**A** **BILL**

TO ENACT THE “EQUAL OPPORTUNITY EDUCATION SCHOLARSHIP ACCOUNT ACT”; TO AMEND TITLE 59 OF THE 1976 CODE, RELATING TO EDUCATION, BY ADDING CHAPTER 8, TO PROVIDE FOR THE ESTABLISHMENT AND FUNDING OF ACCOUNTS FOR USE IN MEETING CERTAIN EDUCATION EXPENSES OF ELIGIBLE STUDENTS, TO PROVIDE GUIDELINES FOR THE USE OF SUCH FUNDS AND PENALTIES FOR MISUSE, TO PROVIDE CERTAIN RELATED POWERS AND DUTIES OF THE EDUCATION OVERSIGHT COMMITTEE, TO CREATE A PARENTAL REVIEW PANEL TO ASSIST IN DETERMINING WHETHER CERTAIN EXPENSES CONSTITUTE QUALIFIED EDUCATION EXPENSES, AMONG OTHER THINGS, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act must be known and may be cited as the “Equal Opportunity Education Scholarship Account Act”.

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

“CHAPTER 8

Equal Opportunity Education Scholarship Account Act

Section 59‑8‑120. By enacting the Equal Opportunity Education Scholarship Account Act, the General Assembly intends to promote student achievement by making South Carolina the most choice‑driven state in the nation by increasing students’ participation in, and students’ access to, educational opportunities, both within and outside of their resident school districts, regardless of where they live or their socioeconomic status. The General Assembly further intends that the provisions of this chapter be construed broadly to maximize parental choice options and student access to customized, high‑quality educational opportunities presently unavailable to them.

Section 59‑8‑130. For the purposes of this chapter:

(1) ‘Account’ means an Equal Opportunity Education Scholarship Account established pursuant to this chapter.

(2) ‘Committee’ means the South Carolina Education Oversight Committee.

(3) ‘Compliance organization’ means an entity that assists parents of eligible students with accountability requirements, such as maintaining records, providing transcripts, and reporting.

(4) ‘Educational consultant’ means an advisor in education curriculum, finance, scholarships, or achievement who is certified or has the experience necessary to provide guidance to parents of eligible students.

(5) ‘Eligible postsecondary institution’ means an accredited community college, technical college, university, or private postsecondary institution.

(6) ‘Eligible student’ means a student who:

(a)(i) has been evaluated in accordance with the State’s evaluation criteria and determined to be eligible as a child with a disability who needs special education and related services, in accordance with the requirements of the regulations of Section 300.8 of IDEA;

(ii) has been diagnosed within the last three years by a licensed speech‑language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as being deaf or blind or having an orthopedic disability, some other disability, or an acute or chronic condition that significantly impedes the student’s ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child’s unique needs;

(iii) has been identified by the Department of Social Services as a special needs child;

(iv) is eligible to receive funding according to the pupils in poverty weighting in the Education Finance Act;

(v) previously received a scholarship issued pursuant to this chapter or an Educational Credit for Exceptional Needs Children scholarship issued either by appropriation of the General Assembly or pursuant to Section 12‑6‑3790;

(vi) is in foster care under the responsibility of the State and for whom the family court has approved a permanent plan of termination of parental rights and adoption;

(vii) previously was in foster care under the responsibility of the State and was then subsequently adopted; or

(viii) is a child of a parent who is on full‑time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to U.S.C. Sections 1209 and 1211, or who was killed in the line of duty; and

(b) with the exception of subsubitem (viii), has:

(i) previously enrolled in a South Carolina public school during the two semesters immediately preceding the semester in which the student receives a scholarship; or

(ii) not previously attended a South Carolina public school but is currently eligible to enroll in a kindergarten program in a school district or charter school in this State.

(7) ‘IDEA’ means the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400, et seq.

(8) ‘Parent’ means a resident of this State who is a parent, guardian, custodian, or other person with the authority to act on behalf of an eligible student.

(9) ‘Participating school’ means an independent school, including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59‑65‑10 may be met, that:

(a) offers a general education to elementary students, secondary students, or both;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the State’s diploma requirements, and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws;

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, or the Palmetto Association of Independent Schools, or their respective successors; and

(g) has notified the committee of its intention to participate in the program and comply with the program’s requirements.

(10) ‘Private tutoring’ means a tutoring service provided by:

(a) a tutor who is accredited by a regional or national accrediting organization;

(b) a state‑certified teacher; or

(c) an instructor who has experience teaching in an accredited institution of higher education.

(11) ‘Program’ means the scholarship program created by this chapter.

