

1 **SENATE FLOOR VERSION**

2 March 2, 2022

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1647

By: Treat, Daniels, Newhouse,
and Jett

6
7 [students - Oklahoma Empowerment Act - providing
8 short title - Oklahoma Empowerment Account Program -
9 removal of certain parent or student from eligibility
- codification - effective date -
emergency]

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11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 28-100 of Title 70, unless there
14 is created a duplication in numbering, reads as follows:

15 A. This act shall be known and may be cited as the "Oklahoma
16 Empowerment Act".

17 B. It is the intent of the Legislature that parents, legal
18 guardians, and others with legal authority over children in this
19 state be able to access educational services that meet the needs of
20 their individual children by directing State Aid for which each
21 child is eligible to the education provider of their choice. The
22 Legislature affirms that parents and legal guardians are best suited
23 to make decisions to help children in this state reach their full
24 potential and achieve a brighter future.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 28-101 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. As used in the Oklahoma Empowerment Act:

5 1. "Agency" means the Office of the State Treasurer;

6 2. "Curriculum" means a complete course of study for a
7 particular content area or grade level;

8 3. "Oklahoma Empowerment Account" means the account in which
9 funds are deposited by the Agency to pay for qualifying education
10 expenses for an empowerment student;

11 4. "Education service provider" means a person, business,
12 public school district, public charter school, magnet school,
13 institution within The Oklahoma State System of Higher Education, or
14 organization that receives payments from a parent directing an
15 Oklahoma Empowerment Account to provide educational goods and/or
16 services to empowerment students;

17 5. "Eligible student" means a resident of this state who is
18 eligible to enroll in a public school in this state and who is a
19 member of a household in which the total annual income during the
20 preceding tax year does not exceed an amount equal to three hundred
21 percent (300%) of the income standard used to qualify for a free or
22 reduced-price school lunch. Eligible student shall not mean a
23 student who is educated pursuant to the other means of education
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1 exception provided for in subsection A of Section 10-105 of Title 70
2 of the Oklahoma Statutes;

3 6. "Empowerment student" means an eligible student approved for
4 participation in the Oklahoma Empowerment Account Program;

5 7. "Parent" means a biological or adoptive parent, legal
6 guardian, custodian, or other person with legal authority to act on
7 behalf of an eligible student; and

8 8. "Qualified expense" means the following services provided by
9 an education service provider:

10 a. tuition and/or fees at a private school accredited or
11 in the process of obtaining accreditation by the State
12 Board of Education or another accrediting association
13 approved by the State Board of Education,

14 b. tuition and/or fees for non-public online learning
15 programs,

16 c. tutoring services provided by an individual or a
17 tutoring facility,

18 d. services contracted for and provided by a public
19 school district, public charter school, or magnet
20 school including but not limited to classes and
21 extracurricular activities and programs,

22 e. textbooks, curriculum, or other instructional
23 materials including but not limited to supplemental
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1 materials or associated online instruction required by
2 an education service provider,

3 f. computer hardware or other technological devices,
4 educational software, and applications that are used
5 to meet an empowerment student's curriculum needs,

6 g. tuition and/or fees for a curriculum or program, along
7 with related instruments, supplies, accessories, and
8 materials, that provides instruction in drama, music,
9 speech and debate, agriculture, or other similar
10 activities,

11 h. school uniforms,

12 i. fees for nationally standardized assessments including
13 but not limited to assessments used to determine
14 college admission and advanced placement examinations
15 as well as tuition and/or fees for tutoring or
16 preparatory courses for the assessments,

17 j. tuition and/or fees for summer education programs and
18 specialized after-school education programs; provided,
19 however, that such expense does not include before-
20 school or after-school childcare,

21 k. tuition, fees, instructional materials, and assessment
22 fees for a curriculum or program offered by a
23 technology center school,
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- 1 l. educational services and therapies including but not
2 limited to occupational, behavioral, physical, speech-
3 language, and audiology therapies,
4 m. tuition and fees for concurrent enrollment at an
5 institution within The Oklahoma State System of Higher
6 Education,
7 n. fees for transportation paid to a fee-for-service
8 provider for the student to travel to and from an
9 education service provider, or
10 o. any other qualified expense approved by the Agency.

11 B. There is hereby created the Oklahoma Empowerment Account
12 Program to be administered by the Agency to provide an Oklahoma
13 Empowerment Account for qualified expenses to support the education
14 of empowerment students in this state.

15 C. 1. To apply for an Oklahoma Empowerment Account, a parent
16 of an eligible student shall submit an application to the Agency on
17 a form prescribed by the Agency and published on its website. The
18 application may be submitted online or by mail.

