

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1039 Session of
2019

INTRODUCED BY NEILSON, BERNSTINE, T. DAVIS, RYAN, SAYLOR, HILL-
EVANS, RABB, CALTAGIRONE, DRISCOLL, STURLA AND GABLER,
APRIL 2, 2019

REFERRED TO COMMITTEE ON EDUCATION, APRIL 2, 2019

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 individual empowerment
6 scholarship accounts; and establishing the Pennsylvania
7 Empowerment Scholarship Accounts Program, the Department of
8 Education Empowerment Scholarship Fund and the State
9 Treasurer Empowerment Scholarship Fund.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

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

15 ARTICLE XXVI-J

16 INDIVIDUAL EMPOWERMENT SCHOLARSHIP ACCOUNTS

17 Section 2601-J. Definitions.

18 The following words and phrases when used in this article
19 shall have the meanings given to them in this section unless
20 context clearly indicates otherwise:

21 "Annual education plan." An initial individualized

1 evaluation and subsequent annual reviews that are developed for
2 a student who meets the requirements under section 2602-J(b) to
3 determine ongoing annual eligibility through the school year in
4 which the student reaches 22 years of age.

5 "Curriculum." A complete course of study approved by the
6 department for content areas or grade levels, including
7 supplemental materials required by the curriculum.

8 "Department." The Department of Education of the
9 Commonwealth.

10 "Eligible postsecondary institution." A community college as
11 defined in section 1901-A, a university under the jurisdiction
12 of the Pennsylvania State System of Higher Education or an
13 accredited private postsecondary institution.

14 "Parent." A resident of this Commonwealth who is the parent
15 or legal guardian of a qualified student.

16 "Qualified school." A preschool for pupils with disabilities
17 or a nongovernmental primary or secondary school that is located
18 in this Commonwealth and that does not discriminate on the basis
19 of race, color or national origin.

20 "Qualified student." A person who meets the requirements
21 under section 2602-J(b).

22 "Treasurer." The State Treasurer of the Commonwealth.
23 Section 2602-J. Pennsylvania Empowerment Scholarship Accounts
24 Program.

25 (a) Establishment.--The Pennsylvania Empowerment Scholarship
26 Accounts Program is established in the Department of Education
27 to provide options for the education of students in this
28 Commonwealth.

29 (b) Qualified students.--A resident of this Commonwealth is
30 qualified for an individual empowerment scholarship account if

1 the person meets any of the following requirements:

2 (1) Is identified as having a disability under section
3 504 of the Rehabilitation Act of 1973 (Public Law 93-112, 29
4 U.S.C. § 794 et seq.).

5 (2) Is identified as a student with a disability as
6 defined in section 1301-A.

7 (3) Is attending a school or school district that has
8 been assigned a score below 60 in its School Performance
9 Profile under section 603-B or who is currently eligible to
10 attend kindergarten and who resides within the attendance
11 boundary of a school that has been assigned a score below 60
12 in its School Performance Profile.

13 (4) Is a previous recipient of a scholarship issued
14 under this article, unless the qualified student's enrollment
15 agreement has been terminated under section 2603-J(e).

16 (5) Is a child of a parent who is a member of the armed
17 forces of the United States and who is on active duty or was
18 killed in the line of duty. A child who meets the
19 requirements of this paragraph is not subject to subsection
20 (c).

21 (c) Enrollment agreement.--To enroll a qualified student for
22 an individual empowerment scholarship account, the parent of the
23 qualified student must sign an enrollment agreement to do all of
24 the following:

25 (1) Use a portion of the individual empowerment
26 scholarship account money allocated annually to provide an
27 education for the qualified student in the subjects of
28 reading, grammar, mathematics, social studies and science,
29 unless the individual empowerment scholarship account is
30 allocated money according to a transfer schedule other than

1 the quarterly transfers under section 2603-J(a).

2 (2) Not enroll the qualified student in a school
3 district or charter school and release the school district or
4 charter school from all obligations.

