

1 SECTION 1. This act may **be** cited and referred to as the ‘Put
2 Parents in Charge Act.’

3
4 SECTION 2. Title 59 of the 1976 Code is amended by adding:

5
6 “CHAPTER 8
7 Education Scholarship Accounts
8

9 Section 59-8-110. For purposes of this chapter:

10 (1) ‘Department’ means the South Carolina Department
11 of Education.

12 (2) ‘Education Scholarship Account’, ‘ESA’, or ‘account’
13 means the individual account that is administered by the department
14 to which funds are allocated to the parent of an ESA student to pay
15 for qualifying expenses.

16 (3) ‘Eligible student’ means a student who satisfies (a),
17 (b), and (c) below:

18 (a) is a resident of this State;

19 (b)(i) attended a public school in this state the prior
20 school year; or

21 (ii) had not yet attained the age of five on or before
22 September first of the prior school year but has attained the age
23 of five on or before September first of the current school year;

24 (c)(i) has a statement of Medicaid eligibility; or

25 (ii) attends a public school in this State that has earned
26 an overall rating of “unsatisfactory” on the most recent South
27 Carolina School Report Card; or

28 (iii) attends a public school in this State that has earned
29 an overall rating of “below average,” or a combination of
30 “below average” and “unsatisfactory,” on the South Carolina
31 School Report Card for 3 of the past 5 years; or

32 (iv) has an IEP; or

33 (v) received an ESA scholarship issued pursuant to this
34 chapter for the prior school year; or

35 (vi) has a sibling living in the same household who
36 receives an ESA scholarship.

37 (4) ‘ESA student’ means an eligible student who is
38 participating in the Education Scholarship Account Act Program.

39 (5) ‘IDEA’ means the Individuals with Disabilities Education
40 Act found in 20 U.S.C. Section 1400, et seq.

41 (6) ‘Parent’ means a resident of this State who is the natural
42 or adoptive parent, legal guardian, custodian, or other person with
43 legal authority to act on behalf of an eligible student.

Commented [SC1]:

S. 935 SUBCOMMITTEE AMENDMENT FOR
2/23/2022 EDUCATION COMMITTEE

1 (7) 'Education service provider' means a person or
2 organization approved by the Department that receives payments
3 from education savings accounts to provide educational goods and
4 services to ESA students.

5 (8) 'Program' means the ESA program created by this
6 chapter.

7 (9) 'Resident school district' means the public school district
8 in which the student is domiciled.

9 (10) 'Scholarship' means education funding allocated from an
10 account established pursuant to this chapter.

11 (11) 'Substantial misuse' means willfully and knowingly
12 receiving or spending any portion of a scholarship for any purpose
13 other than a qualifying expense.

14 (12) 'Qualifying expense' means:

15 (a) tuition and fees of an education service provider.

16 (b) textbooks, curriculum, or other instructional materials,
17 including, but not limited to, any supplemental materials or
18 associated online instruction required by either a curriculum or an
19 education service provider.

20 (c) tutoring services approved by the Department.

21 (d) computer hardware or other technological devices that
22 are used primarily for an ESA student's educational needs and
23 approved by the department or a licensed physician.

24 (e) tuition and fees for an approved nonpublic online
25 education service provider or course;

26 (f) fees for approved:

27 (1) national norm-referenced examinations, advanced
28 placement examinations, or similar assessments.

29 (2) industry certification exams; or

30 (3) examinations related to college or university
31 admission.

32 (g) educational services for pupils with disabilities from a
33 licensed or accredited practitioner or provider including, but not
34 limited to, occupational, behavioral, physical, and speech-language
35 therapies.

36 (h) approved contracted services from a public school
37 district, including individual classes, after school tutoring services,
38 transportation, or fees or costs associated with participation in
39 extracurricular activities;

40 (i) contracted teaching services and education classes
41 approved by the Department;

42 (j) fees for transportation paid to a fee-for-service
43 transportation provider for the ESA student to travel to and from an

1 eligible provider as defined in this section, but not to exceed seven
2 hundred and fifty dollars for each school year;

3 (k) fees for ESA account management by private financial
4 management firms approved by the department; or

5 (l) any other educational expense approved by the
6 department.