19 2. The Agency shall establish procedures to approve
20 applications within ten (10) business days after receipt. There
21 shall be no deadline for submission of applications. Applications
22 shall be approved if the parent signs an agreement to do all of the
23 following:

- 1 a. use the Oklahoma Empowerment Account only for
2 qualified expenses to provide an education for an
3 eligible student in at least the subjects of reading,
4 English language arts, mathematics, science, and
5 social studies,
6 b. not enroll the eligible student as a full-time student
7 in a public school district, public charter school, or
8 magnet school after acceptance of an Oklahoma
9 Empowerment Account,
10 c. comply with rules and requirements of the Oklahoma
11 Empowerment Account Program established by the Agency,
12 and
13 d. not accept a scholarship from the Lindsey Nicole Henry
14 Scholarships for Students with Disabilities Program
15 created by Section 13-101.2 of Title 70 of the
16 Oklahoma Statutes while participating in the Oklahoma
17 Empowerment Account Program.

18 D. Nothing in this act shall be construed to require that an
19 empowerment student be enrolled full time or part time in a private
20 school or a nonpublic online school.

21 E. The Agency shall renew Oklahoma Empowerment Accounts on an
22 annual basis. An account may be closed if:
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1 1. The parent of an empowerment student re-enrolls the student
2 as a full-time student in a public school, as provided for by
3 subsection F of this section;

4 2. The Agency closes the account due to intentional misuse as
5 provided for in Section 3 of this act; or

6 3. The empowerment student graduates from high school or
7 reaches the age of twenty-one (21), whichever comes first.

8 F. The parent of an empowerment student shall notify the Agency
9 within five (5) days of the student re-enrolling in a public school
10 district, public charter school, or magnet school. Upon receipt of
11 the notification required by this subsection, the Agency shall
12 suspend deposits into the student's Oklahoma Empowerment Account.
13 Any unused funds remaining in the Oklahoma Empowerment Account at
14 the end of the applicable calendar year shall be remitted to the
15 General Revenue Fund.

16 G. 1. For each eligible student approved to participate in the
17 Oklahoma Empowerment Account Program, the Agency shall notify the
18 State Department of Education and request calculation of the amount
19 of State Aid for which the student is eligible. Within ten (10)
20 business days of receiving the request, the State Department of
21 Education shall notify the Agency of the calculated amount, which
22 shall be equivalent to the total State Aid factors including pupil
23 category weights for the applicable school year multiplied by the

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1 grade weight generated by the student for the applicable school
2 year.

3 2. The State Department of Education on a monthly basis shall
4 transfer to the Agency for deposit into the Oklahoma Empowerment
5 Account Revolving Fund created pursuant to Section 5 of this act an
6 amount equal to one-twelfth (1/12) of the total amount necessary to
7 fund all Oklahoma Empowerment Accounts requested for the applicable
8 school year. Within ten (10) business days of a deposit required by
9 this paragraph, the Office of the State Treasurer shall make funds
10 available in Oklahoma Empowerment Accounts.

11 3. Prior to the monthly deposit required by this subsection,
12 the Agency shall notify the State Department of Education if changes
13 to the number of participating empowerment students will result in a
14 modification of the monthly deposit amount.

15 H. An education service provider shall not share, refund, or
16 rebate any amount of an Oklahoma Empowerment Account with the parent
17 or empowerment student. A refund or rebate for goods or services
18 purchased with an Oklahoma Empowerment Account shall be credited to
19 the Oklahoma Empowerment Account.

20 I. Parents shall be prohibited from making personal deposits
21 into an Oklahoma Empowerment Account. However, no parent shall be
22 restricted from making payments for educational goods and services
23 not covered by funds in a student's Oklahoma Empowerment Account.

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1 J. Monies received pursuant to the Oklahoma Empowerment Account
2 Program shall not constitute taxable income to the parent or
3 empowerment student.

4 K. Funds deposited into an Oklahoma Empowerment Account but
5 unused shall accrue from month to month and from year to year unless
6 the account is closed pursuant to the provisions of subsection E of
7 this section.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 28-102 of Title 70, unless there
10 is created a duplication in numbering, reads as follows:

11 A. To implement the provisions of the Oklahoma Empowerment Act,
12 the Agency shall maintain and make publicly available on its website
13 an updated list of education service providers.

14 B. The Agency shall provide parents of empowerment students a
15 written explanation of qualified expenses for which an Oklahoma
16 Empowerment Account may be used, the responsibilities of parents,
17 the duties of the Agency, and the role of any private financial
18 management firm or other private organization with which the Agency
19 may contract to administer the Oklahoma Empowerment Act.

