

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 2

Session of 2017

INTRODUCED BY DiSANTO, SCARNATI, EICHELBERGER, ARGALL, ALLOWAY, AUMENT, BAKER, BARTOLOTTA, FOLMER, MARTIN, RAFFERTY, REGAN, RESCHENTHALER, STEFANO, WAGNER, WHITE AND KILLION, OCTOBER 18, 2017

SENATOR EICHELBERGER, EDUCATION, AS AMENDED, MAY 22, 2018

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," providing for education savings
6 account; and conferring powers and imposing duties on the
7 Department of Education and the State Treasury.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
11 as the Public School Code of 1949, is amended by adding an
12 article to read:

13 ARTICLE XX-H

14 EDUCATION SAVINGS ACCOUNT

15 Section 2001-H. Short title.

16 This article shall be known and may be cited as the Education
17 Savings Account Act.

18 Section 2002-H. Definitions.

19 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Department." The Department of Education of the
4 Commonwealth.

5 "Education savings account." A spending account established
6 and administered by the State Treasury for a school-age child
7 and controlled by a parent, with money that may be spent on a
8 qualified education expense as provided for under section 2005-
9 H.

10 "Institution of higher education." As defined under section
11 118(c).

12 "Low-achieving public school." A public school that ranked
13 in the lowest 15% of the school's designation as an elementary
14 school or a secondary school based on combined mathematics and
15 reading scores from the annual ~~assessment~~ STATE ACHIEVEMENT TEST <--
16 administered in the previous school year and for which the
17 department has posted results on its publicly accessible
18 Internet website. The term does not include a charter school,
19 cyber charter school or area vocational-technical school.

20 "Nonpublic school." A school, other than a public school,
21 located within this Commonwealth where a Commonwealth resident
22 may legally fulfill the compulsory attendance requirements of
23 this act, that meets the applicable requirements of Title VI of
24 the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241)
25 and that complies with section 1521.

26 "Parent." Either of the following:

27 (1) A resident of this Commonwealth who is the parent,
28 custodial parent or legal guardian of a school-age child.

29 (2) An individual in this Commonwealth who has control
30 or charge of a school-age child and the legal right to direct

1 the education of the school-age child.

2 "Participating entity." Any of the following that has an
3 application under section 2007-H approved by the department:

4 (1) A nonpublic school for kindergarten through grade
5 12, or a combination of grades.

6 (2) An institution of higher education.

7 (3) A distance learning program that is not offered by a
8 public school or the department.

9 (4) A tutor who is a teacher licensed in any state, has
10 taught at an eligible postsecondary institution and is a
11 subject matter expert or a tutor or tutoring agency otherwise
12 approved by the department.

13 The term does not include a parent of a school-age child to the
14 extent the parent provides educational services directly to the
15 school-age child, as well as after the school-age child
16 graduates from high school.

17 "Program." The education savings account program provided
18 for under this article.

19 "Public school." A school district, charter school, cyber
20 charter school, regional charter school, intermediate unit or
21 area vocational-technical school.

22 "Resident school district." The school district in which a
23 school-age child resides.

24 "School-age child." A child enrolled in kindergarten through
25 grade 12 and who resides in this Commonwealth.

26 "STATE ACHIEVEMENT TEST." THE PENNSYLVANIA SYSTEM OF SCHOOL <--
27 ASSESSMENT TEST, THE KEYSTONE EXAM, AN EQUIVALENT LOCAL
28 ASSESSMENT OR ANOTHER TEST ESTABLISHED OR APPROVED BY THE STATE
29 BOARD OF EDUCATION OR THE GENERAL ASSEMBLY TO MEET THE
30 REQUIREMENTS OF SECTION 2603-B(D)(10)(I), OR REQUIRED UNDER THE

1 EVERY STUDENT SUCCEEDS ACT (PUBLIC LAW 114-95, 129 STAT. 1802)
2 OR ITS SUCCESSOR STATUTE OR ANOTHER TEST REQUIRED TO ACHIEVE
3 OTHER STANDARDS ESTABLISHED BY THE DEPARTMENT FOR THE PUBLIC
4 SCHOOL OR SCHOOL DISTRICT UNDER 22 PA. CODE § 403.3 (RELATING TO
5 SINGLE ACCOUNTABILITY SYSTEM).