7
8 Section 59-8-115. (A) The department shall create a standard
9 application process **and establish the timeline** for parents of
10 eligible students to establish the eligibility of their student for the
11 Education Scholarship Account program. **The application window**
12 **established shall be for at least forty-five days, opening no**
13 **earlier than January fifteenth and closing no later than April**
14 **fifteenth each calendar year.**

15 (B) Pursuant to the timeline established in (A), the
16 department shall:

17 (1) process applications in the order in which they are received,
18 after a preference has been extended to all prior-year participants
19 and their respective siblings; **and**

20 (2) enroll and issue award letters within **thirty days of the deadline**
21 **for receipt of completed applications** and all required
22 documentation.

23 (C) Before awarding a scholarship, the department shall have
24 obtained evidence of the student's eligibility through the card
25 issued in the student's name from the Department of Health and
26 Human Services for Medicaid eligibility **included as applicable**
27 **with application documentation.**

28 (D) The department shall approve an application for an ESA if:

29 (1) the parent submits an annual application for an ESA in
30 accordance with the application and procedures established by the
31 department;

32 (2) the student on whose behalf the parent is applying is an
33 eligible student;

34 (3) funds are available for the ESA; and

35 (4) the parent signs an annual agreement with the department:

36 (a) to provide, at a minimum, a program of academic
37 instruction for the eligible student in at least the subjects of
38 English/language arts to include writing, mathematics, social
39 studies, and science;

40 (b) to ensure the ESA student takes assessments as
41 referenced in Section 59-8-150 or provides assessments in a similar
42 manner through other means if the ESA student does not receive
43 full-time instruction from an education service provider;

1 (c) to use program funds for qualifying expenses only for
2 an approved provider to educate the eligible student, subject to
3 penalty;

4 (d) not to enroll their eligible student in a public school as
5 a full-time student **in the resident school district as defined in this**
6 **chapter.**

7 (e) not to participate in a home instruction program under
8 Sections 59-65-40, 59-65-45, or 59-65-47;

9 (f) **that for every ESA student with a disability,**
10 **includes the student's special education and/or related**
11 **services plan with documentation of the consultation**
12 **process between the resident school district, the school**
13 **district where the education service provider is located if**
14 **different, and the education services provider and the**
15 **manner by which those special education services, related**
16 **services, or accommodations will be provided to the ESA**
17 **student with a disability by the education service**
18 **provider as required by the IDEA and ADA;**

19 (g) to comply with the conditions and requirements of this
20 program as established by the department; and

21 (h) to confirm that, if the parent's child is a student with
22 disabilities, the parent has received notice from the department
23 that participation in the ESA program is a parental placement
24 of the ESA student under Section 1412 of IDEA, along with
25 an explanation of the rights that parentally placed students
26 possess under IDEA and any applicable state laws and
27 regulations.

28 **(5) The department shall make readily available on its**
29 **website information notifying parents that federal**
30 **regulations adopted under IDEA provide that no parentally**
31 **placed private school child with a disability has an**
32 **individual right to receive some or all of the special**
33 **education and related services that the child would receive**
34 **if enrolled in a public school.**

35
36 (E) A parent will be allowed to make payments for the cost of
37 educational goods and services not covered by the funds in their
38 student's ESA; however, personal deposits into an ESA are
39 prohibited.

1 (F) Funds received pursuant to this section do not constitute
2 taxable income to the parent of the ESA student or to the ESA
3 student.

4 (G) A parent's signed agreement under subsection (D)(4)
5 satisfies the state's compulsory attendance law pursuant to Section
6 59-65-10.

7 (H) The **State Board of Education** shall promulgate regulations
8 for the administration of the program as may be applicable.

9 (I) The department may contract with qualified organizations to
10 administer the program application process or specific functions,
11 maintenance, and monitoring of the program application process as
12 required above.