(12) ‘Resident school district’ means the public school district in which the eligible student resides.

(13) ‘Scholarship’ means a scholarship awarded from an account established pursuant to this chapter.

Section 59‑8‑140. (A) A parent of an eligible student is qualified for the State to make a grant to an account for the eligible student if the parent signs an agreement promising to:

(1) provide, at a minimum, an education for the eligible student in at least the subjects of reading, grammar, mathematics, social studies, and science;

(2) use program funds for authorized purposes only;

(3) not enroll the eligible student in a resident school district;

(4) not participate in a home instruction program under Sections 59‑65‑40, 59‑65‑45, or 59‑65‑47;

(5) not enroll the eligible student in the Educational Credit for Exceptional Needs Children program while participating in the program;

(6) release the resident school district from an obligation to educate the eligible student while he is enrolled in the program. Participation in the program shall have the same effect to the resident school district as a parental placement under Section 1414 of IDEA; and

(7) comply with the rules and requirements of the program.

(B) A parent who participates in the program shall agree to use funds deposited in the account of the eligible student only for the following qualifying expenses to educate the eligible student:

(1) tuition and fees at a participating school;

(2) textbooks required by a participating school;

(3) payment to a licensed or accredited private tutor;

(4) payment for the purchase of curriculum or instructional materials;

(5) computer hardware or other technological devices that are used solely for an eligible student’s educational needs and approved by the committee or a licensed physician;

(6) payment to an educational consultant or compliance organization approved by the Education Oversight Committee;

(7) tuition and fees for a nonpublic online learning program or course;

(8) fees:

(a) for national norm‑referenced examinations, advanced placement examinations, or similar courses;

(b) associated with industry certification exams; or

(c) for examinations related to college or university admission;

(9) contribution to a Coverdell education savings account established pursuant to 26 U.S.C. Section 530 for the benefit of the eligible student, except that funds used for elementary or secondary education expenses must be for expenses otherwise allowed under this section;

(10) educational services for eligible students with disabilities from a licensed or accredited practitioner or provider, including, but not limited to, occupational, behavioral, physical, and speech‑language therapies;

(11) tuition and fees at an eligible postsecondary institution;

(12) textbooks required for courses at an eligible postsecondary institution;

(13) contracted services from a public school district, including individual classes, after-school tutoring services, transportation, or fees or costs associated with participation in extracurricular activities should the public school choose to participate in the program;

(14) fees for transportation paid to a fee‑for‑service transportation provider for the eligible student to travel to and from a participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider but not to exceed seven hundred fifty dollars for each school year; or

(15) fees for account management by private financial management firms approved by the committee.

(C) A participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider may not refund, rebate, or share the grant of an eligible student participating in the program with his parent or with the eligible student. The funds in an account may be used only for educational purposes.

(D) A parent may make payments for the costs of educational programs and services not covered by the funds in the account, except that personal deposits into an account are not permitted.

(E) Funds received pursuant to this section do not constitute taxable income to the parent of an eligible student participating in the program.

Section 59‑8‑150. Beginning with the 2019‑2020 School Year, the annual number of enrollees into the program is limited to eligible students under Section 59‑8‑130(6). The funding amount the State shall deposit into an account for an eligible student participating in the program must be equal to the Total State Funding of Shared Expenses Per Pupil that the resident school district to which the eligible student participating in the program would have been assigned would have received for the eligible student participating in the program, including the Education Finance Act funding with appropriate weights, as determined by the State Revenue and Fiscal Affairs Office, less administrative costs withheld pursuant to Section 59‑8‑160. For the purpose of funding calculations, each eligible student participating in the program must be counted in the enrollment figures for the resident school district that he is zoned to attend. The program funds must be subtracted from funds otherwise payable to the district on behalf of the eligible student participating in the program. The amount deposited may not include federal or local funds.

Section 59‑8‑160. (A) The committee shall maintain a list of approved participating schools, private tutors, eligible postsecondary institutions, educational consultants, compliance organizations, or other educational providers.

(B) The committee shall ensure that eligible students participating in the program and their parents are annually informed of which providers will be participating in the program. Special attention must be paid to ensure that lower‑income families are made aware of the program and of their options.

(C) The committee shall create a standard application process for parents to establish the eligibility of their student for the program. The committee shall ensure that the application is readily available to interested parents through various sources, including the Internet.

(D) The committee shall process applications in the order in which they are received.

(E) The committee shall provide the parent of an eligible student participating in the program with a written explanation of the allowable uses of an account, the responsibilities of the parent, and the duties of the committee.

