
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 2

Session of
2017

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

REFERRED TO EDUCATION, OCTOBER 18, 2017

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 in
13 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 administered in the
16 previous school year and for which the department has posted
17 results on its publicly accessible Internet website. The term
18 does not include a charter school, cyber charter school or area
19 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 "Student with a disability." A school-age child who has been
27 identified, in accordance with 22 Pa. Code Ch. 14 (relating to
28 special education services and programs), as a "child with a
29 disability," as defined in 34 CFR 300.8 (relating to child with
30 a disability).

1 Section 2003-H. Application and agreement.

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

4 (1) resides within the attendance area of a low-
5 achieving public school and has been enrolled in a public
6 school in this Commonwealth for not less than one full
7 semester;

8 (2) is entering kindergarten or the first grade; or

9 (3) participated in the program in the prior year and is
10 renewing an agreement under subsection (h) by filing an
11 application with the department, in a manner and on a form
12 provided by the department.

13 (b) Application form.--The form may not exceed one page that
14 measures 8.5 inches by 11 inches and may be filled out and
15 submitted through the department's publicly accessible Internet
16 website.

17 (c) Review and approval.--The department shall review the
18 application to determine if the applicant meets the requirements
19 of subsection (a). If the requirements have been met, the
20 department shall approve the application and enter into an
21 agreement with the applicant. The agreement shall provide that:

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

25 (2) The child will not accept a scholarship in the
26 educational improvement tax credit program under Article XX-B
27 or the opportunity scholarship tax credit program under
28 Article XX-B.

29 (3) The parent will receive a grant on behalf of the
30 parent's child, in the form of money deposited under section

1 2004-H in the education savings account.

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

4 (d) Establishment.--

5 (1) If an agreement is entered into under subsection
6 (c), an education savings account shall be established. The
7 account shall be administered by the State Treasury under
8 this article.

9 (2) Failure of a parent to enter into an agreement under
10 subsection (c) for a school year shall not preclude the
11 parent from entering into an agreement for a subsequent
12 school year if the school-age child is eligible under
13 subsection (a).

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

17 (f) Termination.--

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

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

24 (g) Automatic termination.--

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

28 (2) The school-age child's parent shall notify the
29 department if the child no longer resides in this
30 Commonwealth within 15 days. In such a case, money remaining

1 in the education savings account shall revert to the State
2 Treasury and be used in the resident school district.

3 (h) Renewal.--

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

6 (2) Failure of a parent to renew an agreement for a
7 school year shall not preclude a parent from renewing the
8 agreement for a subsequent school year if the school-age
9 child is eligible under subsection (a).

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

14 (j) Explanation.--Upon entering into or renewing an
15 agreement under subsection (c), the department shall provide the
16 parent with a written explanation of the authorized uses of the
17 money in the education savings account and the responsibilities
18 of the parent, the department and the State Treasury under the
19 agreement and this article.

20 Section 2004-H. Amount.

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

26 (1) For a nonspecial education student, the grant amount
27 shall be equal to the State revenues received by school
28 districts minus State revenues received for transportation
29 divided by the State total average daily membership.

30 (2) For a special education student, the grant amount

1 shall be based on the category of disability by which the
2 resident school district is required to categorize the
3 student for the purpose of the report required under section
4 1372(8) as follows:

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

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

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

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

15 (4) Where a school district's basic education funding
16 and other subsidies are reduced under this section, the
17 resident school district shall include the grant recipient in
18 the resident school district's average daily membership for
19 the purpose of calculating school subsidies.

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

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

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

30 (2) Subject to paragraph (3), money remaining in an

1 education savings account when an agreement entered into
2 under section 2003-H is not renewed or is terminated shall
3 revert to the resident school district.

4 (3) Money remaining in an education savings account
5 after the school-age child graduates from high school may be
6 used for qualified education expenses under section 2005-H
7 for up to two years after the date of high school graduation.
8 After that time period, money remaining in the education
9 savings account shall revert to the General Fund.

10 Section 2005-H. Qualified education expenses.

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

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

15 (2) Textbooks or uniforms required by a participating
16 entity.

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

19 (4) Fees for a nationally norm-referenced test, advanced
20 placement or similar examination or standardized examination
21 required for admission to an institution of higher education,
22 and career and technical education examination fees.

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

25 (6) If the child is a student with a disability, fees
26 for special instruction or special services provided to the
27 child, including, but not limited to, occupational, physical,
28 speech and behavioral therapies.

29 (7) Other valid educational expenses approved by the
30 department.

1 (b) Prohibitions.--A participating entity that receives a
2 payment for qualified education expenses authorized under
3 subsection (a) may not:

4 (1) refund a portion of the payment directly to the
5 parent who made the payment.

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

8 (c) Refund.--A participating entity shall deposit a refund
9 for an item that is being returned or an item or service that
10 has not been provided directly to the education savings account
11 of the school-age child from which payment for the item or
12 service was made.

