
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 733 Session of
2021

INTRODUCED BY J. WARD, PHILLIPS-HILL, MARTIN, AUMENT, DiSANTO
AND REGAN, JUNE 3, 2021

REFERRED TO EDUCATION, JUNE 3, 2021

AN ACT

1 Establishing the Education Opportunity Account Scholarship
2 Program for Exceptional Students; and imposing duties on the
3 Treasury Department, participating schools and resident
4 school districts.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Education
9 Opportunity Account Scholarship Program for Exceptional Students
10 Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Advanced Placement Program." A program authorized by the
16 college board that allows a student to study college-level
17 subjects while enrolled in high school and to receive advanced
18 placement and college credit for earning a qualified score on
19 the course-related Advanced Placement Program exam.

1 "Application." The application for participation in the
2 program developed by the department under section 4(12).

3 "Department." The Treasury Department of the Commonwealth.

4 "Education Opportunity Account" or "account." An account
5 held in the name of an eligible student into which the
6 Commonwealth may make grants for the purpose of paying certain
7 education-related expenses as permitted under section 3(b)(3).

8 "Eligible postsecondary institution." The term includes all
9 of the following:

10 (1) A community college operating under Article XIX-A of
11 the act of March 10, 1949 (P.L.30, No.14), known as the
12 Public School Code of 1949.

13 (2) A university within the State System of Higher
14 Education established under Article XX-A of the Public School
15 Code of 1949.

16 (3) The Pennsylvania State University.

17 (4) The University of Pittsburgh.

18 (5) Temple University.

19 (6) Lincoln University.

20 (7) Any other institution that is designated as "State-
21 related" by the Commonwealth.

22 (8) Thaddeus Stevens College of Technology.

23 (9) An independent institution of higher education.

24 "Eligible student." A school-age child who resides in this
25 Commonwealth, has not yet received a high school diploma and
26 satisfies both of the following:

27 (1) Is the subject of one of the following:

28 (i) Attended a public school in this Commonwealth in
29 the preceding semester or school year.

30 (ii) Received funds from this program in the

1 preceding school year.

2 (iii) Will attend either kindergarten or first grade
3 in the upcoming semester.

4 (iv) Is currently a child in foster care as defined
5 in section 2 of the act of November 23, 2010 (P.L.1264,
6 No.119), known as the Children in Foster Care Act.

7 (v) Is a child whose adoption decree was entered not
8 more than one year prior to submission of the application
9 under section 3(b)(1).

10 (vi) Is a child whose parent or legal guardian is on
11 full-time active-duty status in the armed forces of the
12 United States, including members of the National Guard
13 and reserve on active duty orders under 10 U.S.C. § 12301
14 et seq. (relating to Reserve components generally) and 10
15 U.S.C. § 12401 et seq. (relating to Army and Air National
16 Guard of the United States: status).

17 (2) Is the subject of one of the following:

18 (i) an individualized education program pursuant to
19 the Individuals with Disabilities Education Act (Public
20 Law 91-230, 20 U.S.C. § 1400 et seq.) and 22 Pa. Code Ch.
21 14 (relating to special education services and programs);

22 (ii) a section 504 service agreement pursuant to
23 section 504 of the Rehabilitation Act of 1973 (Public Law
24 93-112, 29 U.S.C. § 701 et seq.) and 22 Pa. Code Ch. 15
25 (relating to protected handicapped students);

26 (iii) a gifted individualized education plan
27 pursuant to 22 Pa. Code Ch. 16 (relating to special
28 education for gifted students);

29 (iv) a medical diagnosis in one of the categories
30 for a child with a disability under 20 U.S.C. § 1401(3)

1 (A) (relating to definitions); or

2 (v) a child eligible for early intervention services
3 under 55 Pa. Code § 4226.22 (relating to eligibility for
4 early intervention services).

5 "Independent institution of higher education." An
6 institution of higher education that is operated not for profit,
7 located in and incorporated or chartered by the Commonwealth and
8 entitled to confer degrees as specified in 24 Pa.C.S. § 6505
9 (relating to power to confer degrees) and to apply to itself the
10 designation "college" or "university" as provided for by the
11 standards and qualifications prescribed by the State Board of
12 Education under 24 Pa.C.S. Ch. 65 (relating to private colleges,
13 universities and seminaries).

