

H. B. 2324

(By Delegate J. Miller)

[Introduced January 12, 2011; referred to the
Committee on Education then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §18-31-1, §18-31-2,
§18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7, §18-31-8 and
§18-31-9, all relating to creating the Special Needs
Scholarship Program, with said program to be administered by
the West Virginia State Board of Education.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended,
by adding thereto a new article, designated §18-31-1, §18-31-2,
§18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7, §18-31-8 and
§18-31-9, all to read as follows:

ARTICLE 31. SPECIAL NEEDS SCHOLARSHIP PROGRAM.

§18-31-1. Title.

This article shall be referred to as the Special Needs

1 Scholarship Program.

2 **§18-31-2. Definitions.**

3 Pursuant to this article, the following terms have the
4 following meanings:

5 (1) "Department" means the West Virginia State Board of
6 Education.

7 (2) "Eligible Student" means any elementary or secondary
8 student attending public school in our state with an individual
9 education plan including, but not limited to, students who are
10 mentally handicapped, speech and language impaired, deaf or hard of
11 hearing, visually impaired, dual sensory impaired, physically
12 impaired, emotionally handicapped, specific learning disabled,
13 autistic, or hospitalized or homebound due to illness or
14 disability.

15 (3) "Parent" includes a guardian, custodian or other person
16 with authority to act on behalf of the child.

17 (4) "Participating school" means either a public school
18 outside of the resident school district or any nonpublic school
19 that provides education to elementary and/or secondary students
20 that has notified the department of their intention to participate
21 in the program and comply with its requirements.

22 (5) "Program" means the Special Needs Scholarship Program.

23 (6) "Resident school district" means the public school
24 district in which the student resides.

1 **§18-31-3. Basic elements of the Special Needs Scholarship Program.**

2 (a) Any parent of a public school special needs student who is
3 dissatisfied with the student's progress shall qualify for a
4 scholarship from the state for the child to enroll in and attend a
5 nonpublic school if:

6 (1) The special needs student has had an individual education
7 plan written in accordance with the rules of the department;

8 (2) The student has been accepted for admission at a
9 participating school; and

10 (3) The parent has requested a scholarship from the state
11 before the deadline established by the department.

12 (b) The department shall inform the resident school district
13 that a special needs student has requested a special needs
14 scholarship. The resident school district shall within three
15 business days provide the department with a copy of the student's
16 most current individual education plan.

17 (c) Upon receipt of the special needs student's request for a
18 scholarship, the department shall review the individual education
19 plan drafted by the student's public school to determine the amount
20 of the scholarship. The department shall provide the student's
21 parent with a timely written explanation of their determination for
22 the amount of the scholarship.

23 (d) The maximum scholarship granted an eligible student shall
24 be an amount equivalent to the cost of the educational program that

1 would have been provided for the student in the resident school
2 district. Although the scholarship amount is a function of a
3 student's individual education plan, the participating school is
4 not required to abide by the individual education plan. The parent
5 and the participating school will mutually determine the best
6 services and educational plan for the student.

7 (e) The amount of the special needs scholarship shall be the
8 lesser of the amount calculated in subsections (c) and (d) of this
9 section, or the amount of the participating school's estimated
10 costs for serving the student. The costs of any assessment by the
11 participating school of the student's special needs may be included
12 in the scholarship amount.

13 (f) Participating students shall be counted in the enrollment
14 of their resident school district. The funds needed to provide a
15 scholarship shall be subtracted from the state school aid payable
16 to the student's resident school district.

17 (g) The Special Needs Scholarship shall remain in force until
18 the student returns to a public school or graduates from high
19 school or reaches their twenty-first birthday, whichever comes
20 first.

21 (h) At any time, the student's parent may remove the student
22 from the participating school and place the student in another
23 participating school or in a public school.

24 **§18-31-4. Responsibilities of the resident school district.**

1 (a) A resident school district shall annually notify the
2 parents of a special needs student of the special needs scholarship
3 program and offer that student's parent an opportunity to enroll
4 the student in a participating school of their choice.

5 (b) The resident school district shall provide a participating
6 school that has admitted an eligible student with a complete copy
7 of the student's school records while complying with the Family
8 Educational Rights and Privacy Act of 1974 (Title 20 United States
9 Code §1232(g)).

10 (c) The resident school district shall provide transportation
11 for an eligible student to and from the participating school under
12 the same conditions as the resident school district is required to
13 provide transportation for other resident students to nonpublic
14 schools as per current law. The resident school district qualifies
15 for state transportation aid for each student so transported.

16 (d) If the parent of an eligible student participating in this
17 program requests that the student take the statewide assessments,
18 the resident school district shall provide locations and times for
19 the student to take all statewide assessments if they are not
20 offered at the student's participating school.

21 **§18-31-5. Responsibilities of the West Virginia State Board of**
22 **Education.**

23 (a) The department shall adopt rules and procedures regarding:
24 (1) The eligibility and participation of nonpublic schools,

1 including timelines that will maximize student and public and
2 nonpublic school participation;

3 (2) The calculation and distribution of scholarships to
4 eligible students and participating schools; and

5 (3) The application and approval procedures for eligible
6 students and participating schools.

7 (b) No liability exists on the part of the department or the
8 state based on the award or use of a special needs scholarship.

9 (c) The department may bar a school from participation in the
10 program if the department establishes that the participating school
11 has:

12 (1) Intentionally and substantially misrepresented information
13 required under section six of this article; or

14 (2) Failed to refund to the state any scholarship overpayments
15 in a timely manner.