20 C. The Agency shall provide parents of empowerment students
21 with disabilities notice that participation in the Oklahoma
22 Empowerment Account Program shall have the same effect as a parental
23 revocation of consent pursuant to 20 U.S.C., Sections 1414(a)(1)(D)
24 and 1414(C) of the Individuals with Disabilities Education Act

1 (IDEA) and an explanation of the rights parents of empowerment
2 students with disabilities have under IDEA and any applicable state
3 laws and regulations.

4 D. The Agency may contract with a private financial management
5 firm or other private organization to administer in full or in part
6 the Oklahoma Empowerment Account Program.

7 E. The Agency may withhold funding from deposits made pursuant
8 to subsection G of Section 2 of this act to administer the Oklahoma
9 Empowerment Account Program in an amount not to exceed five percent
10 (5%) annually for the first two years after the effective date of
11 this act and three percent (3%) annually thereafter.

12 F. The Agency shall establish a commercially viable, cost-
13 effective, and parent-friendly system of payment for services from
14 Oklahoma Empowerment Accounts to education service providers by
15 electronic or online funds transfer.

16 1. The system of payment established pursuant to this
17 subsection shall provide maximum flexibility for parents by
18 facilitating direct payments to education service providers whenever
19 possible, provide a parent-friendly system for requests for pre-
20 approval of qualified expenses, and timely reimbursement for
21 qualified expenses.

22 2. The Agency may contract with private entities to develop the
23 payment system.

1 G. The Agency shall implement a commercially viable, cost-
2 effective, and parent-friendly system for parents to publicly rate,
3 review, and share information about education service providers.

4 H. If an education service provider requires partial payment of
5 tuition or fees to reserve a place for an empowerment student prior
6 to the start of the school year, the partial payment may be paid by
7 the Agency prior to the start of the school year in which the
8 Oklahoma Empowerment Account is opened and deducted in equal amounts
9 from monthly deposits into Oklahoma Empowerment Accounts. If the
10 parent of an empowerment student chooses not to use the education
11 service provider, the partial reservation payment shall be remitted
12 to the Agency within fifteen (15) business days of notification of
13 the decision and credited to the empowerment student's Oklahoma
14 Empowerment Account.

15 I. The Agency shall have the authority to conduct an audit or
16 contract for the auditing of Oklahoma Empowerment Accounts and shall
17 conduct random audits of ten percent (10%) of Oklahoma Empowerment
18 Accounts on an annual basis.

19 J. The Agency shall have the authority to remove any parent or
20 empowerment student from eligibility for an Oklahoma Empowerment
21 Account in the event of intentional and substantial misuse of
22 Oklahoma Empowerment Account funds.

23 1. The Agency shall create procedures to ensure a fair process
24 to determine whether an intentional and substantial misuse of

1 Oklahoma Empowerment Account funds has occurred. If misuse by a
2 parent is established but the empowerment student is determined to
3 be free from personal misconduct, he or she shall be eligible for an
4 Oklahoma Empowerment Account in the future if placed with a
5 different parent, guardian, or other person with legal authority to
6 act on behalf of the student.

7 2. The Agency shall have the authority to refer suspected cases
8 of intentional and substantial misuse of Oklahoma Empowerment
9 Account funds to the Attorney General for investigation if evidence
10 of fraudulent use of funds is obtained.

11 3. A parent or empowerment student may, pursuant to the
12 Administrative Procedures Act, appeal the Agency's decision to
13 remove the parent or student from eligibility for an Oklahoma
14 Empowerment Account.

15 K. The Agency may cease payments to an education service
16 provider from Oklahoma Empowerment Accounts if the Agency determines
17 the education service provider has:

18 1. Intentionally and substantially misrepresented information
19 or failed to refund any overpayments in a timely manner; or

20 2. Routinely failed to provide empowerment students with
21 promised educational goods or services.

22 L. The Agency shall create procedures to ensure a fair process
23 to determine whether an education service provider should be
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1 prohibited from receiving payments from Oklahoma Empowerment
2 Accounts.

3 1. If the Agency prohibits an education service provider from
4 receiving payments pursuant to this subsection, the Agency shall
5 notify parents and empowerment students of its decision within ten
6 (10) days.

7 2. Education service providers may, pursuant to the
8 Administrative Procedures Act, appeal the Agency's decision to
9 prohibit them from receiving Oklahoma Empowerment Account payments.

10 M. The Agency may accept gifts and grants from any source to
11 support administration of the Oklahoma Empowerment Account Program,
12 to inform the public about the Oklahoma Empowerment Account Program,
13 and to fund additional Oklahoma Empowerment Accounts.