13
14 Section 59-8-120. (A) There is established, at the department,
15 the 'South Carolina Education Scholarship Account Fund' that is
16 separate and distinct from the general fund, consisting of monies
17 appropriated to the department to provide scholarships to ESA
18 students for qualifying expenses. The fund must receive and hold all
19 monies allocated for it as well as all earnings until disbursed as
20 provided in this section.

21 (B) The department shall administer the fund and is responsible
22 for keeping records, managing accounts, and disbursing
23 scholarships awarded pursuant to this section.

24 (C) Upon approval of an eligible student's application by the
25 department, the State Treasurer shall transfer from the State
26 appropriated monies allocated for the child's education in the prior
27 school district of the child's domicile, or if the child is currently
28 eligible to attend kindergarten, the **state** monies that would
29 otherwise be allocated for the child's education in the expected
30 school district of the child's domicile, to the department. The
31 department shall deposit these monies into the South Carolina
32 Education Scholarship Account Fund.

33 (D) The department shall create an individual online ESA
34 account for each ESA student and transfer an amount that is
35 equivalent to the State average of State funding per pupil in public
36 schools for the current fiscal year as determined by the Revenue and
37 Fiscal Affairs Office. The amount deposited shall not include
38 federal or local funds.

39 (1) The parent must be able to access the online account for
40 the ESA student using a secure portal.

41 (2) The ESA student account must be created within thirty
42 days of the application approval.

1 (E) The department shall make payments to an ESA student's
2 account on a quarterly basis with the first payment being distributed
3 by July thirty-first of each year.

4 (F) For the purpose of funding calculations, each eligible student
5 who participates in the program must be counted in the enrollment
6 figures for the resident school district in which the student is zoned
7 to attend.

8 (G) By September first of each school year and again on January
9 fifteenth and March fifteenth of the school year, the Department
10 shall compare the list of ESA students with the public school
11 enrollment lists to avoid duplicate payments.

12 (H) Education service providers may not refund, rebate, or share
13 an ESA student's scholarship funds with a parent or the ESA
14 student. The funds in an account may only be used for qualifying
15 expenses as defined in this chapter and provided by the department.

16 (I) The department may contract with qualified organizations to
17 administer the program.

18
19 Section 59-8-125. (A) The department shall develop an online
20 electronic system for payment for services by participating parents.
21 The department shall not adopt a system that requires parents to be
22 reimbursed for out-of-pocket expenses.

23 (B) The General Assembly shall appropriate funds to the
24 department for initial costs to create the program. Thereafter, the
25 department shall deduct an amount from the grants of all accounts
26 to cover the costs of overseeing the accounts and administering the
27 program up to a limit of **three percent. The department shall**
28 **notify the Chairman of the Senate Finance Committee and the**
29 **Chairman of the House of Representatives Ways and Means**
30 **Committee of the amount deducted for administrative costs and**
31 **a breakdown of the costs incurred to administer the program**
32 **for the previous school year by December 31 of each year.**

33 (C) The department may contract with qualified vendors to
34 manage accounts and shall establish reasonable fees for private
35 financial management firms participating in the program based upon
36 market rates.

37 (D) The department may contract with qualified organizations to
38 administer the program or specific functions of the program.

39 (E) Payments made by the department must remain in force until
40 a parent or ESA student is proven to have participated in a prohibited
41 activity specified in this chapter, an ESA student returns to **a public**
42 **school in** his resident public school district, or an ESA student
43 graduates from high school or attains twenty-two years of age,

1 whichever occurs first. An ESA student who enrolls in a public
2 school **in his resident public school district** is considered to have
3 returned to a public school for the purpose of determining the end
4 of the term.

5 (F) An account is active and usable until funds are revoked by
6 the department for substantial misuse or the ESA student leaves the
7 program for any reason, at which time any remaining funds must
8 revert to the program fund.

9 (G) Unused funds must be rolled over to the following year for
10 an ESA student who continues to meet eligibility requirements to
11 participate in the program.

12 (H) An agreement terminates automatically if the ESA student is
13 no longer domiciled in this State, and money remaining in the
14 account reverts to the program fund.

