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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

Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," providing for education savings account; and conferring powers and imposing duties on the Department of Education and the State Treasury.

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

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

ARTICLE XX-H

EDUCATION SAVINGS ACCOUNT

Section 2001-H. Short title.

This article shall be known and may be cited as the Education Savings Account Act.

Section 2002-H. Definitions.

The following words and phrases when used in this article

shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

"Education savings account." A spending account established and administered by the State Treasury for a school-age child and controlled by a parent, with money that may be spent on a qualified education expense as provided for under section 2005-H.

"Institution of higher education." As defined under section 118(c).

"Low-achieving public school." A public school that ranked in the lowest 15% of the school's designation as an elementary school or a secondary school based on combined mathematics and reading scores from the annual assessment administered in the previous school year and for which the department has posted results on its publicly accessible Internet website. The term does not include a charter school, cyber charter school or area vocational-technical school.

"Nonpublic school." A school, other than a public school, located within this Commonwealth where a Commonwealth resident may legally fulfill the compulsory attendance requirements of this act, that meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241) and that complies with section 1521.

"Parent." Either of the following:

(1) A resident of this Commonwealth who is the parent, custodial parent or legal guardian of a school-age child.

(2) An individual in this Commonwealth who has control or charge of a school-age child and the legal right to direct

the education of the school-age child.

"Participating entity." Any of the following that has an application under section 2007-H approved by the department:

(1) A nonpublic school for kindergarten through grade 12, or a combination of grades.

(2) An institution of higher education.

(3) A distance learning program that is not offered by a public school or the department.

(4) A tutor who is a teacher licensed in any state, has taught at an eligible postsecondary institution and is a subject matter expert or a tutor or tutoring agency otherwise approved by the department.

The term does not include a parent of a school-age child to the extent the parent provides educational services directly to the school-age child, as well as after the school-age child graduates from high school.

"Program." The education savings account program provided for under this article.

"Public school." A school district, charter school, cyber charter school, regional charter school, intermediate unit or area vocational-technical school.

"Resident school district." The school district in which a school-age child resides.

"School-age child." A child enrolled in kindergarten through grade 12 and who resides in this Commonwealth.

"Student with a disability." A school-age child who has been identified, in accordance with 22 Pa. Code Ch. 14 (relating to special education services and programs), as a "child with a disability," as defined in 34 CFR 300.8 (relating to child with a disability).

Section 2003-H. Application and agreement.

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

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

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

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

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

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

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

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

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

2004-H in the education savings account.

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

(d) Establishment.--

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

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

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

(f) Termination.--

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

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

(g) Automatic termination.--

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

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

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

(h) Renewal.--

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

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

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

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

Section 2004-H. Amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2005-H. Qualified education expenses.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Payment system.--

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

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

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

(e) Source of payment.--

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

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

education savings account.

Section 2006-H. Audits and penalties.

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

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

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

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

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

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

Section 2007-H. Participating entity application and requirements.

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

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

the parties relating to the program.

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

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

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

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

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

(f) Notice.--

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

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

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

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

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

(h) Withdrawal from enrollment.--In the event that an eligible student withdraws from enrollment in a participating entity prior to the completion of the school year, the participating entity shall, within 15 days of withdrawal, provide the department with written notice of the withdrawal.

Section 2008-H. Academic requirements.

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

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

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

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

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

(b) Exception.--

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

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

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

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

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

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

Section 2009-H. Listing of participating entities.

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

Section 2010-H. Education records.

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

Section 2011-H. Transportation.

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

Section 2012-H. Participating entity autonomy.

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

(b) Prohibition.--

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

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

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

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

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

Section 2013-H. Regulations.

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

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