

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

HOUSE BILL 2260

5 By: Representative Biviano  
6

## For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE SPECIAL NEEDS SCHOLARSHIP  
9 PROGRAM; TO PROVIDE FUNDING FOR STUDENTS WITH  
10 DISABILITIES TO ATTEND A SCHOOL OF THE PARENTS'  
11 CHOICE; TO DECLARE AN EMERGENCY; AND FOR OTHER  
12 PURPOSES.  
13  
14

## Subtitle

15 TO ESTABLISH THE SPECIAL NEEDS  
16 SCHOLARSHIP PROGRAM AND TO DECLARE AN  
17 EMERGENCY.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code Title 6, Chapter 18, is amended to add an  
24 additional subchapter to read as follows:  
25

### Subchapter 19 - Special Needs Scholarship Program

#### 6-18-1901. Scholarship established.

26 (a) A special needs scholarship program is established to provide  
27 students with disabilities the option to attend:  
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29 (1) A public school other than the one to which the student is  
30 assigned; or  
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32 (2) An eligible private school of the parent's choice.  
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34 (b) The Department of Education shall establish a toll-free telephone  
35 number or website that provides parents, public schools, and private schools  
36 with information about the program.



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

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 6       6-18-1902. Definitions.

7       As used in this subchapter:

8           (1) "Accommodation plan" means the documentation of efforts of a  
 9 public school to provide equal access and fairness in general education to a  
 10 student with a disability under Section 504 of the Rehabilitation Act of  
 11 1973, 29 U.S.C. § 794, as it existed on January 1, 2013;

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

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

18                   (A) Biological or adoptive parent;

19                   (B) Guardian; or

20                   (C) Custodian;

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

24                   (A) An intellectual disability;

25                   (B) A speech impairment;

26                   (C) A language impairment;

27                   (D) A hearing impairment, including without limitation  
 28 deafness;

29                   (E) A visual impairment, including without limitation  
 30 blindness;

31                   (F) A dual sensory impairment;

32                   (G) An orthopedic impairment;

33                   (H) Another health impairment;

34                   (I) An emotional or behavioral disability;

35                   (J) A specific learning disability, including without  
 36 limitation dyslexia, dyscalculia, or developmental aphasia;

1                   (K) A traumatic brain injury;  
 2                   (L) A developmental delay; or  
 3                   (M) Autism spectrum disorder; and  
 4                   (5) "Written" means documentation in paper, digital, or  
 5 electronic form.

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 7                   6-18-1903. Student eligibility.

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

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

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

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

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

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

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

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

32                   (3) The parent has:

33                   (A) Selected:

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

36                   (ii) A private school from the Department of

1 Education's list of approved schools; and

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

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

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

11 (3) The department shall approve or reject the request under §  
12 6-18-1904 and notify the parent of its decision.

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

15 (1) Returns to his or her assigned public school;

16 (2) Graduates from high school;

17 (3) Attains twenty-two (22) years of age; or

18 (4) Fails to:

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

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

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

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

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28 6-18-1904. Special needs scholarship awards.

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

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

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

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

1 (b) A special needs scholarship is calculated as:

2 (1) The lesser of:

3 (A) The per student foundation funding amount under § 6-  
4 20-2305 for the applicable school year; or

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

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

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

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

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

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

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

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

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

28 (1) Payable to the parent; and

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

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

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

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

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

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

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

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

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14           6-18-1905. Private school eligibility.

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

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

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

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

26           (2) Demonstrates fiscal soundness by:

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

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

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

35           (3) Certifies that:

36           (A) It does not discriminate against students or

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

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

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

7 (D) It employs or contracts with teachers who:

8 (i) Hold a baccalaureate degree or higher;

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

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

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

15 (d) The department shall:

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

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

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

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 25 6-18-1906. Suspension or revocation of private school eligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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 29           6-18-1907. Termination of an individualized education program.

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

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

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1       6-18-1908. School district transportation.

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

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

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10       6-18-1909. Construction.

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

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

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

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

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

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

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

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