15 (I) Only one account may be established for an eligible student.
16

17 Section 59-8-130. (A) If an ESA student's program of
18 academic instruction is terminated for any reason before the end of
19 the semester or school year and the ESA student does not resume
20 instruction within thirty days, then the parent shall notify the
21 department and remaining funds in the ESA student's account must
22 be credited to the program fund.

23 (B) Any funds not expended in an ESA student's scholarship
24 account at the end of the school year will be carried forward into the
25 next school year and expended for the same purposes.
26

27 Section 59-8-135. (A) Beginning with the **2023-2024** School
28 Year, the annual number of ESA students is limited by the following
29 capacity:

30 (1) In School Year **2023-2024**, the program is limited to five
31 thousand ESA students.

32 (2) In School Year **2024-2025**, the program is limited to ten
33 thousand ESA students.

34 (3) In School Year **2025-2026** and beyond, the program is
35 limited to fifteen thousand ESA students.

36 (B) In 2026, and every five years thereafter, the **Department**
37 shall conduct an eligibility and use review of the program and shall
38 make recommendations to the General Assembly to improve the
39 program.
40

41 Section 59-8-140. (A)(1) The Department shall develop an
42 application for education service providers desiring to participate in

1 the program to submit according to the process established by the
2 **Department.**

3 (2) The Department shall require an independent school that
4 applies to be an education service provider to be located in the State,
5 to have an educational curriculum that includes courses set forth in
6 the state's diploma requirements and **to meet the compulsory**
7 **attendance and State Board of Education approval**
8 **requirements of Section 59-65-10.**

9 (3) An education service provider that participated in the
10 program in the previous school year and which desires to participate
11 in the program in the current year shall reapply to the Department.
12 The education service provider reapplying shall certify to the
13 Department that it continues to meet all program requirements. An
14 education service provider required to administer academic testing
15 shall provide to the Department test score data from the previous
16 school year. If individual student test score data is not submitted,
17 then the Department shall remove the education service provider
18 from the program.

19 (4) By March first of each year, the Department will certify
20 **the list of approved** education service providers for participation in
21 the program that meet all program requirements. The Department
22 may waive the deadline requirement upon good cause shown by the
23 education service provider.

24 (5) An education service provider that is denied certification
25 pursuant to this section may seek review by filing a request for a
26 contested case hearing with the Administrative Law Court in
27 accordance with the court's rules of procedure.

28 (6) By March fifteenth of each year, the Department shall
29 publish on its website a comprehensive list of certified education
30 service providers. The list must include the name, address,
31 telephone number, and website address for each education service
32 provider.

33 (B) The Department shall establish the process for new
34 education service providers to participate in the program which may
35 be added on a rolling basis, subject to the Department's approval,
36 and will be published on its website.

37 (C) The Department may bar an education service provider from
38 the program if the Department establishes that the education service
39 provider has:

40 (1) failed to comply with the accountability standards
41 established in this **section**; or

42 (2) failed to provide the ESA student with the educational
43 services funded by the account.

1 (D) The Department shall create procedures to ensure that a fair
2 process exists to determine whether an education service provider
3 may be barred from receiving payments from accounts.

4 (1) If the Department decides to bar an education service
5 provider from the program, it shall notify affected students and
6 their parents of this decision as quickly as possible.

7 (2) Education service providers may appeal the Department's
8 decision to bar them from receiving payments from accounts
9 pursuant to the state's Administrative Procedures Act.

10 (E) The **State Board of Education** shall promulgate regulations
11 to allow ESA students to return to their resident school districts at
12 any time, providing the least disruptive process, and as may be
13 necessary for applicable administration of the program.

14
15 Section 59-8-145. (A) The department shall adopt procedures to
16 inform students that are eligible for the program and their parents
17 annually of their ability to participate in the program.

18 (B) The department shall adopt procedures to annually inform
19 ESA students and their parents of which education service providers
20 will be participating in the program.