5 (3) Not accept a scholarship from a school tuition
6 organization for the qualified student in the same year a
7 parent signs the agreement under this section.

8 (4) Not file an affidavit of intent to homeschool.

9 (5) Not use money deposited in the qualified student's
10 account for any of the following:

11 (i) Computer hardware or other technological
12 devices.

13 (ii) Transportation of the pupil.

14 (iii) Consumable educational supplies, including
15 paper, pens or markers.

16 (6) Use the money deposited in the individual
17 empowerment scholarship account only for the following
18 expenses of the qualified student:

19 (i) Tuition or fees at a qualified school.

20 (ii) Textbooks required by a qualified school.

21 (iii) If the qualified student meets the criteria
22 specified in subsection (b)(1) or (2) as determined by a
23 school district or by an independent third party
24 contracted for under section 2603-J(i), any of the
25 following additional expenses:

26 (A) Educational therapies from a licensed or
27 accredited practitioner or provider.

28 (B) Services of a licensed or accredited
29 paraprofessional or educational aide.

30 (C) Tuition for vocational and life skills

1 education approved by the department.

2 (D) Associated services that include educational
3 and psychological evaluations, assistive technology
4 rentals and braille translation services approved by
5 the department.

6 (iv) Tutoring or teaching services provided by an
7 individual or facility accredited by a national, regional
8 or State accrediting organization.

9 (v) Curricula.

10 (vi) Tuition or fees for a nonpublic online learning
11 program.

12 (vii) Fees for a nationally standardized norm-
13 referenced achievement test, an advanced placement
14 examination or an exam related to college or university
15 admission.

16 (viii) Contributions to a Coverdell education
17 savings account established under section 530(b)(1) of
18 the Internal Revenue Code of 1986 (Public Law 99-514, 26
19 U.S.C. § 530(b)(1)) for the benefit of the qualified
20 student, except that money used for elementary or
21 secondary education expenses must be for expenses
22 otherwise allowed under this section.

23 (ix) Tuition or fees at an eligible postsecondary
24 institution.

25 (x) Textbooks required by an eligible postsecondary
26 institution.

27 (xi) Fees for management of the individual
28 empowerment scholarship account.

29 (xii) Services provided by a public school,
30 including individual classes and extracurricular

1 programs.

2 (xiii) Insurance or surety bond payments.

3 (xiv) Uniforms purchased from or through a qualified
4 school.

5 (xv) Beginning January 1, 2020, if the qualified
6 student is in the second year prior to the final year of
7 a contract executed under this article, costs associated
8 with an annual education plan conducted by an independent
9 evaluation team. The department shall prescribe minimum
10 qualifications for independent evaluation teams in
11 accordance with this article and factors that teams must
12 use to determine whether the qualified student shall be
13 eligible to continue to receive money under this article
14 through the school year in which the qualified student
15 reaches 22 years of age. An independent evaluation team
16 that provides an annual education plan under this article
17 shall submit a written report that summarizes the results
18 of the evaluation to the parent of the qualified student
19 and to the department on or before July 31 each year. The
20 written report submitted by the independent evaluation
21 team shall be valid for one year. If the department
22 determines that the qualified student meets the
23 eligibility criteria prescribed in the annual education
24 plan, the qualified student is eligible to continue to
25 receive money under this article until the qualified
26 student reaches 22 years of age, subject to annual
27 review. A parent may appeal the department's decision. As
28 an addendum to a qualified student's final-year contract,
29 the department shall provide the following information in
30 writing to the parent of the qualified student:

1 (A) That the qualified student will not be
2 eligible to continue to receive money under this
3 article unless the results of an annual education
4 plan conducted under this article demonstrate that
5 the qualified student meets the eligibility criteria
6 prescribed in the annual education plan.

7 (B) That the parent is entitled to obtain a copy
8 of an annual education plan under this article to
9 determine whether the qualified student meets the
10 eligibility criteria prescribed in the annual
11 education plan.

