



SPONSOR: Rep. Hudson & Sen. Lavelle ;
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HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 161

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE ESTABLISHING THE PARENT EMPOWERMENT
EDUCATION SAVINGS ACCOUNT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as
2 shown by underline as follows:

3 CHAPTER 43. PARENT EMPOWERMENT EDUCATION SAVINGS ACCOUNT ACT

4 § 4301. Statement of Purpose

5 (a) The Parent Empowerment Education Savings Account Act allows parents to use the funds that would have
6 been allocated to their child at their resident school district for an education program of the parents' choosing.

7 (b) In establishing this program, it is the goal of the General Assembly to increase access to educational
8 opportunity for the students covered by this act. It is therefore the intent of the General Assembly that this act be construed
9 broadly to maximize parental choice in obtaining access to educational opportunities for their children.

10 (c) For the school year commencing July 1, 2015, and each succeeding school year, an eligible parent residing
11 within this State may enroll that parent's child in a non-public school in any school district in the manner provided in this
12 act.

13 (d) The forms prescribed and policies adopted pursuant to this chapter shall be available on the websites of the
14 school districts and the Department of Education.

15 § 4302. Definitions

16 For the purposes of this act, the following terms shall have the following meanings:

17 (1) "Department" means the state Department of Education or an organization chosen by the state.

18 (2) "District of residence" shall mean any reorganized school district in which the parent of a student resides.

19 (3) "Parent" shall mean every person in this State who has legal custody, guardianship of the person, or legal
20 control of a child between 5 and 16 years of age, including any person acting as a caregiver pursuant to the provisions of §
21 202(f) of this title and includes a child with a disability's biological or natural parent, or, as appropriate, a stepparent,

22 guardian, educational surrogate parent, relative caregiver or custodian. With respect to a child with a disability who has
23 reached that child's own 18th birthday, and for whom no guardian has been appointed, all rights and entitlements accorded
24 to parents by this chapter shall be deemed accorded directly to the child with a disability

25 (4) "Participating school" means a nongovernmental primary or secondary school located in this State that
26 provides education to elementary and/or secondary students and/or disabled students and has notified the Department of its
27 intention to participate in the program and that does not discriminate on the basis of race, color or national origin.

28 (5) "Resident school district" means the public school district in which the student resides.

29 (6) "Eligible student" means a resident of Delaware who is any of the following:

30 (a) An "exceptional child" as defined in Delaware Code , Title 14, Chapter 31. A "child with a disability"
31 identified as having a disability under section 504 of the rehabilitation act of 1973 (29 United States Code section
32 794); a child who because of mental, physical, emotional, developmental, speech or learning disability problems,
33 as defined by the Department of Education rules and regulations approved by the State Board of Education,
34 requires special education and related services in order to develop that person's own capabilities. A child with a
35 disability is eligible for services beginning on the child's third birthday, or earlier if otherwise provided in
36 Delaware Code, Title 14, Chapter 31.

37 (b) Any elementary or secondary student who was eligible to attend a public school in Delaware in the
38 preceding semester or is starting school in Delaware for the first time is a member of this act.

39 (7) "Program" means the Parent Empowerment Education Savings Account program created in this act.

40 (8) "Private tutoring" means tutoring services provided by tutors accredited by a regional or national accrediting
41 organization.

42 (9) "Eligible postsecondary institution" means a community college, an accredited university or an accredited
43 private postsecondary institution.

44 (10) "Treasurer" means the office of the state treasurer.

45 § 4303. Procedures for Parent Empowerment Education Savings Accounts

46 (a) Any parent of an eligible student shall qualify for the state to make a grant to their child's education savings
47 account if the parents sign an agreement promising:

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

50 (2) Not to enroll their eligible student in a public district or charter school.

51 (b) The state shall deposit into a Parent Empowerment Education Savings Account some or all of the state aid that
52 would otherwise have been provided to the resident school district for the eligible student had they enrolled in the resident
53 school district;

54 (c) Parents participating in the Parent Empowerment Education Savings Account program shall agree to use the
55 funds deposited in their eligible student's accounts for the following qualifying expenses to educate the eligible student:

56 (1) Tuition and fees at a participating school.

57 (2) Textbooks required by a participating school.

58 (3) Payment to a licensed or accredited tutor.

59 (4) Payment for purchase of curriculum.

60 (5) Tuition or fees for a non-public online learning program.

61 (6) Fees for national norm-referenced examinations, Advanced Placement examinations or similar
62 courses, and any examinations related to college or university admission.

63 (7) Contribution to the eligible student's qualified tuition program established pursuant to 11 USC
64 Section 529.

65 (8) Educational services for pupils with disabilities from a licensed or accredited practitioner or provider.