21 (C) The department shall provide parents of an ESA student with
22 a written explanation of the allowable uses of an account and the
23 responsibilities of parents and the duties of the department.

24 (D) The department may make a parent ineligible for the
25 program for substantial misuse of the funds in the account.

26 (E) The department may conduct or contract for the auditing of
27 accounts, and shall, at a minimum, conduct random audits of
28 accounts on an annual basis.

29 (F) The department may refer cases of substantial misuse of
30 funds to law enforcement agencies for investigation if credible
31 evidence of the fraudulent use of an account is obtained.

32 (G) The department may contract with one or more qualified
33 organizations to administer some or all portions of this program.

34 (H) The department shall maintain a record of the number of
35 applications received annually for the program, the number of
36 students accepted into the program each year, the number of
37 students not accepted into the program each year with a
38 corresponding explanation as to why the student was not accepted
39 into the program. The department shall compile this information and
40 provide a report the General Assembly by December thirty-first of
41 each year.

42

1 Section 59-8-150. (A) To ensure equitable treatment and
2 personal safety of all ESA students, all education service providers
3 shall:

4 (1) comply with all applicable health and safety laws or
5 codes;

6 (2) hold a valid occupancy permit if required by their
7 municipality and if applicable;

8 (3) not discriminate on the basis of race, color, **religion**
9 national origin; and

10 (4) conduct criminal background checks on employees and
11 exclude from employment anyone who:

12 (a) is not permitted by state law to work in a school;

13 (b) reasonably might pose a threat to the safety of students;

14 or

15 (c) is listed on federal, state, or other central child abuse
16 registries.

17 (B) To ensure that funds are spent appropriately, all education
18 service providers shall:

19 (1) provide parents with a receipt for all qualifying expenses;
20 and

21 (2) demonstrate their financial viability by showing they can
22 repay funds received from parents that might be provided from
23 accounts, if they are to receive fifty thousand dollars or more during
24 the school year, by filing a surety bond with the Department prior to
25 the start of the school year.

26 (C) In order to allow parents and the public to measure the
27 achievements of the program, academic progress must be
28 documented annually for each ESA student. ESA students with an
29 Individualized Education Plan (IEP) that cannot be accommodated
30 with standardized testing are excluded from the requirements of
31 item (1). Education service providers that provide academic
32 instruction, however, must monitor the progress of students with
33 significant cognitive disabilities through alternative assessments
34 including portfolios.

35 (1) Education service providers that provide full-time
36 academic instruction shall:

37 (a) ensure that each ESA student in grades three through
38 **twelve completes the same state assessments administered to**
39 **public school students to satisfy the accountability provisions of**
40 **the Every Student Succeeds Act in math, reading/language arts,**
41 **and science;** and

42 (b) measure academic performance and learning gains of
43 its ESA **students** by:

1 (i)requiring that each ESA student takes one of an
2 approved list of nationally norm-referenced tests identified by the
3 Department that measure learning gains in math and language arts
4 and provide for value-added assessment; and

5 (ii) collecting high school graduation information of
6 ESA students for reporting to the Department as required in this
7 section.

8 **(c) The department shall ensure that the education**
9 **service provider has access to and is trained in administering**
10 **the state assessments, and at no cost to the provider or to ESA**
11 **students.**

12 (2) For the purpose of evaluating program effectiveness,
13 education service providers that provide full-time academic
14 instruction shall ensure that results in item (1) are:

15 (a) provided to the parent of an ESA student and must be
16 provided to the Department on an annual basis, beginning with the
17 first year of program implementation; and

18 (b) disaggregated by grade level, gender, family income
19 level, ~~and~~ race **and English learner status.**

20 (3) The department or the appropriate organization chosen by
21 the department, if any, will be informed of the ESA student's
22 graduation from high school.