14 "Parent." A resident of this Commonwealth who is a parent or
15 guardian of a school-age child.

16 "Participating school." A nonpublic school as defined in
17 section 922.1-A of the Public School Code of 1949, that provides
18 a program of instruction for kindergarten through grade 12, or a
19 combination of grades, and has notified the department of the
20 nonpublic school's intention to participate in the program and
21 comply with the program's requirements.

22 "Program." The Education Opportunity Account Scholarship
23 Program for Exceptional Students established by this act.

24 "Public school." A school district, charter school, cyber
25 charter school, regional charter school, intermediate unit or
26 area vocational-technical school.

27 "Resident school district." The school district in which a
28 school-age child resides.

29 "School-age child." A child enrolling in kindergarten or in
30 grades 1 through 12.

1 "State assessment." The Pennsylvania System of School
2 Assessment test, the Keystone Exam or another test established
3 or approved by the State Board of Education or the General
4 Assembly to meet the requirements of section 2603-B or 2604-B of
5 the Public School Code of 1949 or 22 Pa. Code § 4.51 (relating
6 to State assessment system) or required under the Every Student
7 Succeeds Act (Public Law 114-95, 129 Stat. 1802) or its
8 successor Federal statute.

9 "Tutoring." Tutoring services provided by a tutor or a
10 tutoring facility accredited by a regional or national
11 accrediting organization, a person holding a certificate listed
12 in section 1201 of the Public School Code of 1949, a person with
13 National Board Certification or with experience teaching in
14 higher education or a properly qualified private tutor as
15 defined in section 1327 of the Public School Code of 1949.
16 Section 3. Program.

17 (a) Establishment.--Beginning with the 2022-2023 school
18 year, the Education Opportunity Account Scholarship Program for
19 Exceptional Students is established in the department.

20 (b) Administration.--The program shall be administered by
21 the department as follows:

22 (1) An eligible student shall qualify on an annual basis
23 to receive from the Commonwealth a grant to the eligible
24 student's account if the parent of the eligible student
25 agrees, in an application submitted by the parent to the
26 department by April 1 of the year preceding the school year
27 in which participation in the program is sought and accepted
28 by the department under section 4(4):

29 (i) To provide an education for the eligible student
30 in at least the subjects of reading, grammar,

1 mathematics, social studies and science.

2 (ii) Not to enroll the eligible student in a public
3 school for a school year in which the eligible student is
4 participating in the program.

5 (iii) Not to accept a scholarship for the eligible
6 student under the educational improvement tax credit
7 program or opportunity scholarship tax credit program
8 established under Article XX-B of the act of March 10,
9 1949 (P.L.30, No.14), known as the Public School Code of
10 1949, in an amount which, when combined with an award
11 made under the program, exceeds the tuition, costs and
12 fees of attendance at the student's chosen school for a
13 school year in which the eligible student is
14 participating in the program.

15 (iv) For a student with special needs who is awarded
16 funds under this program, participation in the program is
17 a parental placement of the child under 20 U.S.C. §
18 1412(a)(10) (relating to State eligibility) of the
19 Individuals with Disabilities Education Act.

20 (2) If the department approves an eligible student's
21 application for participation in the program, the
22 Commonwealth shall deposit into the account of the eligible
23 student participating in the program a base grant amount
24 equal to 90% of all State payments made to the resident
25 school district of the eligible student for the immediately
26 preceding school year divided by the resident school
27 district's average daily membership for the immediately
28 preceding school year. The base grant amount shall be
29 increased according to the student's disability. The
30 additional grant amount for the disability shall be based on

1 the category of disability by which the resident school
2 district is required to categorize the eligible student for
3 the purpose of the report required under section 1372(8) of
4 the Public School Code of 1949, as follows:

5 (i) For a student in Category 1, multiply the base
6 grant amount by 1.51.

7 (ii) For a student in Category 2, multiply the base
8 grant amount by 3.77.

9 (iii) For a student in Category 3A and 3B, multiply
10 the base grant amount by 7.46.

