

AN ACT relating to Individualized Education Accounts and making an appropriation therefor.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 8 of this Act:*

*(1) "Account" means the Individualized Education Accounts Program account established for an eligible student;*

*(2) "Department" means the Kentucky Department of Education;*

*(3) "Eligible postsecondary institution" means an "institution" as defined in KRS 164.001 that actively participates in the federal Pell Grant program;*

*(4) "Eligible student" means a Kentucky student who was previously enrolled in a public elementary or secondary school and:*

*(a) Has an individualized education program and meets the definition of exceptional children and youth under KRS 157.200(1)(a) to (m);*

*(b) Has a Section 504 Plan as defined in KRS 156.027; or*

*(c) Has received a diagnosis from a physician or psychologist licensed in the Commonwealth identifying the student as a child with a disability in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq.;*

*(5) "Parent" means a Kentucky resident who is a parent, guardian, custodian, or other person with authority to act on behalf of the eligible student;*

*(6) "Participating school" means any nonpublic elementary or secondary school within Kentucky that has been approved to participate in and complies with the requirements of the Individualized Education Accounts Program;*

*(7) "Private tutoring" means tutoring services provided by teachers certified by the Education Professional Standards Board or by tutors accredited by a state,*

regional, or national tutor accreditation organization and approved by the State Treasury;

(8) "Program" means the Individualized Education Accounts Program described in Sections 1 to 8 of this Act;

(9) "Qualified expenses" means the expenses described in Section 3 of this Act;

(10) "Resident school district" means the public school district in which the eligible student resides; and

(11) "Service provider" means a person or entity that:

(a) Provides services or products that are qualified expenses as described in Section 3 of this Act;

(b) Has been approved to participate in the program; and

(c) Complies with the requirements of the program.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) The State Treasury shall administer the Individualized Education Accounts Program and shall promulgate administrative regulations in accordance with KRS Chapter 13A as may be needed for its administration.

(2) The State Treasury shall:

(a) Create an application and approval process, including an online application option for:

1. Parents to establish program accounts for eligible students; and

2. Participating schools and service providers;

(b) Process applications in the order in which they are received;

(c) Conduct outreach to inform Kentucky families about the availability of the program, with particular effort to provide program information to low-income families;

(d) Provide written notification to parents regarding program rules, procedures,

and responsibilities;

(e) Maintain a list of participating schools and service providers and make the list available to parents and the Department of Education;

(f) Account for program funds separately for each eligible student;

(g) Develop a system for electronic payment of qualified expenses from the program, including but not limited to debit cards or electronic payment systems;

(h) Conduct regular audits of the program accounts to verify the eligibility of students and the use of program funds for qualifying expenses; and

(i) Provide an annual report to the Interim Joint Committee on Education on the program, including participation, utilization, and student performance, by October 1, 2017, and each year thereafter.

(3) The State Treasury shall disqualify a participating school or service provider from receiving funds from the program if the State Treasury determines the school or provider has failed to comply with the requirements of Sections 1 to 8 of this Act or has failed to provide an eligible student with educational services funded by the program. Parents shall be notified of disqualified schools or providers as soon as possible and a list of disqualified schools and providers shall be maintained and updated monthly.

(4) The State Treasury shall refer evidence of serious misuse of funds by a parent, participating school, or service provider to the appropriate law enforcement agency for investigation.

(5) The State Treasury may contract with one (1) or more entities to provide administrative services to the program.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) To participate in the Individualized Education Accounts Program, a parent of an

eligible student shall enter into a written participation agreement with the State Treasury. Pursuant to the terms of the agreement, the parent shall:

(a) Provide documentation verifying that the student is an eligible student as defined in Section 1 of this Act and is not enrolled in a public elementary or secondary school;

(b) Release the resident school district from the obligation to educate the student. Participation in the program shall have the same effect as a parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq.;

(c) Comply with the rules and requirements of the program;

(d) Ensure that the eligible student annually takes either the statewide assessment administered to public school students or a national norm-referenced test approved by the State Treasury that measures learning gains in math and language arts and provides for value-added assessment. Students with disabilities for whom standardized testing is not appropriate, as determined by the State Treasury, shall be exempt from this requirement;  
and

(e) Use program funds only for the following qualified expenses of the eligible student:

1. Tuition and fees at a participating school;

2. Textbooks required for courses at a participating school;

3. Private tutoring services;

4. Curriculum or instructional materials approved by the State Treasury;

5. Computer hardware or other technological devices that are used solely for the eligible student's educational needs and approved by the State Treasury or a licensed physician;

6. Tuition and fees for an online learning program provided by a

nonpublic entity and approved by the State Treasury;

7. Fees for national norm-referenced tests, Advanced Placement examinations, fees associated with state-recognized industry certification exams, and any college admissions examinations;
  8. Educational services and therapies for students with disabilities provided by a licensed or accredited practitioner or provider, including but not limited to occupational, behavioral, physical, or speech-language therapies;
  9. Tuition and fees at an eligible postsecondary institution;
  10. Textbooks required for courses at an eligible postsecondary institution;
  11. Contracted services provided by a public school district for educational and developmental needs, including individual classes; and
  12. Transportation paid to a fee-for-service transportation provider for travel to a participating school, not to exceed seven hundred fifty dollars (\$750) per school year.
- (2) Funds from an account shall be paid directly to a participating school or service provider for qualified expenses, except that funds may be paid to a parent for reimbursement of qualified expenses upon prior authorization by the Treasury and submission of documentation verifying the payment of qualified expenses.
- (3) Funds paid directly to a participating school or service provider shall not be refunded, rebated, or shared with a parent or eligible student. Any funds distributed from an account that are refunded or unused shall be returned to the program.
- (4) The payment of funds from the program shall not constitute taxable income to the parent or the eligible student.
- (5) If the State Treasury determines a parent has misused funds in the account, the

State Treasury may permanently disqualify the parent and eligible student from participating in the program. Funds remaining in the account for the eligible student shall be returned to the general fund.