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

67 (10) Textbooks required for college or university courses.

68 (11) Fees for account management by private financial management firms approved by the Department.

69 (d) A parent must renew the qualified student's Parent Empowerment Education Savings Accounts on an annual
70 basis. Notwithstanding any changes to the student's multidisciplinary evaluation team plan, a student who has previously
71 qualified for an empowerment scholarship account shall remain eligible to apply for renewal until the student finishes high
72 school.

73 (e) The State Treasurer shall deposit into a Parent Empowerment Education Savings Account some or all of the
74 state aid that would otherwise have been provided to the resident school district for the eligible student had they enrolled in
75 the resident school district.

76 (f) A participating school, private tutor, eligible postsecondary institution or other educational provider may not
77 refund, rebate, or share a student's grant with a parent or the student in any manner. The funds in a Parent Empowerment
78 Education Saving Account may only be used for educational purposes.

79 (g) Parents will be allowed to make payments for the costs of educational programs and services not covered by
80 the funds in their accounts.

81 (h) A participating student shall be counted in the enrollment figures for his or her resident school district for the
82 purposes of calculating state aid to the resident school district. The funds needed for a grant to a Parent Empowerment
83 Education Savings Account shall be subtracted from the state school aid payable to the student's resident school district.

84 (i) In exchange for the parent's agreement pursuant to Subsection III of this act, the Department shall transfer from
85 the monies that would otherwise be allocated to a recipient's prior school district to the treasurer for deposit into a Delaware
86 Parent Empowerment Education Savings Account an amount that is the base support level prescribed for that particular
87 student.

88 (j) The Department of Education Parent Empowerment Education Savings Account fund is established consisting
89 of monies retained by the department. The Department shall administer the fund. Monies in the fund are subject to
90 legislative appropriation. Monies in the fund shall be used for the Department's costs in administering empowerment
91 scholarship accounts under this chapter. Monies in the fund are exempt from the provisions relating to lapsing of
92 appropriations. If the number of empowerment scholarship accounts significantly increases after fiscal year 2015-2016, the
93 department may request an increase in the amount appropriated to the fund in any subsequent fiscal year in the budget
94 estimate.

95 (k) The State Treasurer Parent Empowerment Education Savings Accounts fund is established consisting of
96 monies transferred by the Department to the State Treasurer pursuant to Subsection 3, F of this Act. The State Treasurer
97 shall administer the fund. Monies in the fund shall be used for the State Treasurer's costs in administering the empowerment
98 scholarship accounts under this chapter. If the number of empowerment scholarship accounts significantly increases after
99 fiscal year 2015-2016, the State Treasurer may request an increase in the amount appropriated to the fund in any subsequent
100 fiscal year in the budget estimate. Monies in the fund are subject to legislative appropriation.

101 (l) On the qualified student's graduation from a postsecondary institution or after any period of four consecutive
102 years after high school graduation in which the student is not enrolled in an eligible postsecondary institution, the qualified
103 student's Delaware Parent Empowerment Education Savings account shall be closed and any remaining funds shall be
104 returned to the state.

105 (m) Monies received pursuant to this article do not constitute taxable income to the parent of the qualified student.

106 § 4304. Administration of the Education Savings Account Act

107 (a) The Department will qualify private financial management firms to manage Parent Empowerment Education
108 Savings Accounts.

109 (b) The Department will have the authority to conduct or contract for the auditing of accounts, and will at a
110 minimum conduct random audits of accounts on an annual basis. The Department will have the authority to make any

111 parent of an eligible student ineligible for the Parent Empowerment Education Savings Account program in the event of
112 substantial misuse of the funds in the account.

113 (c) The Department will have the authority to refer cases of substantial misuse of funds to law enforcement
114 agencies for investigation if evidence of fraudulent use of an account is obtained.

115 (d) The Department shall provide parents of participating students with a written explanation of the allowable uses
116 of education savings accounts, the responsibilities of parents and the duties of the Department.

117 (e) The Department may deduct an amount from the grants to Parent Empowerment Education Savings accounts to
118 cover the costs of overseeing the accounts and administering the program up to a limit of 3 percent.

119 (f) The Department shall establish reasonable fees for private financial management firms participating in the
120 program based upon market rates.

121 (g) The Department shall make payments to eligible students' Parent Empowerment Education Savings Accounts
122 on a quarterly basis.

123 § 4305. Accountability Standards for Participating Schools

124 (a) Administrative Accountability Standards. To ensure that students are treated fairly and kept safe, all
125 participating, private schools shall:

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

127 (2) Hold a valid occupancy permit if required by their municipality or county;

128 (3) Certify that they comply with the nondiscrimination policies set forth in 42 USC 1981 and

129 (b) Financial Accountability Standards. To ensure that funds are spent appropriately, all participating schools
130 shall:

131 (1) Provide parents with a receipt for all qualifying expenses at the school.