23 (D) The Department shall:

24 (1) comply with all student privacy laws;

25 (2) collect all test results;

26 (3) annually provide the test results, associated learning gains,
27 and graduation rates to the public by means of a state website with
28 aggregated data by the school, grade level, gender, family income
29 level, number of years of participation in the program, and race, **and**
30 **a report for each participating school;**

31 (4) collaborate with the department to develop and administer
32 an annual parental satisfaction survey to all parents of ESA students
33 to express their satisfaction with the program and their opinions on
34 issues relevant to the ESA program that the State finds would elicit
35 information about the effectiveness of the program, including the
36 number of years the child has participated in it. Results of this
37 survey must be provided to the General Assembly by December
38 thirty-first of each year.

39 (E) An education service provider that is not a public school is
40 autonomous and not an agent of the State or federal government,
41 therefore:

1 (1) the department or any other state agency may not regulate
2 the educational program of a certified education provider that
3 accepts funds from an account;

4 (2) the creation of the program does not expand the regulatory
5 authority of the State, its officers, or a school district to impose
6 regulation of education service providers beyond those necessary to
7 enforce the requirements of the program;

8 (3) the freedom of education service providers to provide for
9 the educational needs of ESA students without governmental
10 control must not be abridged;

11 (4) an education service provider that accepts payment from
12 a parent using funds from an ESA pursuant to this chapter is not an
13 agent of the State or federal government; and

14 (5) education service providers shall not be required to alter
15 their creeds, practices, admissions policy, or curriculum in order to
16 accept payments from a parent using funds from an ESA.

17
18 Section 59-8-155. The ESA student's resident school district
19 shall provide a parent and the education service providers that
20 provide academic services to an ESA student with a complete copy
21 of the student's school records, while complying with the Family
22 Educational Rights and Privacy Act of 1974, 20 U.S.C. Section
23 1232(g).

24
25 Section 59-8-160. (A) There is created the 'ESA Review Panel'
26 that shall serve as an advisory panel to the department.

27 (B) The review panel shall consist of ten members, pursuant to
28 the following:

29 (1) the Governor or his designee, who shall serve as the chair
30 of the panel; and

31 (2) three members to be appointed by the Governor upon the
32 recommendation of the:

33 (a) South Carolina Association of Christian Schools;

34 (b) South Carolina Independent Schools Association; and

35 (c) Palmetto Association of Independent Schools;

36 (3) one member appointed by the Speaker of the House of
37 Representatives;

38 (4) one member appointed by the President of the Senate;

39 (5) one member appointed by the Chairman of the House
40 Education and Public Works Department;

41 (6) one member appointed by the Chairman of the Senate
42 Education Department; and

1 (7) two parents of ESA students to be appointed by the
2 Governor.

3 (C) The review panel may advise the department on whether
4 certain expenses meet the requirements to be considered a qualified
5 expense under this chapter when requested by the department. The
6 review panel periodically may make recommendations to the
7 General Assembly about improving the program.

8 (D) Members shall serve at the pleasure of their appointing
9 authority. In making appointments to the board, the appointing
10 authorities, as appropriate, shall consider legal, financial,
11 accounting, and marketing experience and race, gender, and other
12 demographic factors to ensure nondiscrimination, inclusion, and
13 representation of all segments of the State to the greatest extent
14 possible.

15 (E) Members may not receive mileage or per diem.”

16
17 SECTION 3. If any section, subsection, paragraph, subparagraph,
18 sentence, clause, phrase, or word of this act is for any reason held to
19 be unconstitutional or invalid, then such holding shall not affect the
20 constitutionality or validity of the remaining portions of this act, the
21 General Assembly hereby declaring that it would have passed this
22 act, and each and every section, subsection, paragraph,
23 subparagraph, sentence, clause, phrase, and word thereof,
24 irrespective of the fact that any one or more other sections,
25 subsections, paragraphs, subparagraphs, sentences, clauses, phrases,
26 or words hereof may be declared to be unconstitutional, invalid, or
27 otherwise ineffective.

28
29 SECTION 4. This act takes effect thirty days after approval by the
30 Governor, provided that upon approval of this act by the Governor,
31 the **Department of Education** shall begin undertaking and
32 executing responsibilities incident to the implementation of this act
33 so that the provisions of this act may be fully implemented thirty
34 days after approval by the Governor.

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36