11 This amount shall be deposited on a quarterly basis, as
12 provided in section 4(8).

13 (3) A parent of an eligible student participating in the
14 program shall agree in the application submitted under
15 paragraph (1) to use the funds deposited in the eligible
16 student's account for the following qualifying expenses to
17 educate the eligible student:

18 (i) Tuition and fees at a participating school.

19 (ii) Textbooks required by a participating school.

20 (iii) Payment for tutoring.

21 (iv) Payment for purchase of curriculum and other
22 materials required by the curriculum.

23 (v) Tuition or fees for a nonpublic online learning
24 program.

25 (vi) Fees for national norm-referenced examinations,
26 Advanced Placement Program examinations, State-recognized
27 industry certification exams, any examinations related to
28 college or university admission and fees for preparatory
29 courses for those exams.

30 (vii) Contribution to the eligible student's

1 qualified tuition program established pursuant to section
2 529 of the Internal Revenue Code of 1986 (Public Law 99-
3 514, 26 U.S.C. § 529).

4 (viii) Educational services and therapies, including
5 occupational, behavioral, physical, speech-language and
6 audiology therapies, from a licensed or accredited
7 practitioner or provider.

8 (ix) Tuition and fees at an eligible postsecondary
9 institution.

10 (x) Textbooks required for courses at an eligible
11 postsecondary institution.

12 (xi) Fees for account management by private
13 financial management firms identified by the department
14 under section 4(1).

15 (xii) Costs associated with obtaining an industry
16 certification.

17 (xiii) Services provided under contract by a public
18 school.

19 (xiv) Computer hardware and computer software
20 associated with instruction or any of the qualifying
21 expenses described in this paragraph.

22 (4) A parent may appeal the department's decision to
23 deny acceptance into the program under 2 Pa.C.S. Chs. 1
24 (relating to general provisions), 5 (relating to practice and
25 procedure) and 7 (relating to judicial review).

26 (5) A provider of a service authorized under paragraph
27 (3) may not refund, rebate or share payment from an eligible
28 student's account with a parent or the eligible student in
29 any manner. Funds may only be refunded directly to an
30 account. The funds in an account may only be used for

1 purposes authorized under paragraph (3).

2 (6) An eligible student shall be counted in the average
3 daily membership of the eligible student's resident school
4 district for the purposes of calculating State aid to the
5 resident school district. The amount deposited by the
6 Commonwealth into an eligible student's account shall be
7 subtracted from the State aid payable to the eligible
8 student's resident school district.

9 (c) Tax consequences and status of awards.--

10 (1) The money in an account of an eligible student is
11 not taxable income to the parent of the eligible student or
12 to the eligible student.

13 (2) An award made or funds expended from a student's
14 account under the program may not be construed to be an
15 appropriation or financial assistance to the student's chosen
16 school.

17 (d) Unused funds.--Money in an account of an eligible
18 student that is unused at the end of a school year shall roll
19 over to be used by the eligible student in subsequent years.
20 Upon the eligible student reaching 26 years of age, such money
21 shall be deposited into the General Fund.

22 (e) Regulations.--The department shall promulgate
23 regulations as necessary to implement the program.

24 Section 4. Duties of department.

25 The department shall:

26 (1) Determine whether to solicit requests for proposals
27 from private financial management firms to manage some or all
28 parts of the program.

29 (2) Collaborate with the Office of the Auditor General
30 to conduct the auditing of eligible student accounts and, at

1 a minimum, conduct random audits of the accounts on an annual
2 basis. An eligible student shall be ineligible for the
3 program in the event that the parent of the eligible student
4 engages in fraudulent misuse of the eligible student account.
5 A parent may appeal the department's decision to make an
6 eligible student ineligible under 2 Pa.C.S. Chs. 1 (relating
7 to general provisions), 5 (relating to practice and
8 procedure) and 7 (relating to judicial review).

9 (3) Refer cases of fraudulent misuse of eligible student
10 accounts to law enforcement agencies for investigation. The
11 balance of money in an eligible student account in which
12 fraudulent misuse of the account has occurred shall revert to
13 the General Fund.

14 (4) Within 30 days of receipt of an application for
15 participation in the program submitted by a parent under
16 section 3(b)(1), notify the school district and parent of a
17 student's acceptance or nonacceptance into the program. An
18 eligible student shall be accepted into the program if the
19 student meets the requirements of this act. A parent may
20 appeal the department's decision under this paragraph.