(F) The committee shall compare the list of eligible students participating in the program with the public school enrollment lists before each program payment to avoid duplicate payments.

(G) The committee may prohibit a participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider from the program if the committee finds that the participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider has:

(1) routinely failed to comply with the accountability standards established in this chapter; or

(2) failed to provide the eligible student participating in the program with the educational services funded by the account.

(H) If the committee decides to bar a participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider from the program, then it shall notify eligible students participating in the program and their parents of this decision as quickly as possible.

(I) The committee shall promulgate regulations to allow eligible students participating in the program to return to their resident school districts at any time, providing the least disruptive process.

(J) The committee shall adopt rules and procedures as necessary for the administration of the program.

Section 59‑8‑170. (A) The committee shall qualify private financial management firms to manage accounts.

(B) The committee may conduct or contract for the auditing of accounts and shall, at a minimum, conduct random audits of accounts on an annual basis. The committee may make a parent ineligible for the program for substantial misuse of the funds in the account.

(C) The committee shall develop a system for the payment of services by participating parents by electronic funds transfer, including, but not limited to, debit cards, electronic payment systems, or another means of electronic payment that the committee determines to be commercially viable, cost effective, and parent‑friendly. However, the committee may not adopt a system that requires parents to be reimbursed for out‑of‑pocket expenses.

(D) The committee may refer cases of substantial misuse of funds to law enforcement agencies for investigation if evidence of the fraudulent use of an account is obtained.

(E) The committee shall deduct an amount from the grants of all accounts to cover the costs of overseeing the accounts and administering the program up to a limit of four percent. In the first three years of the program, the committee annually may deduct an amount equal to four percent of the funds annually deposited into the accounts of eligible students participating in the program to cover the costs of the program. In subsequent years, the organization must be granted an amount equal to three percent of the funds.

(F) The committee shall establish reasonable fees for private financial management firms participating in the program based upon market rates.

(G) The committee shall make payments to the accounts of eligible students participating in the program on a quarterly basis.

(H) The committee may contract with one or more qualified organizations to administer the program or specific functions of the program.

(I) The committee may receive contributions from private sources to help fund the program.

(J) For the purposes of continuity of educational choice, payments made under this section must remain in force until an eligible student participating in the program participates in a prohibited activity specified in this chapter, returns to his resident public school, graduates from high school, or attains twenty‑two years of age, whichever occurs first. An eligible student participating in the program who enrolls in his resident school district or resident public school program is considered to have returned to a public school for the purpose of determining the end of his term.

(K) Unused funds must be rolled over to the following year. Only funds that are saved over the course of all four quarterly deposits of an entire school year are eligible to roll over. Remaining funds that are generated from less than four deposits, because the eligible student participating in the program either entered or left the program midyear, must revert to the State.

(L) Accounts are active and usable until:

(1) funds are revoked by the committee for misuse;

(2) the eligible student participating in the program graduates from an institution of higher learning in this State after four consecutive years following high school graduation in which the eligible student participating in the program is not enrolled in an institution of higher learning in this State;

(3) the eligible student participating in the program attains the age of twenty‑five years; or

(4) two consecutive years of account inactivity lapse, except in the case of military families who remain in the State with guardians or return to the State before reaching the age of twenty‑five years.

(M) An agreement terminates automatically if the eligible student no longer resides in this State, and money remaining in the account reverts to the State’s general fund.

(N) Only one account may be established for an eligible student.

Section 58‑8‑180. (A) To ensure that eligible students participating in the program are treated fairly and kept safe, all participating private schools shall:

(1) comply with all health and safety laws or codes that apply to private schools;

(2) hold a valid occupancy permit if required by their municipality;

(3) not discriminate on the basis of race, color, disability, or national origin; and

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

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

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

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

(B) To ensure that funds are spent appropriately, all participating schools shall:

(1) provide parents with a receipt for all qualifying expenses at the school; and

(2) demonstrate their financial viability by showing they can repay funds that might be provided from accounts, if they are to receive fifty thousand dollars or more during the school year, by filing with the committee prior to the start of the school year:

(a) a surety bond payable to the State in an amount equal to the aggregate amount of the funds from accounts expected to be paid during the school year from eligible students admitted at the participating school; or

(b) financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the funds from accounts expected to be paid during the school year to eligible students admitted to the participating school.

