AN ACT

Establishing the Education Opportunity Account Scholarship Program for Exceptional Students; and imposing duties on the Treasury Department, participating schools and resident school districts.

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

Section 1. Short title.

This act shall be known and may be cited as the Education Opportunity Account Scholarship Program for Exceptional Students Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advanced Placement Program." A program authorized by the college board that allows a student to study college-level subjects while enrolled in high school and to receive advanced placement and college credit for earning a qualified score on the course-related Advanced Placement Program exam.
"Application." The application for participation in the program developed by the department under section 4(12).

"Department." The Treasury Department of the Commonwealth.

"Education Opportunity Account" or "account." An account held in the name of an eligible student into which the Commonwealth may make grants for the purpose of paying certain education-related expenses as permitted under section 3(b)(3).

"Eligible postsecondary institution." The term includes all of the following:

3. The Pennsylvania State University.
4. The University of Pittsburgh.
5. Temple University.
6. Lincoln University.
7. Any other institution that is designated as "State-related" by the Commonwealth.
8. Thaddeus Stevens College of Technology.
9. An independent institution of higher education.

"Eligible student." A school-age child who resides in this Commonwealth, has not yet received a high school diploma and satisfies both of the following:

1. Is the subject of one of the following:
   (i) Attended a public school in this Commonwealth in the preceding semester or school year.
   (ii) Received funds from this program in the
preceding school year.

(iii) Will attend either kindergarten or first grade in the upcoming semester.

(iv) Is currently a child in foster care as defined in section 2 of the act of November 23, 2010 (P.L.1264, No.119), known as the Children in Foster Care Act.

(v) Is a child whose adoption decree was entered not more than one year prior to submission of the application under section 3(b)(1).

(vi) Is a child whose parent or legal guardian is on full-time active-duty status in the armed forces of the United States, including members of the National Guard and reserve on active duty orders under 10 U.S.C. § 12301 et seq. (relating to Reserve components generally) and 10 U.S.C. § 12401 et seq. (relating to Army and Air National Guard of the United States: status).

(2) Is the subject of one of the following:

(i) an individualized education program pursuant to the Individuals with Disabilities Education Act (Public Law 91-230, 20 U.S.C. § 1400 et seq.) and 22 Pa. Code Ch. 14 (relating to special education services and programs);

(ii) a section 504 service agreement pursuant to section 504 of the Rehabilitation Act of 1973 (Public Law 93-112, 29 U.S.C. § 701 et seq.) and 22 Pa. Code Ch. 15 (relating to protected handicapped students);

(iii) a gifted individualized education plan pursuant to 22 Pa. Code Ch. 16 (relating to special education for gifted students);

(iv) a medical diagnosis in one of the categories for a child with a disability under 20 U.S.C. § 1401(3)
(A) (relating to definitions); or

(v) a child eligible for early intervention services under 55 Pa. Code § 4226.22 (relating to eligibility for early intervention services).

"Independent institution of higher education." An institution of higher education that is operated not for profit, located in and incorporated or chartered by the Commonwealth and entitled to confer degrees as specified in 24 Pa.C.S. § 6505 (relating to power to confer degrees) and to apply to itself the designation "college" or "university" as provided for by the standards and qualifications prescribed by the State Board of Education under 24 Pa.C.S. Ch. 65 (relating to private colleges, universities and seminaries).

"Parent." A resident of this Commonwealth who is a parent or guardian of a school-age child.

"Participating school." A nonpublic school as defined in section 922.1-A of the Public School Code of 1949, that provides a program of instruction for kindergarten through grade 12, or a combination of grades, and has notified the department of the nonpublic school's intention to participate in the program and comply with the program's requirements.

"Program." The Education Opportunity Account Scholarship Program for Exceptional Students established by this act.

"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 enrolling in kindergarten or in grades 1 through 12.
"State assessment." The Pennsylvania System of School Assessment test, the Keystone Exam or another test established or approved by the State Board of Education or the General Assembly to meet the requirements of section 2603-B or 2604-B of the Public School Code of 1949 or 22 Pa. Code § 4.51 (relating to State assessment system) or required under the Every Student Succeeds Act (Public Law 114-95, 129 Stat. 1802) or its successor Federal statute.

"Tutoring." Tutoring services provided by a tutor or a tutoring facility accredited by a regional or national accrediting organization, a person holding a certificate listed in section 1201 of the Public School Code of 1949, a person with National Board Certification or with experience teaching in higher education or a properly qualified private tutor as defined in section 1327 of the Public School Code of 1949.

