending the private school with a special needs scholarship.

(2) The notice shall include the reasons for the proposed action and the timelines and procedures for the appeal of a decision under this section.

(d)(1) A private school receiving a notice of a proposed suspension or revocation of its eligibility under this section shall have fifteen (15) days from receipt of the notice to file with the department a request for an administrative hearing before the State Board of Education under the Administrative Procedures Act, § 25-15-101 et seq.

(2) The state board shall commence a hearing within sixty (60) days after the receipt of the formal written request and enter an order within thirty (30) days after the hearing.

(3) The state board immediately may suspend payment of scholarship funds if it determines that there is probable cause to believe that there is an imminent threat to the health, safety, or welfare of the students or fraudulent activity on the part of the private school.

6-18-1907. Termination of an individualized education program.

(a) Upon accepting a special needs scholarship, the parent shall provide the public school where the student was enrolled written notice of the receipt of a scholarship.

(b) The notice shall serve as the written revocation of consent for the continued provision of special education and related services required by the student's individualized education plan.

6-18-1908. School district transportation.

(a) A school district shall provide transportation for a student receiving a special needs scholarship under this subchapter to a public school selected by the parent if the transportation is consistent with the school district's transportation plan.

(b) A parent shall provide transportation to a chosen public school if the transportation is not consistent with the school district's transportation plan.

6-18-1909. Construction.

(a) This subchapter does not provide a right upon which a person may sue the state, the State Board of Education, the Department of Education, or a school district based on the award or use of a scholarship provided through the special needs scholarship program.

(b) The inclusion of private schools within options available to public school students in Arkansas does not expand the regulatory authority of the state or any school district to impose any additional regulation of private schools beyond those reasonably necessary to enforce the requirements expressly set forth in this subchapter.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that many public schools struggle with providing for the educational needs of students with disabilities; that parents of public school students with disabilities should have the option to choose the school that can best provide the educational needs for their children and that this act provides that option; that without this act, hundreds of students with disabilities may be denied better opportunities for educational services that meet their needs; that this act is immediately necessary to provide parents the opportunity to apply for a special needs scholarship for the 2013-2014 school year, and for the State Board of Education to promulgate rules to implement the program for the 2013-2014 school year. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor,

the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.