21 (5) Provide parents of eligible students with a written
22 explanation of the allowable uses of the accounts, the
23 responsibilities of parents and the duties of the department.

24 (6) In the department's discretion, deduct an amount
25 from the grants to accounts necessary to pay the costs of
26 overseeing the accounts and administering the program up to a
27 limit of 3%.

28 (7) Establish reasonable fees for private financial
29 management firms that manage the accounts based upon market
30 rates.

1 (8) Make payments to the accounts on a quarterly basis
2 on August 1, November 1, February 1 and May 1 of each year of
3 participation in the program.

4 (9) Provide for development of a system to allow parents
5 to pay for services by electronic funds transfer, including,
6 but not limited to, debit cards, electronic payment systems
7 or any other means of electronic payment that the department
8 determines to be commercially viable, cost effective and
9 easily understandable and usable by parents. The department
10 shall not adopt a system that exclusively requires parents to
11 be reimbursed for out-of-pocket expenses.

12 (10) Develop a process by which participating schools
13 may inform the department of their interest in participating
14 in the program and demonstrate their compliance with the
15 requirements of this act.

16 (11) Ensure that eligible students and their parents are
17 informed annually of the participating schools in the program
18 by posting a list of participating schools on its publicly
19 accessible Internet website by March 1, 2022, and by March 1
20 of each year thereafter.

21 (12) By March 1, 2022, develop a standard application
22 form which can be accessed and submitted electronically that
23 parents of eligible students must use to apply to participate
24 in the program and post the standard application form on the
25 department's publicly accessible Internet website.

26 Section 5. Accountability standards for participating schools.

27 (a) General rule.--A participating school shall:

28 (1) Comply with all health and safety laws or codes that
29 apply to participating schools.

30 (2) Hold a valid occupancy permit if required by the

1 municipality in which the participating school is located.

2 (3) Comply with the applicable nondiscrimination
3 policies set forth in section 1981 of the Civil Rights Act of
4 1964 (Public Law 88-352, 78 Stat. 241) and with section 1521
5 of the act of March 10, 1949 (P.L.30, No.14), known as the
6 Public School Code of 1949.

7 (4) Comply with the provisions of sections 111 and 111.1
8 of the Public School Code of 1949.

9 (b) Financial accountability standards.--A participating
10 school shall:

11 (1) Provide parents with a receipt for all qualifying
12 expenses incurred at the participating school.

13 (2) Demonstrate the participating school's financial
14 viability by showing the participating school can repay funds
15 that might be provided from eligible student accounts, if the
16 participating school receives \$50,000 or more from the
17 accounts during the school year, by filing with the
18 department prior to the start of the school year:

19 (i) a surety bond payable to the Commonwealth in an
20 amount equal to the aggregate amount of the money from
21 the accounts expected to be paid during the school year
22 on behalf of eligible students admitted at the
23 participating school; or

24 (ii) financial information that demonstrates the
25 participating school has the ability to pay an aggregate
26 amount equal to the amount of the money from the accounts
27 expected to be paid during the school year on behalf of
28 eligible students admitted to the participating school.

29 (c) Academic accountability standards.--

30 (1) A parent of an eligible student shall ensure that:

1 (i) Each year in grades three through eight and once
2 in grades nine through twelve the eligible student takes
3 either the State assessment or nationally norm-referenced
4 tests that measure learning gains in mathematics,
5 language arts and, for students in grades four and eight
6 and in grades nine through twelve, science and provide
7 for value-added assessment. An eligible student for whom
8 standardized testing is not appropriate under the
9 student's individualized education program shall be
10 exempt from this requirement.

11 (ii) The results of the tests taken by an eligible
12 student under subparagraph (i) are reported to the
13 department on an annual basis, beginning with the first
14 year of testing, in a manner that allows the department
15 to aggregate data for eligible students participating in
16 the program by grade level, gender, family income level
17 and race.

18 (iii) The department is informed of the eligible
19 student's graduation from high school.

20 (2) The department shall:

21 (i) Ensure compliance with all student privacy laws,
22 including the Family Educational Rights and Privacy Act
23 of 1974 (Public Law 90-247, 20 U.S.C. § 1232g).