Section 3. Program.
(a) Establishment.--Beginning with the 2022-2023 school year, the Education Opportunity Account Scholarship Program for Exceptional Students is established in the department.
(b) Administration.--The program shall be administered by the department as follows:

(1) An eligible student shall qualify on an annual basis to receive from the Commonwealth a grant to the eligible student's account if the parent of the eligible student agrees, in an application submitted by the parent to the department by April 1 of the year preceding the school year in which participation in the program is sought and accepted by the department under section 4(4):

(i) To provide an education for the eligible student in at least the subjects of reading, grammar,
mathematics, social studies and science.

(ii) Not to enroll the eligible student in a public school for a school year in which the eligible student is participating in the program.

(iii) Not to accept a scholarship for the eligible student under the educational improvement tax credit program or opportunity scholarship tax credit program established under Article XX-B of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, in an amount which, when combined with an award made under the program, exceeds the tuition, costs and fees of attendance at the student's chosen school for a school year in which the eligible student is participating in the program.

(iv) For a student with special needs who is awarded funds under this program, participation in the program is a parental placement of the child under 20 U.S.C. § 1412(a)(10) (relating to State eligibility) of the Individuals with Disabilities Education Act.

(2) If the department approves an eligible student's application for participation in the program, the Commonwealth shall deposit into the account of the eligible student participating in the program a base grant amount equal to 90% of all State payments made to the resident school district of the eligible student for the immediately preceding school year divided by the resident school district's average daily membership for the immediately preceding school year. The base grant amount shall be increased according to the student's disability. The additional grant amount for the disability shall be based on
the category of disability by which the resident school
district is required to categorize the eligible student for
the purpose of the report required under section 1372(8) of
the Public School Code of 1949, as follows:

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

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

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

This amount shall be deposited on a quarterly basis, as
provided in section 4(8).

(3) A parent of an eligible student participating in the
program shall agree in the application submitted under
paragraph (1) to use the funds deposited in the eligible
student's account for the following qualifying expenses to
educate the eligible student:

(i) Tuition and fees at a participating school.

(ii) Textbooks required by a participating school.

(iii) Payment for tutoring.

(iv) Payment for purchase of curriculum and other
materials required by the curriculum.

(v) Tuition or fees for a nonpublic online learning
program.

(vi) Fees for national norm-referenced examinations,
Advanced Placement Program examinations, State-recognized
industry certification exams, any examinations related to
college or university admission and fees for preparatory
courses for those exams.

(vii) Contribution to the eligible student's

(viii) Educational services and therapies, including occupational, behavioral, physical, speech-language and audiology therapies, from a licensed or accredited practitioner or provider.

(ix) Tuition and fees at an eligible postsecondary institution.

(x) Textbooks required for courses at an eligible postsecondary institution.

(xi) Fees for account management by private financial management firms identified by the department under section 4(1).

(xii) Costs associated with obtaining an industry certification.

(xiii) Services provided under contract by a public school.

(xiv) Computer hardware and computer software associated with instruction or any of the qualifying expenses described in this paragraph.

(4) A parent may appeal the department's decision to deny acceptance into the program under 2 Pa.C.S. Chs. 1 (relating to general provisions), 5 (relating to practice and procedure) and 7 (relating to judicial review).

(5) A provider of a service authorized under paragraph (3) may not refund, rebate or share payment from an eligible student's account with a parent or the eligible student in any manner. Funds may only be refunded directly to an account. The funds in an account may only be used for
purposes authorized under paragraph (3).

(6) An eligible student shall be counted in the average daily membership of the eligible student's resident school district for the purposes of calculating State aid to the resident school district. The amount deposited by the Commonwealth into an eligible student's account shall be subtracted from the State aid payable to the eligible student's resident school district.

(c) Tax consequences and status of awards.--

(1) The money in an account of an eligible student is not taxable income to the parent of the eligible student or to the eligible student.

(2) An award made or funds expended from a student's account under the program may not be construed to be an appropriation or financial assistance to the student's chosen school.

(d) Unused funds.--Money in an account of an eligible student that is unused at the end of a school year shall roll over to be used by the eligible student in subsequent years. Upon the eligible student reaching 26 years of age, such money shall be deposited into the General Fund.

(e) Regulations.--The department shall promulgate regulations as necessary to implement the program.

Section 4. Duties of department.

The department shall:

(1) Determine whether to solicit requests for proposals from private financial management firms to manage some or all parts of the program.