(C) In order to allow parents and the public to measure the achievements of the program:

(1) parents shall ensure that:

(a) each year their eligible student participating in the program takes either the state achievement tests or nationally norm‑referenced tests identified by the committee that measure learning gains in math and language arts and provide for value‑added assessment, provided, however, that students with disabilities for whom standardized testing is not appropriate are exempt from this requirement;

(b) the results of these tests are provided to the committee or an organization chosen by the State on an annual basis, beginning with the first year of testing;

(c) the information of eligible students participating in the program is reported in a way that would allow the State to aggregate data by grade level, gender, family income level, and race; and

(d) the committee or the appropriate organization chosen by the State, if any, is informed of the graduation from high school of any eligible student participating in the program; and

(2) the committee or an organization chosen by the State, if any, shall:

(a) ensure compliance with all student privacy laws;

(b) collect all test results;

(c) provide the test results, associated learning gains, and graduation rates to the public by means of a state website after the third year of testing and graduation‑related data collection, provided, however, these findings must be aggregated by the grade level, gender, family income level, number of years of participation in the program, and race of eligible students participating in the program;

(d) provide graduation rates to the public by means of a state website after the third year of testing and test‑related data collection; and

(e) administer an annual parental satisfaction survey that asks parents of eligible students participating in the program to express their:

(i) satisfaction with the program; and

(ii) opinions on other topics, items, or issues that the State finds would elicit information about the effectiveness of the program and the number of years their eligible student has participated in it.

(D) A participating private school is autonomous and not an agent of the State or federal government, therefore:

(1) the committee or another state agency may not regulate the educational program of a participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider that accepts funds from an account;

(2) the creation of the program does not expand the regulatory authority of the State, its officers, or a school district to impose an additional regulation on a participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider beyond those necessary to enforce the requirements of the program;

(3) a participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider must be given maximum freedom to provide for the educational needs of its students without governmental control; and

(4) in a legal proceeding challenging the application of this chapter to a participating school, the State bears the burden of establishing that the law is necessary and does not impose an undue burden on participating schools.

Section 59‑8‑190. The resident school district shall provide a participating school, private tutor, eligible postsecondary institution, educational consultant, compliance organization, or other educational provider that has admitted an eligible student under the program with a complete copy of the eligible student’s school records, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1232(g).

Section 59‑8‑200. (A) The committee may contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct a study of the program with funds other than state funds.

(B) The study shall assess the:

(1) level of satisfaction with the program of eligible students participating in the program;

(2) level of parental satisfaction with the program;

(3) fiscal impact to the State and resident school districts of the program;

(4) impact of the program on public and private school capacity, availability, and quality; and

(5) academic performance and graduation rates of eligible students participating in the program in comparison with students who applied for a scholarship under the program but did not receive one because of random selection.

(C) The researchers who conduct the study shall:

(1) apply appropriate analytical and behavioral science methodologies to ensure public confidence in the study;

(2) protect the identity of participating schools and eligible students participating in the program by, among other things, keeping anonymous all disaggregated data other than that for the categories of grade level, gender, and ethnicity; and

(3) provide the General Assembly with a final copy of the evaluation of the program.

(D) The relevant public schools and the parents of eligible students participating in the program shall cooperate with the research effort by providing student assessment results and other data necessary to complete this study.

(E) The committee may accept grants to assist in funding this study.

(F) The study shall cover a period of at least five years. The General Assembly may require periodic reports from the researchers. After publishing their results, the researchers shall make their data and methodology available for public review, while complying with the requirements of the Family Educational Rights and Privacy Act of 1974.

Section 59‑8‑210. (A) There is created the Parental Review Panel to determine whether certain expenses meet the requirements to be considered qualified education expenses under this chapter when requested by the committee or as an appeal by a parent or guardian of the committee’s decision to reject the application of a private tutor, teaching service, compliance organization, educational consultant, or online educational course or program provider for approval under Section 59‑9‑140 to receive funds distributed under the program.

(B) The Parental Review Panel must consist of eight parents of eligible students participating in the program appointed by, and serving at the pleasure of, the Governor. Members of the panel:

(1) must represent no fewer than four counties in the State;

(2) must serve for one‑year terms and may be reappointed; and

(3) may not receive mileage or per diem.

(C) The Governor or his designee shall serve as the chair of the panel but may only vote if there is a tie between the other eight members of the panel.

Section 59‑8‑220. The annual number of new enrollees into the program is limited to five percent of eligible students for the 2019‑2020 School Year and ten percent of eligible students for the 2020‑2021 School Year. For the 2021‑2022 School Year, there is no eligibility limit.”

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

SECTION 4. This act takes affect beginning with the 2019‑2020 School Year, with the expenses of the Education Oversight Committee for setting up the program authorized for the 2018‑2019 School Year.

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