13 (d) Payment system.--

14 (1) The State Treasury shall develop a system that
15 enables parents to pay for services provided by participating
16 entities by electronic funds transfer, including electronic
17 payment systems or other means of electronic payment that the
18 State Treasury determines to be commercially viable and cost
19 effective.

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

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

24 (e) Source of payment.--

25 (1) Persons may not deposit personal funds into or
26 otherwise make gifts or contributions of private funds to an
27 education savings account.

28 (2) Nothing in this section shall be construed to
29 prohibit a parent or school-age child from paying for
30 qualified education expenses from a source other than the

1 education savings account.

2 Section 2006-H. Audits and penalties.

3 (a) Audit.--The State Treasury may provide for audits of an
4 education savings account as the State Treasury determines
5 necessary.

6 (b) Penalties.--If the State Treasury determines that the
7 money in an education savings account has been expended for an
8 expense other than a qualified education expense under section
9 2005-H(a), the State Treasury may do any of the following:

10 (1) Freeze or dissolve the education savings account,
11 subject to regulations adopted by the State Treasury
12 providing for notice of the action and opportunity to respond
13 to the notice.

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

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

19 (4) Disqualify the parent from future participation in
20 the program.

21 Section 2007-H. Participating entity application and
22 requirements.

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

25 (b) Determination.--The department shall approve an
26 application submitted under subsection (a) if the applicant
27 meets the criteria to serve as a participating entity. If the
28 department accepts the application, the department, in
29 consultation with the State Treasury, shall enter into a
30 contract with the applicant specifying the rights and duties of

1 the parties relating to the program.

2 (c) Posting and submission.--The department shall make the
3 application and contract for participation in the program
4 required under this section available to be filled out and
5 submitted on the department's publicly accessible Internet
6 website.

7 (d) Receipt.--Each participating entity that accepts payment
8 from an education savings account shall provide a receipt to the
9 parent for the payment.

10 (e) Refusal.--The department may refuse to allow a
11 participating entity continued participation in the program for
12 up to three years if the department determines that the
13 participating entity:

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

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

19 (f) Notice.--

20 (1) If the department takes an action described under
21 subsection (e) against a participating entity, the department
22 shall provide immediate notice of the action to each parent
23 of a school-age child who is receiving education services
24 from the participating entity who has entered into or renewed
25 an agreement under section 2003-H.

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

29 (3) If a school-age child is enrolled in a participating
30 entity that is refused continued participation in the program

1 during the school year, the parent may use the education
2 savings account to pay for the remainder of that school
3 year's qualified education expenses, but may not use
4 education savings account money to pay the participating
5 entity until the participating entity is permitted to resume
6 continued participation in the program.

7 (g) Limitation on tuition charges.--The tuition charged by a
8 participating entity to a student with an education savings
9 account may not exceed the regular tuition charged to those
10 similarly situated students for whom an education savings
11 account does not exist.

12 (h) Withdrawal from enrollment.--In the event that an
13 eligible student withdraws from enrollment in a participating
14 entity prior to the completion of the school year, the
15 participating entity shall, within 15 days of withdrawal,
16 provide the department with written notice of the withdrawal.
17 Section 2008-H. Academic requirements.

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

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

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

29 (3) Collect and aggregate the test results and
30 associated learning gains under paragraph (1) and graduation

1 rates for the school-age children participating in the
2 program according to the grade level of each school-age child
3 and shall post the information on the publicly accessible
4 Internet website of the nonpublic school.

5 (b) Exception.--

6 (1) If a school-age child for whom an education savings
7 account exists is not enrolled in a full-time education
8 program at a nonpublic school, the parent shall ensure the
9 participating student is administered a State achievement
10 test or nationally norm-referenced test.

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

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

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

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

21 (2) After three school years for which examination data
22 has been collected under this section, post on the
23 department's publicly accessible Internet website the
24 aggregated test results, associated learning gains and
25 graduation rates of school-age children participating in the
26 program.

27 Section 2009-H. Listing of participating entities.

28 The department shall annually post on the department's
29 publicly accessible Internet website a listing of all
30 participating entities.

1 Section 2010-H. Education records.

2 The department shall annually require the resident school
3 district of each school-age child participating in the program
4 to provide the child's education records to the participating
5 entity.

6 Section 2011-H. Transportation.

7 The school district of residence of a school-age child
8 participating in the program shall provide transportation to the
9 school-age child in accordance with section 1361.

10 Section 2012-H. Participating entity autonomy.

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

14 (b) Prohibition.--

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

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

24 (3) No participating entity shall be required to alter
25 the participating entity's creed, practices, admissions
26 policy or curriculum to accept school-age children whose
27 parents make payments from education savings accounts.

28 (c) Nontaxable.--Education savings accounts shall not be
29 considered taxable income for purposes of any local taxing
30 ordinance or home rule charter or for purposes of Article III of

1 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
2 Code of 1971, nor shall payments made from any education savings
3 account constitute financial assistance or appropriations to any
4 participating entity.

5 Section 2013-H. Regulations.

6 The State Treasury and the department shall jointly
7 promulgate regulations as necessary for the administration of
8 this article within 60 days of the effective date of this
9 section.

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