6 "Student with a disability." A school-age child who has been
7 identified, in accordance with 22 Pa. Code Ch. 14 (relating to
8 special education services and programs), as a "child with a
9 disability," as defined in 34 CFR 300.8 (relating to child with
10 a disability).

11 Section 2003-H. Application and agreement.

12 (a) Parents who may apply.--A parent may apply for an
13 education savings account for a school-age child who:

14 ~~(1) resides within the attendance area of a low-~~ <--
15 ~~achieving public school and has been enrolled in a public~~
16 ~~school in this Commonwealth for not less than one full-~~
17 ~~semester;~~

18 ~~(2) is entering kindergarten or the first grade; or~~

19 (1) RESIDES WITHIN THE ATTENDANCE AREA OF A LOW- <--
20 ACHIEVING PUBLIC SCHOOL AND:

21 (I) HAS BEEN ENROLLED IN A PUBLIC SCHOOL IN THIS
22 COMMONWEALTH FOR NOT LESS THAN ONE FULL SEMESTER
23 IMMEDIATELY PRECEDING THE ESTABLISHMENT OF AN EDUCATION
24 SAVINGS ACCOUNT; OR

25 (II) IS ENTERING KINDERGARTEN OR THE FIRST GRADE; OR

26 ~~(3)~~ (2) participated in the program in the prior year <--
27 and is renewing an agreement under subsection (h) by filing
28 an application with the department, in a manner and on a form
29 provided by the department.

30 (b) Application form.--The form may not exceed one page that

1 measures 8.5 inches by 11 inches and may be filled out and
2 submitted through the department's publicly accessible Internet
3 website.

4 (c) Review and approval.--The department shall review the
5 application to determine if the applicant meets the requirements
6 of subsection (a). If the requirements have been met, the
7 department shall approve the application and enter into an
8 agreement with the applicant. The agreement shall provide that:

9 (1) The child will withdraw from public school and
10 receive instruction in this Commonwealth from a participating
11 entity for the school year for which the agreement applies.

12 (2) The child will not accept a scholarship in the
13 educational improvement tax credit program under Article XX-B
14 or the opportunity scholarship tax credit program under
15 Article XX-B.

16 (3) The parent will receive a grant on behalf of the
17 parent's child, in the form of money deposited under section
18 2004-H in the education savings account.

19 (4) The money in the education savings account will be
20 expended only as authorized under this article.

21 (d) Establishment.--

22 (1) If an agreement is entered into under subsection
23 (c), an education savings account shall be established. The
24 account shall be administered by the State Treasury under
25 this article.

26 (2) Failure of a parent to enter into an agreement under
27 subsection (c) for a school year shall not preclude the
28 parent from entering into an agreement for a subsequent
29 school year if the school-age child is eligible under
30 subsection (a).

1 (e) Term of agreement.--Except as otherwise provided under
2 this article, an agreement entered into under subsection (c)
3 shall be valid for one school year.

4 (f) Termination.--

5 (1) Notwithstanding subsection (g), an agreement entered
6 into under subsection (c) may be terminated early.

7 (2) If an agreement is terminated early by either the
8 parent or the department, all available funds in the
9 education savings account shall revert to the State Treasury
10 and be used in the resident school district.

11 (g) Automatic termination.--

12 (1) An agreement entered into under subsection (c) shall
13 terminate automatically if the school-age child no longer
14 resides in this Commonwealth.

15 (2) The school-age child's parent shall notify the
16 department if the child no longer resides in this
17 Commonwealth within 15 days. In such a case, money remaining
18 in the education savings account shall revert to the State
19 Treasury and be used in the resident school district.

20 (h) Renewal.--

21 (1) An agreement entered into under subsection (c) may
22 be renewed for each school year for the school-age child.

23 (2) Failure of a parent to renew an agreement for a
24 school year shall not preclude a parent from renewing the
25 agreement for a subsequent school year if the school-age
26 child is eligible under subsection (a).

27 (i) Number.--A parent may enter into separate agreements
28 under subsection (c) for each school-age child of the parent.
29 Not more than one education savings account may be established
30 for a school-age child.

1 (j) Explanation.--Upon entering into or renewing an
2 agreement under subsection (c), the department shall provide the
3 parent with a written explanation of the authorized uses of the
4 money in the education savings account and the responsibilities
5 of the parent, the department and the State Treasury under the
6 agreement and this article.

