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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3909

03/03/2022 Authored by Erickson
The bill was read for the first time and referred to the Committee on Education Policy

1.1 A bill for an act
1.2 relating to education; creating a scholarship program as a learning option for
1.3 students with a disability; proposing coding for new law in Minnesota Statutes,
1.4 chapter 125A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [125A.81] SCHOLARSHIP PROGRAM FOR STUDENTS WITH A
1.7 DISABILITY ACT.

1.8 Subdivision 1. Title. This act shall be known as the "Scholarship Program for Students
1.9 with a Disability Act."

1.10 Subd. 2. Definitions. (a) For the purposes of this section, the following terms have the
1.11 meanings given.

1.12 (b) "Commissioner" means the commissioner of education.

1.13 (c) "Department" means the Department of Education.

1.14 (d) "Eligible school" means a nonpublic school: (1) where a student can fulfill compulsory
1.15 education requirements and that is recognized by the commissioner or accredited by an
1.16 accrediting agency recognized by the Minnesota Nonpublic Education Council under section
1.17 123B.445, paragraph (a); and (2) that must agree to admit an eligible student and provide
1.18 appropriate educational services related to the student's disability as agreed upon under
1.19 subdivision 3. An eligible school does not include a home school under sections 120A.22,
1.20 subdivision 4, and 120A.24.

2.1 (e) "Eligible student" means any student with an individualized education program under  
2.2 section 125A.08 who resides in Minnesota and who attended a public school or a public  
2.3 charter school during the semester preceding participation in the program.

2.4 (f) "Parent" means a resident of Minnesota who is a parent, legal guardian, custodian,  
2.5 or other person with the authority to act on behalf of the eligible student.

2.6 (g) "Program" means a program to implement a scholarship program for students with  
2.7 a disability (SPSD).

2.8 Subd. 3. **Scholarship program for students with a disability.** (a) Notwithstanding  
2.9 section 125A.03, beginning in the 2023-2024 school year, an eligible student qualifies to  
2.10 participate in the program if the student's parent signs an agreement:

2.11 (1) with the eligible school, in the form and manner described by the commissioner;

2.12 (2) with the public school district or charter school where the eligible student is currently  
2.13 enrolled, in the form and manner described by the commissioner, that states the district or  
2.14 charter school agrees to the student's enrollment in an eligible school; and

2.15 (3) to not enroll the participating student in a public school or a public charter school  
2.16 and to acknowledge as part of the agreement that the participating student has no individual  
2.17 entitlement to a free appropriate public education under section 125A.03 from the student's  
2.18 resident school district for as long as the student is participating in the program. A student  
2.19 participating in the program is still eligible for services under section 123B.86.

2.20 (b) For purposes of continuity of educational attainment, students who enroll in the  
2.21 program must remain eligible until the participating student returns to a public school,  
2.22 graduates from high school, or completes the school year in which the student reaches the  
2.23 age of 21, whichever occurs first.

2.24 (c) A participating student must be allowed to return to the resident school district at  
2.25 any time after enrolling in the program, according to rules adopted by the commissioner  
2.26 providing for the least disruptive process for doing so. Upon a participating student's return  
2.27 to the resident school district, the student is no longer a participant in the SPSPD.

2.28 (d) The commissioner must begin accepting applications for the program on July 1,  
2.29 2023.

2.30 Subd. 4. **General education aid.** The commissioner must increase the former serving  
2.31 school district's general education aid by an amount equal to 50 percent of the statewide  
2.32 average general education aid per adjusted pupil unit for each year the student remains  
2.33 enrolled in an eligible school. The general education aid under this subdivision for a student

3.1 formally enrolled at a charter school must be paid to the student's resident district. For  
3.2 purposes of this subdivision, the term "school district" does not include charter schools.