14 N. The Agency may promulgate rules to implement the provisions
15 of this act, which shall include but not be limited to:

16 1. Establishing or contracting for the establishment of an
17 online anonymous fraud reporting service;

18 2. Establishing an anonymous telephone hotline for fraud
19 reporting;

20 3. Requiring a surety bond for education service providers
21 receiving more than One Hundred Thousand Dollars (\$100,000.00) in
22 Oklahoma Empowerment Account funds; and

23 4. Refunding payments from education service providers back to
24 Oklahoma Empowerment Accounts.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 28-103 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Agency may approve education service providers on its
5 own initiative, at the request of parents, or at the request of a
6 prospective education service provider.

7 B. A prospective education service provider seeking to
8 participate in the Oklahoma Empowerment Account Program shall:

9 1. Submit notice to the Agency that it wishes to participate
10 and receive Oklahoma Empowerment Account funds designated by parents
11 for payment of educational goods and services; and

12 2. Agree not to refund, rebate, or share Oklahoma Empowerment
13 Account funds with parents or empowerment students in any manner,
14 except that funds may be remitted or refunded to an Oklahoma
15 Empowerment Account.

16 C. A public school district, public charter school, or magnet
17 school in which an empowerment student was enrolled shall provide a
18 private school that is an education service provider and that has an
19 empowerment student enrolled with a complete copy of the empowerment
20 student's records within five (5) business days of receiving the
21 request for records. The provision of records pursuant to this
22 subsection shall be in accordance with the provisions of the Family
23 Educational Rights and Privacy Act of 1974 (FERPA).

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1 D. Nothing in this act shall limit the independence or autonomy
2 of an education service provider or make the actions of an education
3 service provider the actions of state government. Education service
4 providers shall be given maximum freedom to provide for the
5 educational needs of empowerment students without governmental
6 control.

7 1. An education service provider that accepts payment from an
8 Oklahoma Empowerment Account as directed by parents pursuant to this
9 act shall not be considered an agent of the state or federal
10 government.

11 2. An education service provider shall not be required to alter
12 its creed, practices, admissions policy, or curriculum to accept
13 payments as directed by parents from an Oklahoma Empowerment
14 Account.

15 E. Nothing in this act shall be construed to expand the
16 regulatory authority of the state, its officers, or any public
17 school to impose any additional regulation of education service
18 providers beyond those necessary to enforce the requirements of the
19 Oklahoma Empowerment Account Program.

20 SECTION 5. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 28-104 of Title 70, unless there
22 is created a duplication in numbering, reads as follows:

23 There is hereby created in the State Treasury a revolving fund
24 for the Office of the State Treasurer to be designated the "Oklahoma

1 Empowerment Account Revolving Fund". The fund shall be a continuing
2 fund, not subject to fiscal year limitations, and shall consist of
3 all monies received by the Office of the State Treasurer from
4 appropriations, gifts, grants, donations, and bequests. All monies
5 accruing to the credit of the fund are hereby appropriated and may
6 be budgeted and expended by the Office of the State Treasurer for
7 the purpose of implementing the provisions of the Oklahoma
8 Empowerment Act. Expenditures from the fund shall be made upon
9 warrants issued by the State Treasurer against claims filed as
10 prescribed by law with the Director of the Office of Management and
11 Enterprise Services for approval and payment.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 28-105 of Title 70, unless there
14 is created a duplication in numbering, reads as follows:

15 A. In any legal proceeding challenging the application of the
16 Oklahoma Empowerment Act to an education service provider, the state
17 bears the burden of establishing both that its action is necessary
18 and that it does not impose any undue burden on the education
19 service provider.

20 B. No liability shall arise on the part of the Agency, the
21 state, a public school district, a public charter school, or a
22 magnet school based on the award of or use of an Oklahoma
23 Empowerment Account pursuant to this act.

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1 C. If any part of the Oklahoma Empowerment Act is challenged in
2 a state court as violating either the state or federal
3 constitutions, parents of eligible students and empowerment students
4 shall be permitted to intervene for the purposes of defending the
5 Oklahoma Empowerment Account Program's constitutionality. However,
6 for the purposes of judicial administration, a court may require
7 that all parents of eligible students and empowerment students file
8 a joint brief so long as they are not required to join any brief
9 filed on behalf of any named state defendant.

10 D. The provisions of the Oklahoma Empowerment Act shall be
11 severable, and if any provision of the Oklahoma Empowerment Act or
12 the application thereof to any person or circumstances is held
13 invalid, such invalidity shall not affect the other provisions or
14 applications of this Act, which can be given effect without the
15 invalid provision or application.

16 SECTION 7. This act shall become effective July 1, 2022.

17 SECTION 8. It being immediately necessary for the preservation
18 of the public peace, health, or safety, an emergency is hereby
19 declared to exist, by reason whereof this act shall take effect and
20 be in full force from and after its passage and approval.

21 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
22 March 2, 2022 - DO PASS AS AMENDED
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