7 (K) APPLICATION AND RENEWAL PERIOD.--

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8 (1) A PARENT MAY APPLY OR SEEK RENEWAL BETWEEN JANUARY 1
9 AND APRIL 1 FOR THE FOLLOWING SCHOOL YEAR.

10 (2) THE DEPARTMENT SHALL NOTIFY PARENTS AND SCHOOL
11 DISTRICTS OF APPROVED APPLICATIONS BY APRIL 30.

12 Section 2004-H. Amount.

13 (a) General rule.--If a parent enters into or renews an
14 agreement under section 2003-H with the department for a school
15 year, the Secretary of Education shall deposit a grant for that
16 school year in the education savings account of the student. The
17 amount of the grant shall be as follows:

18 (1) For a nonspecial education student, the grant amount
19 shall be equal to the State revenues received by school
20 districts minus State revenues received for transportation
21 divided by the State total average daily membership.

22 (2) For a special education student, the grant amount
23 shall be based on the category of disability by which the
24 resident school district is required to categorize the
25 student for the purpose of the report required under section
26 1372(8) as follows:

27 (i) For a student in Category 1, multiply the grant
28 amount in paragraph (1) by 1.51.

29 (ii) For a student in Category 2, multiply the grant
30 amount in paragraph (1) by 3.77.

1 (iii) For a student in Category 3A and 3B, multiply
2 the grant amount in paragraph (1) by 7.46.

3 (3) For a student receiving a grant, the amount of basic
4 education funding and other subsidies paid by the department
5 to the resident school district shall be reduced by the grant
6 amount calculated for the student.

7 (4) Where a school district's basic education funding
8 and other subsidies are reduced under this section, the
9 resident school district shall include the grant recipient in
10 the resident school district's average daily membership for
11 the purpose of calculating school subsidies.

12 (b) Installments.--The State Treasury shall deposit the
13 money for each grant in quarterly installments under a schedule
14 determined by the State Treasury.

15 (c) Disposition.--The following shall apply to money
16 remaining in an education savings account:

17 (1) For money remaining in an education savings account
18 at the end of a school year, the money may be carried forward
19 to any other school year of the student if the agreement
20 entered into under section 2003-H is renewed for the other
21 school year.

22 (2) Subject to paragraph (3), money remaining in an
23 education savings account when an agreement entered into
24 under section 2003-H is not renewed or is terminated shall
25 revert to the resident school district.

26 (3) Money remaining in an education savings account
27 after the school-age child graduates from high school may be
28 used for qualified education expenses under section 2005-H
29 for up to two years after the date of high school graduation.
30 After that time period, money remaining in the education

1 savings account shall revert to the General Fund.

2 Section 2005-H. Qualified education expenses.

3 (a) General rule.--Money deposited in an education savings
4 account may be used to pay for any of the following expenses
5 incurred by or associated with the school-age child:

6 (1) Tuition and fees charged by a participating entity.

7 (2) Textbooks or uniforms required by a participating
8 entity.

9 (3) Fees for tutoring or other teaching services
10 provided by a participating entity.

11 (4) Fees for a nationally norm-referenced test, advanced
12 placement or similar examination or standardized examination
13 required for admission to an institution of higher education,
14 and career and technical education examination fees.

15 (5) Fees for purchasing a curriculum or instructional
16 materials required to administer the curriculum.

17 (6) If the child is a student with a disability, fees
18 for special instruction or special services provided to the
19 child, including, but not limited to, occupational, physical,
20 speech and behavioral therapies.

21 (7) Other valid educational expenses approved by the
22 department.

23 (b) Prohibitions.--A participating entity that receives a
24 payment for qualified education expenses authorized under
25 subsection (a) may not:

26 (1) refund a portion of the payment directly to the
27 parent who made the payment.

28 (2) rebate or otherwise directly share a portion of the
29 payment with the parent who made the payment.

30 (c) Refund.-A participating entity shall deposit a refund

1 for an item that is being returned or an item or service that
2 has not been provided directly to the education savings account
3 of the school-age child from which payment for the item or
4 service was made.