24 (ii) Collect results for all tests taken by eligible
25 students under paragraph (1)(i).

26 (iii) Post the results of all tests taken by
27 eligible students under paragraph (1)(i), associated
28 learning gains and graduation rates for eligible students
29 participating in the program on the department's publicly
30 accessible Internet website after the third year of test

1 and graduation-related data collection, subject to the
2 requirements of the Family Educational Rights and Privacy
3 Act of 1974. The findings shall be aggregated by the
4 eligible students' grade level, gender, family income
5 level, number of years of participation in the program
6 and race.

7 (iv) Administer an annual parental satisfaction
8 survey that asks parents of eligible students
9 participating in the program to express:

10 (A) Their satisfaction with the program.

11 (B) The number of years their children have
12 participated in the program.

13 (C) Their opinions on other topics, items or
14 issues that the department determines will elicit
15 information about the effectiveness of the program.

16 (d) Participating school autonomy.--

17 (1) A participating school shall be autonomous and not
18 an agent of the department or the Commonwealth.

19 (2) The department or any other State agency may not
20 regulate the educational program of a participating school or
21 education provider that accepts money from an eligible
22 student account.

23 (3) The establishment of the program shall not be
24 construed to expand the regulatory authority of the State,
25 its officers or any school district to impose any additional
26 regulation of nonpublic schools or education providers beyond
27 those necessary to enforce the requirements of the program.

28 Section 6. Bar of certain participating schools.

29 (a) General rule.--The department may bar a participating
30 school or education provider from participation in the program

1 if the department establishes that the participating school or
2 education provider has:

3 (1) routinely failed to comply with the accountability
4 standards established in section 5; or

5 (2) failed to provide an eligible student with the
6 educational services funded by the eligible student's
7 account.

8 (b) Notice.--If the department decides to bar a
9 participating school or education provider from participation in
10 the program, the department shall post the decision on the
11 department's publicly accessible Internet website. A
12 participating school or education provider may appeal the
13 department's decision.

14 Section 7. Duties of resident school districts.

15 (a) School records.--A resident school district shall
16 provide a participating school or education provider that has
17 admitted an eligible student participating in the program with a
18 complete copy of the eligible student's school records
19 immediately upon the eligible student's enrollment in the
20 participating school or beginning of services from the education
21 provider, subject to the Family Educational Rights and Privacy
22 Act of 1974 (Public Law 90-247, 20 U.S.C. § 1232g).

23 (b) Transportation.--

24 (1) A resident school district shall provide
25 transportation for an eligible student to and from the
26 participating school or education provider under the same
27 conditions as the resident school district provides
28 transportation of other resident students to nonpublic
29 schools under section 1361 of the act of March 10, 1949
30 (P.L.30, No.14), known as the Public School Code of 1949.

1 (2) The resident school district shall qualify for State
2 transportation reimbursement for each eligible student so
3 transported.

4 Section 8. Legal proceedings.

5 (a) General rule.--In a legal proceeding challenging the
6 application of this act to an education service provider, the
7 Commonwealth bears the burden of establishing that the law is
8 necessary and does not impose an undue burden on the education
9 service provider.

10 (b) Liability.--No liability shall arise on the part of the
11 agency, the Commonwealth or a public school or school district
12 based on the award of or use of an account under this act.

13 (c) Challenges.--If any part of this act is challenged in a
14 State court as violating either the Constitution of the United
15 States or the Constitution of Pennsylvania, parents of eligible
16 students and eligible students who have an account shall be
17 permitted to intervene as of right in such lawsuit for the
18 purposes of defending the account program's constitutionality.
19 For the purposes of judicial administration, a court may require
20 that all parents file a joint brief so long as they are not
21 required to join a brief filed on behalf of a named State
22 defendant.

23 (d) Severability.--If any provision of this act or the
24 application thereof to any person or circumstance is held
25 invalid, such invalidity shall not affect other provisions or
26 applications of this act which can be given effect without the
27 invalid provision or application, and to this end the provisions
28 of this act are declared to be severable.

29 Section 9. Effective date.

30 This act shall take effect in 60 days.