3.3 Subd. 5. **Special education aid.** (a) The commissioner must increase the former serving  
3.4 school district's or charter school's special education aid by an amount equal to the average  
3.5 cost by disability category referenced in the most recent special education statewide average  
3.6 expenditure report required under section 125A.76, subdivision 2d, times the number of  
3.7 students within each disability category enrolled at an eligible school.

3.8 (b) A school district must transfer the amounts under paragraph (a) to an eligible school.

3.9 Subd. 6. **Administration.** (a) The commissioner must create a standard form that parents  
3.10 of students may submit to establish the student's eligibility for participating in the SPSD.  
3.11 The commissioner must ensure that the application is readily available to interested families  
3.12 through various sources, including on the department's website. The commissioner must  
3.13 provide a copy of procedural safeguards annually to parents.

3.14 (b) The commissioner must provide parents of participating students with a written  
3.15 explanation of the responsibilities of parents and the duties of the commissioner. The  
3.16 information must also be made available on the department's website.

3.17 (c) The commissioner must annually notify all students who are eligible to participate  
3.18 in the SPSD of the existence of the program and must ensure that low-income families are  
3.19 made aware of the program and eligibility for participation.

3.20 (d) The commissioner must make a determination of eligibility and must approve an  
3.21 application within 21 business days of receiving an application for participation in the  
3.22 program.

3.23 Subd. 7. **SPSD establishment.** (a) To ensure that funds are spent appropriately, the  
3.24 commissioner must adopt rules and policies necessary for the administration of the program.

3.25 (b) If the commissioner determines that a parent has failed to comply with the terms of  
3.26 the agreement as specified in subdivision 3, the commissioner must suspend the student's  
3.27 participation in the SPSD. The commissioner must notify the parent in writing within five  
3.28 business days that the student has been suspended from the SPSD. The notification must  
3.29 specify the reason for the suspension and state that the parent has 21 business days to respond  
3.30 and take corrective action.

3.31 (c) If the parent fails to respond to the commissioner, furnish reasonable and necessary  
3.32 information, or make a report that may be required for reinstatement within the 21-day  
3.33 period, the commissioner may remove the participating student from the program.

4.1 (d) The decision of the commissioner under this section is subject to review under  
4.2 sections 14.63 to 14.69. The decision of the commissioner is stayed pending an appeal.

4.3 Subd. 8. **Scope.** An eligible nonpublic school is autonomous and not an agent of the  
4.4 state or federal government, and therefore:

4.5 (1) the commissioner, department, or any other government agency must not in any way  
4.6 regulate the educational program of a nonpublic school or educational service provider that  
4.7 accepts funds from the parent of a participating student;

4.8 (2) the creation of the program does not expand the regulatory authority of the state, its  
4.9 officers, or any school district to impose any additional regulation of nonpublic schools or  
4.10 educational service providers beyond those necessary to enforce the requirements of the  
4.11 program; and

4.12 (3) eligible schools and educational service providers must be given the maximum  
4.13 freedom to provide for the educational needs of enrolled students without governmental  
4.14 control. An eligible school or educational service provider must not be required to alter its  
4.15 creed, practices, admission policies, or curriculum in order to accept participating students.

4.16 Subd. 9. **Appeal to commissioner.** The public school district where an eligible student  
4.17 is enrolled must consider the primacy of parental rights when considering whether to allow  
4.18 an eligible student to enroll in an eligible school under subdivision 3a. If a district or charter  
4.19 school denies enrollment, the district or charter school must provide a reasonable explanation  
4.20 for preventing the eligible student from enrolling in the eligible school. The student's parent  
4.21 may appeal the decision to the commissioner. Upon appeal, the commissioner must make  
4.22 the final determination regarding enrollment of the student at an eligible school.

4.23 Subd. 10. **Severability.** If any provision of this law or its application is found to be  
4.24 unconstitutional and void, the remaining provisions or applications of this law that can be  
4.25 given effect without the invalid provision or application are valid.

4.26 **EFFECTIVE DATE.** This section is effective the day following final enactment.