16 (d) If the department decides to bar a participating school
17 from the program, it shall notify eligible students and their
18 parents of this decision as quickly as possible.

19 **§18-31-6. Accountability for participating schools.**

20 (a) To be eligible to participate in the special needs
21 scholarship program, a nonpublic school must operate in this state
22 and demonstrate:

23 (1) Administrative Accountability. -- To ensure that students
24 are treated fairly and kept safe, all participating schools shall:

1 (A) Comply with all health and safety laws or codes that apply
2 to nonpublic schools;

3 (B) Hold a valid occupancy permit if required by their
4 municipality;

5 (C) Certify that they will not discriminate in admissions on
6 the basis of race, color, national origin, or religion; and

7 (D) Comply with all state laws that apply to nonpublic schools
8 regarding criminal background checks for employees and exclude from
9 employment any people not permitted by state law to work in a
10 nonpublic school.

11 (2) Financial Accountability. -- To ensure that public funds
12 are spent appropriately, all participating schools shall
13 demonstrate their financial accountability by:

14 (A) Submitting a financial information report for the school
15 that complies with uniform financial accounting standards
16 established by the department and conducted by a certified public
17 accountant; and

18 (B) Having the Office of the State Auditor certify the report
19 is free of material misstatements. The Auditor's report shall be
20 limited in scope to those records that are necessary for the
21 department to make payments to schools for scholarships.

22 (b) To be eligible to participate in the special needs
23 scholarship program, a nonpublic school must operate in this state
24 and further demonstrate their financial viability by showing they

1 can pay any funds owed the state, if they are to receive \$50,000 or
2 more during the school year, by:

3 (1) Filing with the department prior to the start of the
4 school year a surety bond payable to the state in an amount equal
5 to the aggregate amount of the Special Needs Scholarships expected
6 to be paid during the school year to students admitted to the
7 participating school; or

8 (2) Filing with the department prior to the start of the
9 school year financial information that demonstrates the school has
10 the ability to pay an aggregate amount equal to the amount of the
11 Special Needs Scholarships expected to be paid during the school
12 year to students admitted to the participating school.

13 (c) Academic Accountability. -- To ensure that schools provide
14 academic accountability to parents of the students in the program,
15 all participating schools shall regularly report to the parent on
16 the student's progress.

17 (d) Participating School Autonomy. -- A participating school
18 is autonomous and not an agent of the state or federal government
19 therefore:

20 (1) The department or any other state agency may not in any
21 way regulate the educational program of a participating school that
22 accepts a special needs scholarship;

23 (2) The creation of the special needs scholarship program does
24 not expand the regulatory authority of the state, its officers or

1 any school district to impose any additional regulation of
2 nonpublic schools beyond those reasonably necessary to enforce the
3 requirements of the program; and

4 (3) Participating schools shall be given the maximum freedom
5 to provide for the educational needs of their students without
6 governmental control.

7 **§18-31-7. Responsibilities of the Scholarship Students and Their**

8 **Parents.**

9 (a) It is the responsibility of a parent to select their
10 child's school, apply for admission, and apply for a special needs
11 scholarship.

12 (b) Any student participating in the program must comply fully
13 with a participating school's written code of conduct and shall
14 remain in attendance throughout the school year, unless excused by
15 the school for illness or other good cause. However, a parent may
16 transfer an eligible student to another participating school at any
17 time. The scholarship amount shall be prorated between
18 participating schools according to the period of attendance at each
19 school.

20 (c) A parent's decision for their student to participate in
21 the program constitutes a nonpublic placement for purposes of the
22 Individuals with Disabilities Education Act at Title 20 United
23 States Code §1400, et seq.

24 **§18-31-8. Evaluation of Special Needs Scholarship Program.**

1 (a) The department may contract with one or more qualified
2 researchers who have previous experience evaluating school choice
3 programs to conduct a study of the program with funds other than
4 state funds.

5 (b) The study shall assess:

6 (1) The level of participating student's satisfaction with the
7 program;

8 (2) The level of parental satisfaction with the program;

9 (3) The percentage of participating students who were
10 victimized because of their special needs status at their resident
11 school district compared to the percentage so victimized at their
12 participating school;

13 (4) The percentage of participating students who exhibited
14 behavioral problems at their resident school district compared to
15 the percentage exhibiting behavioral problems at their
16 participating school;

17 (5) The class size experienced by participating students at
18 their resident school district and at their participating school;
19 and

20 (6) The fiscal impact to the state and resident school
21 districts of the program.

22 (c) The researchers who conduct the study shall apply
23 appropriate analytical and behavioral sciences methodologies to
24 ensure public confidence in the study.

1 (d) The researchers who conduct the study shall provide the
2 Legislature with a final copy of the evaluation of the program.

3 (e) The public and nonpublic participating schools from which
4 students transfer to participate in the program shall cooperate
5 with the research effort by providing student assessment instrument
6 scores and any other data necessary to complete this study.

7 (f) The department may accept grants to assist in funding this
8 study.

9 (g) The Legislature may require periodic reports from the
10 researchers. The researchers must make their data and methodology
11 available for public review while complying with the requirements
12 of the Family Educational Rights and Privacy Act at Title 20 United
13 States Code §1232(g).

14 **§18-31-9. Effective date.**

15 The Special Needs Scholarship Program shall begin with the
16 fall semester of the next school year after the effective date of
17 this article.

NOTE: The purpose of this bill is to create the Special Needs Scholarship Program to be administered by the West Virginia State Board of Education.

This article is new; therefore, it has been completely underscored.