5 (d) Payment system.--

6 (1) The State Treasury shall develop a system that
7 enables parents to pay for services provided by participating
8 entities by electronic funds transfer, including electronic
9 payment systems or other means of electronic payment that the
10 State Treasury determines to be commercially viable and cost
11 effective.

12 (2) The State Treasury may not adopt a system that
13 requires parents to be reimbursed for out-of-pocket expenses.

14 (3) The State Treasury may contract with qualified
15 private firms to manage some or all parts of this subsection.

16 (e) Source of payment.--

17 (1) Persons may not deposit personal funds into or
18 otherwise make gifts or contributions of private funds to an
19 education savings account.

20 (2) Nothing in this section shall be construed to
21 prohibit a parent or school-age child from paying for
22 qualified education expenses from a source other than the
23 education savings account.

24 Section 2006-H. Audits and penalties.

25 (a) Audit.--The State Treasury may provide for audits of an
26 education savings account as the State Treasury determines
27 necessary.

28 (b) Penalties.--If the State Treasury determines that the
29 money in an education savings account has been expended for an
30 expense other than a qualified education expense under section

1 2005-H(a), the State Treasury may do any of the following:

2 (1) Freeze or dissolve the education savings account,
3 subject to regulations adopted by the State Treasury
4 providing for notice of the action and opportunity to respond
5 to the notice.

6 (2) Refer the matter to the Attorney General or district
7 attorney of the county in which the parent resides for
8 investigation and criminal prosecution, if appropriate.

9 (3) Impose a civil penalty equal to 300% of the amount
10 of the education savings account prior to the fraudulent use.

11 (4) Disqualify the parent from future participation in
12 the program.

13 Section 2007-H. Participating entity application and
14 requirements.

15 (a) General rule.--A participating entity shall submit an
16 application to and enter into a contract with the department.

17 (b) Determination.--The department shall approve an
18 application submitted under subsection (a) if the applicant
19 meets the criteria to serve as a participating entity. If the
20 department accepts the application, the department, in
21 consultation with the State Treasury, shall enter into a
22 contract with the applicant specifying the rights and duties of
23 the parties relating to the program.

24 (c) Posting and submission.--The department shall make the
25 application and contract for participation in the program
26 required under this section available to be filled out and
27 submitted on the department's publicly accessible Internet
28 website.

29 (d) Receipt.--Each participating entity that accepts payment
30 from an education savings account shall provide a receipt to the

1 parent for the payment.

2 (e) Refusal.--The department may refuse to allow a
3 participating entity continued participation in the program for
4 up to three years if the department determines that the
5 participating entity:

6 (1) has routinely failed to comply with the provisions
7 of this article; or

8 (2) has received payment for a school-age child of an
9 education savings account and fails to provide the education
10 services required by law to the school-age child.

11 (f) Notice.--

12 (1) If the department takes an action described under
13 subsection (e) against a participating entity, the department
14 shall provide immediate notice of the action to each parent
15 of a school-age child who is receiving education services
16 from the participating entity who has entered into or renewed
17 an agreement under section 2003-H.

18 (2) All payments made to a participating entity prior to
19 notice being given shall be deemed qualified education
20 expenses for education savings accounts.

21 (3) If a school-age child is enrolled in a participating
22 entity that is refused continued participation in the program
23 during the school year, the parent may use the education
24 savings account to pay for the remainder of that school
25 year's qualified education expenses, but may not use
26 education savings account money to pay the participating
27 entity until the participating entity is permitted to resume
28 continued participation in the program.

29 (g) Limitation on tuition charges.--The tuition charged by a
30 participating entity to a student with an education savings

1 account may not exceed the regular tuition charged to those
2 similarly situated students for whom an education savings
3 account does not exist.

4 (h) Withdrawal from enrollment.--In the event that an
5 eligible student withdraws from enrollment in a participating
6 entity prior to the completion of the school year, the
7 participating entity shall, within 15 days of withdrawal,
8 provide the department with written notice of the withdrawal.

9 Section 2008-H. Academic requirements.

10 (a) General rule.--Nonpublic schools that accept payments
11 from education savings accounts for tuition and fees shall:

12 (1) Ensure that each school-age child on whose behalf a
13 grant of money has been deposited and who is receiving
14 education services from the participating entity is
15 administered either the State achievement tests or nationally
16 norm-referenced tests that measure learning gains in math and
17 language arts for grades 3, 5, 7 and 11.