(6) Available account funds may be used for qualified expenses of the eligible student until:

(a) The eligible student graduates from an eligible postsecondary institution;

(b) Four (4) consecutive years after the student graduates from high school and is not enrolled in an eligible postsecondary institution;

(c) The eligible student's twenty-fifth birthday; or

(d) No funds are disbursed from the account on behalf of the eligible student for two (2) consecutive years.

(7) Funds remaining when an account is closed shall be returned to the general fund.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

(1) The State Treasury shall notify the Department of Education when a parent executes an agreement to participate in the Individualized Education Accounts Program. The notice shall include the resident school district of the eligible student.

(2) The department shall notify the resident school district of the eligible student's participation in the program. For the purposes of calculating average daily attendance as defined by KRS 157.320 under the Support Education Excellence in Kentucky program, an eligible student shall be counted present each day in the public school the student would attend under KRS 159.010.

(3) (a) Beginning with the 2017-2018 school year, the department shall transfer funds monthly on behalf of each eligible student to the State Treasury for deposit into the program fund.

- (b) The amount of funds to be deposited and designated for each eligible student shall be an amount equal to ninety percent (90%) of the state portion of the average statewide per pupil guaranteed base funding level and the corresponding add-on for an exceptional child that is allotted under KRS 157.360.
- (c) The remaining ten percent (10%) of the funds for each eligible student shall be transferred as follows:
1. Five and one-half percent (5.5%) to the resident school district; and
  2. Four and one-half percent (4.5%) to the State Treasury for the purpose of paying costs associated with administering the program.
- (d) Funds shall be transferred from the department to the State Treasury on behalf of the eligible student until the student reenrolls in a public school district, graduates from a participating school, or reaches his or her twenty-first birthday.
- (e) The department shall post information on its Web site about the program, including the list of participating schools and service providers.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

A resident school district shall:

- (1) Provide a participating school that has admitted an eligible student with a complete copy of the student's school records while complying with the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. sec. 1232g; and
- (2) Allow an eligible student in a participating school to take the statewide assessment administered in public schools if requested by the parent and provide the results to the State Treasury. The student's scores shall not be counted in the resident school district's accountability scores.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO

READ AS FOLLOWS:

(1) A participating school shall:

- (a) Adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all public schools;
- (b) Require state and criminal background checks for staff and volunteers as required of all public school employees and volunteers within the public schools specified in KRS 160.380 and 161.148;
- (c) Exclude from employment any person that has a record of a sex crime or as a violent offender as defined in KRS 17.165;
- (d) Provide parents with a receipt for all qualifying expenses incurred by an eligible student at the school;
- (e) Provide the results of any statewide assessment or national norm-referenced test that is administered by the school and taken by an eligible student to the State Treasury in a format approved by the State Treasury; and
- (f) Notify the State Treasury of the high school graduation of an eligible student.

(2) When the State Treasury determines a participating school may receive at least fifty thousand dollars (\$50,000) from the Individualized Education Accounts Program on behalf of eligible students during a school year, the participating school shall be required to provide the State Treasury prior to the start of the school year:

- (a) A surety bond payable to the Commonwealth in an amount equal to the aggregate amount of program funds expected to be paid to the school during the school year; and
- (b) Financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of program funds expected to be paid to the school during the school year.



**(3) The creation of the Individualized Education Accounts Program does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation on participating schools beyond those reasonably necessary to enforce the requirements of Sections 1 to 8 this Act;**

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

**(1) In compliance with all student privacy laws, the State Treasury shall produce an annual report on the Individualized Education Accounts Program and post it to a Web site available to the public. The report shall include:**

- (a) Eligible student performance on statewide assessment or national norm-referenced tests, including learning gains;**
- (b) High school graduation rates of eligible students;**
- (c) Parental satisfaction rates regarding the program;**
- (d) Opinions from parents about the effectiveness of the program;**
- (e) The percentage of program funds used for each qualified expense identified in Section 3 of this Act; and**
- (f) The fiscal impact of the program on the state and resident school districts, determined by including revenue and expense factors.**

**(2) The student performance data in the report shall be disaggregated by grade level, gender, family income level, and race. The report shall protect the identity of eligible students and participating schools.**

**(3) Appropriate analytical behavioral science methodologies shall be used in preparing the report.**

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

**(1) The Individualized Education Accounts Program trust fund is hereby created as a trust fund in the State Treasury to be administered by the State Treasury for the**

purpose of providing funds for the qualified expenses of eligible students as described in Sections 1 to 8 of this Act.

(2) The trust fund shall consist of funds transferred from the Department of Education under Section 4 of this Act. Contributions to the fund from individuals is prohibited. All moneys included in the trust fund shall be appropriated for the purposes set forth in Sections 1 to 8 of this Act.

(3) Any unallotted or unencumbered balances in the trust fund shall be invested as provided in KRS 42.500(9). Income earned from the investments shall be credited to the trust fund.

(4) Notwithstanding KRS 45.229, any fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year and continuously appropriated only for the purposes specified in Sections 1 to 8 of this Act, except for funds returned to the general fund under the provisions of Sections 1 to 8 of this Act.