132 (2) Demonstrate their financial viability by showing they can repay any funds that might be provided
133 from Education Savings Accounts, if they are to receive \$50,000 or more during the school year, by:

134 a. Filing with the Department prior to the start of the school year a surety bond payable to the
135 state in an amount equal to the aggregate amount of the funds from Parent Empowerment Education
136 Savings Accounts expected to be paid during the school year from students admitted at the participating
137 school; or

138 b. Filing with the Department prior to the start of the school year financial information that
139 demonstrates the school has the ability to pay an aggregate amount equal to the amount of the funds from

140 Parent Empowerment Education Savings Accounts expected to be paid during the school year to students
141 admitted to the participating school.

142 (3) The Department may refer cases of substantial misuse of monies to the attorney general for
143 investigation if the department obtains evidence of fraudulent use of an account.

144 (4) The Department shall make quarterly transfers of the amount calculated to the treasurer for deposit
145 into the Parent Empowerment Savings Account of each qualified student.

146 (5) The Department shall determine a period that is between July 1 and May 1 of each year during which
147 it will accept applications for the following fiscal year. On or before May 30 of each year, the Department shall
148 furnish to the joint legislative budget committee an estimate of the amount required to fund Parent Empowerment
149 Education Savings account for the following fiscal year. The department shall include in its budget request for the
150 following fiscal year the amount estimated for each qualified student.

151 (c) Participating School Autonomy. A participating private school is autonomous and not an agent of the state or
152 federal government and therefore:

153 (1) The Department or any other state agency may not in any way regulate the educational program of a
154 participating private school or education provider that accepts funds from a Parent Empowerment Education
155 Savings account;

156 (2) The creation of the Parent Empowerment Education Savings Account Program does not expand the
157 regulatory authority of the state, its officers, or any school district to impose any additional regulation of private
158 schools or education providers beyond those necessary to enforce the requirements of the program; and

159 (3) Participating private schools and education providers shall be given the maximum freedom to provide
160 for the educational needs of their students without governmental control.

161 § 4306. Responsibilities of the Department of Education

162 (a) The Department shall ensure that eligible students and their parents are informed annually of which schools
163 will be participating in the Education Savings Account Program.

164 (b) The Department shall create a standard form that parents of eligible students can submit to establish their
165 student's eligibility for the Parent Empowerment Education Savings Account Program. The Department shall ensure that
166 the application is readily available to interested families through various sources, including the Internet.

167 (c) The Department may bar a participating school or education provider from the Parent Empowerment Education
168 Savings Account Program if the Department establishes that the participating school or education provider has:

169 (1) Routinely failed to comply with the accountability standards established in § 4305 of this chapter; or

170 (2) Failed to provide the eligible student with the educational services funded by the Education Savings
171 Account.

172 (d) If the Department decides to bar a participating school or education provider from the program, it shall notify
173 eligible students and their parents of this decision as quickly as possible but no later than 30 calendar days.

174 (e) The Department shall adopt rules and regulations as necessary for the administration of the Parent
175 Empowerment Education Savings Account Program.

176 § 4307. Responsibilities of Resident School Districts.

177 (a) The resident school district shall provide a participating school or education provider that has admitted an
178 eligible student under this program with a complete copy of the student's school records, while complying with the Family
179 Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

180 (b) The resident school district shall provide transportation for an eligible student to and from the participating
181 school or education provider under the same conditions as the resident school district is required to provide transportation
182 for other resident students to private schools as per current law. The resident school district will qualify for state
183 transportation aid for each student so transported.

184 Section 2. This Act takes effect August 1, 2015.

SYNOPSIS

This bill provides opportunities to parents of special needs students to select the most appropriate and productive educational pathway for their children by using funds otherwise allocated to their residential school district.

The goal of the Parent Empowerment Educational Savings Account Act is to increase educational opportunities for special needs students. The funds will be administered and audited by the State Treasurer.

The co-sponsors of this legislation appeal to the General Assembly to dignify parents of special needs children, by approving an innovative experiment to empower certain parents with the authority to design their special needs children's education plan, subject only to state approval of vendors to be managed by the state Department of Education or its designee. The co-sponsors hope to complement the parallel efforts of the state regarding Special Needs students, with insights gained from these empowered parents, acting as they deem is best for their children and accessing diverse individual and/or collective support services that might be not be identified or recognized by state efforts.

Funds for this experimental project would transfer from those monies allocated or otherwise obligated by the State for each Special Need student and would therefore not require any new, unbudgeted, or unanticipated funds from the State. Management of these funds would be done by the State Treasurer, which would also be responsible for compliance audits.