12 (C) A list of independent evaluation teams that
13 meet the minimum qualifications prescribed by the
14 department under this subdivision.

15 (d) Transfer to individual empowerment scholarship
16 account.--Upon execution of the parent's agreement under
17 subsection (c), the department shall transfer from the money
18 that would otherwise be allocated to a qualified student's prior
19 school district, or, if the child is currently eligible to
20 attend kindergarten, the money that the department determines
21 would otherwise be allocated to a qualified student's expected
22 school district of attendance, to the treasurer for deposit into
23 an individual empowerment scholarship account an amount that is
24 equivalent to 90% of the sum of the amount prescribed in section
25 2502.53, divided by average daily membership, for the qualified
26 student if the qualified student were attending a charter
27 school. The department may retain up to 5% of the sum of the
28 base support level and additional assistance prescribed in
29 section 2502.53, divided by average daily membership, for each
30 student with an individual empowerment scholarship account for

1 deposit in the Department of Education Empowerment Scholarship
2 Fund established under subsection (e), out of which the
3 department shall transfer 1% of the sum of the amount prescribed
4 in section 2502.53, divided by average daily membership, for
5 each student with an individual empowerment scholarship account
6 to the treasurer for deposit in the State Treasurer Empowerment
7 Scholarship Fund established in subsection (f).

8 (e) Department of Education Empowerment Scholarship Fund.--
9 The Department of Education Empowerment Scholarship Fund is
10 established and shall consist of money retained by the
11 department under subsection (d). The department shall administer
12 the fund. Money in the fund is subject to legislative
13 appropriation and shall be used for the department's costs in
14 administering individual empowerment scholarship accounts under
15 this article. If the number of individual empowerment
16 scholarship accounts significantly increases after fiscal year
17 2019-2020, the department may request an increase in the amount
18 appropriated to the fund in any subsequent fiscal year in the
19 budget estimate submitted.

20 (f) State Treasurer Empowerment Scholarship Fund.--The State
21 Treasurer Empowerment Scholarship Fund is established and shall
22 consist of money transferred by the department to the treasurer
23 under subsection (d). The treasurer shall administer the fund.
24 Money in the fund shall be used for the treasurer's costs in
25 administering the individual empowerment scholarship accounts
26 under this article. If the number of individual empowerment
27 scholarship accounts significantly increases after fiscal year
28 2019-2020, the treasurer may request an increase in the amount
29 appropriated to the fund in a subsequent fiscal year in the
30 budget estimate submitted. Money in the fund is subject to

1 legislative appropriation.

2 (g) Account renewal.--A parent must renew the qualified
3 student's individual empowerment scholarship account on an
4 annual basis. Notwithstanding any changes to the student's
5 individualized education program or plan under section 504 of
6 the Rehabilitation Act of 1973 (Public Law 93-112, 29 U.S.C. §
7 794), a student who has previously qualified for an individual
8 empowerment scholarship account shall remain eligible to apply
9 for renewal until the student finishes high school.

10 (h) School attendance.--A signed enrollment agreement under
11 this section constitutes school attendance required under
12 Article XIII.

13 (i) Prohibition.--A qualified school or a provider of
14 services purchased under subsection (c) (6) may not share with,
15 refund or rebate to a parent or the qualified student any
16 individual empowerment scholarship account money.

17 (j) Return of funds.--Upon the qualified student's
18 graduation from a postsecondary institution or after a period of
19 four consecutive years after high school graduation in which the
20 student is not enrolled in an eligible postsecondary
21 institution, the qualified student's individual empowerment
22 scholarship account shall be closed and any remaining money
23 shall be returned to the Commonwealth.

24 (k) Tax implications.--Money received under this article
25 does not constitute taxable income to the parent of the
26 qualified student.