18 (2) Release a school-age child's individual results on
19 the State achievement tests or nationally norm-referenced
20 tests to the parent of the school-age child.

21 (3) Collect and aggregate the test results and
22 associated learning gains under paragraph (1) and graduation
23 rates for the school-age children participating in the
24 program according to the grade level of each school-age child
25 and shall post the information on the publicly accessible
26 Internet website of the nonpublic school-, IF THE NUMBER OF <--
27 CHILDREN MEETS THE MINIMUM NUMBER REQUIRED BY THE DEPARTMENT
28 FOR REPORTING OF PUBLIC SCHOOL SCORES.

29 (b) Exception.--

30 (1) If a school-age child for whom an education savings

1 account exists is not enrolled in a full-time education
2 program at a nonpublic school, the parent shall ensure the
3 participating student is administered a State achievement
4 test or nationally norm-referenced test.

5 (2) The department shall provide a list of entities
6 administering State achievement tests or nationally norm-
7 referenced tests to the parent.

8 (3) The entity that administers the test shall release
9 the result to each school-age child's parent and provide test
10 results to the department.

11 (c) Department duties.--The department shall:

12 (1) Aggregate the examination results and associated
13 learning gains provided under subsection (b) according to the
14 grade level of each school-age child.

15 (2) After three school years for which examination data
16 has been collected under this section, post on the
17 department's publicly accessible Internet website the
18 aggregated test results, associated learning gains and
19 graduation rates of school-age children participating in the
20 program.

21 Section 2009-H. Listing of participating entities.

22 The department shall annually post on the department's
23 publicly accessible Internet website a listing of all
24 participating entities.

25 Section 2010-H. Education records.

26 ~~The department shall annually require the resident school~~ <--
27 ~~district of each school age child participating in the program~~
28 ~~to provide the child's education records to the participating~~
29 ~~entity.~~

30 (A) GENERAL RULE.--A RESIDENT SCHOOL DISTRICT SHALL PROVIDE <--

1 A PARTICIPATING ENTITY THAT HAS ADMITTED AN ELIGIBLE STUDENT
2 PARTICIPATING IN THE PROGRAM WITH A COMPLETE COPY OF THE
3 STUDENT'S DISCIPLINARY RECORD AT THE REQUEST OF THE
4 PARTICIPATING ENTITY.

5 (B) TIME PERIOD.--THE RESIDENT SCHOOL DISTRICT SHALL SUPPLY
6 A CERTIFIED COPY OF THE STUDENT'S DISCIPLINARY RECORD, NOT LATER
7 THAN 10 DAYS AFTER RECEIPT OF THE REQUEST, SUBJECT TO THE FAMILY
8 EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 (PUBLIC LAW 90-247,
9 20 U.S.C. § 1232G).

10 Section 2011-H. Transportation.

11 The school district of residence of a school-age child
12 participating in the program shall provide transportation to the
13 school-age child in accordance with section 1361.

14 Section 2012-H. Participating entity autonomy.

15 (a) General rule.--A participating entity shall be
16 autonomous and not an agent of the Commonwealth, the State
17 Treasury or the department.

18 (b) Prohibition.--

19 (1) No Commonwealth agency may regulate the education
20 program of a participating entity that accepts a payment from
21 an education savings account, except as otherwise provided
22 for under Federal or State law.

23 (2) The establishment of the program does not expand the
24 regulatory authority of the State, State officers or a school
25 district to impose additional regulation of nonpublic schools
26 or education providers beyond that necessary to enforce the
27 requirements of this article.

28 (3) No participating entity shall be required to alter
29 the participating entity's creed, practices, admissions
30 policy or curriculum to accept school-age children whose

1 parents make payments from education savings accounts.

2 (c) Nontaxable.--Education savings accounts shall not be
3 considered taxable income for purposes of any local taxing
4 ordinance or home rule charter or for purposes of Article III of
5 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
6 Code of 1971, nor shall payments made from any education savings
7 account constitute financial assistance or appropriations to any
8 participating entity.

9 Section 2013-H. Regulations.

10 The State Treasury and the department shall jointly
11 promulgate regulations as necessary for the administration of
12 this article within 60 days of the effective date of this
13 section.

14 Section 2. This act shall take effect in 60 days.