27 Section 2603-J. Administration of individual empowerment
28 scholarship accounts.

29 (a) Account deposits.--The department shall make quarterly
30 transfers of the amount calculated under section 2602-J(d) to

1 the treasurer for deposit into the individual empowerment
2 scholarship account of each qualified student. The department
3 may make transfers according to another transfer schedule if the
4 department determines a transfer schedule other than quarterly
5 transfers is necessary for the operation of the individual
6 empowerment scholarship account.

7 (b) Scholarship award.--The department shall accept
8 applications between July 1 and June 30 of each year. The
9 department shall enroll and issue an award letter to eligible
10 applicants within 45 days after receipt of a completed
11 application and all required documentation.

12 (c) Private management.--The treasurer may contract with
13 private financial management firms to manage individual
14 empowerment scholarship accounts.

15 (d) Audits.--The department shall conduct or contract for
16 annual audits of individual empowerment scholarship accounts to
17 ensure compliance with section 2602-J(c)(6). The department
18 shall also conduct or contract for random audits of individual
19 empowerment scholarship accounts as needed.

20 (e) Account suspension.--The department may suspend an
21 individual empowerment scholarship account if the parent or
22 qualified student fails to comply with the terms of the
23 enrollment agreement or applicable laws, rules or orders. The
24 department shall notify the treasurer to suspend the individual
25 empowerment scholarship account and shall notify the parent and
26 qualified student in writing that the account has been suspended
27 and that no further transactions will be allowed or
28 disbursements made. The notification shall specify the reason
29 for the suspension and state that the parent or qualified
30 student has 10 days, not including weekends or Federal or State

1 holidays, to respond and take corrective action. If the parent
2 or qualified student fails to contact the department, furnish
3 information or make a report that may be required for
4 reinstatement within the 10-day period, the department may
5 terminate the enrollment agreement. A parent may appeal the
6 department's decision.

7 (f) Referral to Attorney General.--The department may refer
8 cases of substantial misuse of money to the Attorney General for
9 the purpose of collection or for the purpose of a criminal
10 investigation if the department obtains evidence of fraudulent
11 use of an individual empowerment scholarship account.

12 (g) Budget submission.--On or before May 30 of each year,
13 the department shall furnish to the Legislative Budget and
14 Finance Committee an estimate of the amount required to fund
15 individual empowerment scholarship accounts for the following
16 fiscal year. The department shall include in the budget request
17 for the following fiscal year the amount estimated under section
18 2602-J(d), for each qualified student.

19 (h) Rules and policies.--The department may adopt rules and
20 policies necessary for the administration of individual
21 empowerment scholarship accounts including:

22 (1) Conducting or contracting for audits of the use of
23 account money.

24 (2) Establishing or contracting for the establishment of
25 an online anonymous fraud reporting service.

26 (3) Establishing an anonymous telephone hotline for
27 fraud reporting.

28 (4) Requiring a surety bond or insurance for individual
29 empowerment scholarship account holders.

30 (i) Contract for third party assessment.--The department

1 shall contract with an independent third party for the purposes
2 of determining if a qualified student is eligible to receive
3 educational therapies or services under section 2602-J(c)(6)
4 (iii).

5 Section 2604-J. State control over nonpublic schools.

6 (a) General rule.--This article does not permit a State
7 agency to exercise control or supervision over a nonpublic
8 school or home school. A qualified school that accepts a payment
9 from a parent from an individual empowerment scholarship account
10 under this article is not an agent of the Federal or State
11 government.

12 (b) Prohibition.--A qualified school may not be required to
13 alter the qualified school's creed, practices, admissions policy
14 or curriculum in order to accept students whose parents pay
15 tuition or fees from an individual empowerment scholarship
16 account in order to participate as a qualified school.

17 (c) Applicability.--In any legal proceeding challenging the
18 application of this article to a qualified school, the
19 Commonwealth bears the burden of establishing that the law is
20 necessary and does not impose any undue burden on qualified
21 schools.

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