(2) Collaborate with the Office of the Auditor General to conduct the auditing of eligible student accounts and, at
a minimum, conduct random audits of the accounts on an annual basis. An eligible student shall be ineligible for the program in the event that the parent of the eligible student engages in fraudulent misuse of the eligible student account. A parent may appeal the department's decision to make an eligible student ineligible under 2 Pa.C.S. Chs. 1 (relating to general provisions), 5 (relating to practice and procedure) and 7 (relating to judicial review).

(3) Refer cases of fraudulent misuse of eligible student accounts to law enforcement agencies for investigation. The balance of money in an eligible student account in which fraudulent misuse of the account has occurred shall revert to the General Fund.

(4) Within 30 days of receipt of an application for participation in the program submitted by a parent under section 3(b)(1), notify the school district and parent of a student's acceptance or nonacceptance into the program. An eligible student shall be accepted into the program if the student meets the requirements of this act. A parent may appeal the department's decision under this paragraph.

(5) Provide parents of eligible students with a written explanation of the allowable uses of the accounts, the responsibilities of parents and the duties of the department.

(6) In the department's discretion, deduct an amount from the grants to accounts necessary to pay the costs of overseeing the accounts and administering the program up to a limit of 3%.

(7) Establish reasonable fees for private financial management firms that manage the accounts based upon market rates.
(8) Make payments to the accounts on a quarterly basis on August 1, November 1, February 1 and May 1 of each year of participation in the program.

(9) Provide for development of a system to allow parents to pay for services by electronic funds transfer, including, but not limited to, debit cards, electronic payment systems or any other means of electronic payment that the department determines to be commercially viable, cost effective and easily understandable and usable by parents. The department shall not adopt a system that exclusively requires parents to be reimbursed for out-of-pocket expenses.

(10) Develop a process by which participating schools may inform the department of their interest in participating in the program and demonstrate their compliance with the requirements of this act.

(11) Ensure that eligible students and their parents are informed annually of the participating schools in the program by posting a list of participating schools on its publicly accessible Internet website by March 1, 2022, and by March 1 of each year thereafter.

(12) By March 1, 2022, develop a standard application form which can be accessed and submitted electronically that parents of eligible students must use to apply to participate in the program and post the standard application form on the department's publicly accessible Internet website.

Section 5. Accountability standards for participating schools.

(a) General rule.--A participating school shall:

(1) Comply with all health and safety laws or codes that apply to participating schools.

(2) Hold a valid occupancy permit if required by the
municipality in which the participating school is located.

(3) Comply with the applicable nondiscrimination
policies set forth in section 1981 of the Civil Rights Act of
1964 (Public Law 88-352, 78 Stat. 241) and with section 1521
of the act of March 10, 1949 (P.L.30, No.14), known as the
Public School Code of 1949.

(4) Comply with the provisions of sections 111 and 111.1
of the Public School Code of 1949.

(b) Financial accountability standards.--A participating
school shall:

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

(2) Demonstrate the participating school's financial
viability by showing the participating school can repay funds
that might be provided from eligible student accounts, if the
participating school receives $50,000 or more from the
accounts during the school year, by filing with the
department prior to the start of the school year:

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

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

(c) Academic accountability standards.--

(1) A parent of an eligible student shall ensure that:
(i) Each year in grades three through eight and once in grades nine through twelve the eligible student takes either the State assessment or nationally norm-referenced tests that measure learning gains in mathematics, language arts and, for students in grades four and eight and in grades nine through twelve, science and provide for value-added assessment. An eligible student for whom standardized testing is not appropriate under the student's individualized education program shall be exempt from this requirement.

(ii) The results of the tests taken by an eligible student under subparagraph (i) are reported to the department on an annual basis, beginning with the first year of testing, in a manner that allows the department to aggregate data for eligible students participating in the program by grade level, gender, family income level and race.

(iii) The department is informed of the eligible student's graduation from high school.

(2) The department shall:


(ii) Collect results for all tests taken by eligible students under paragraph (1)(i).

(iii) Post the results of all tests taken by eligible students under paragraph (1)(i), associated learning gains and graduation rates for eligible students participating in the program on the department's publicly accessible Internet website after the third year of test
and graduation-related data collection, subject to the requirements of the Family Educational Rights and Privacy Act of 1974. The findings shall be aggregated by the eligible students' grade level, gender, family income level, number of years of participation in the program and race.

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

(A) Their satisfaction with the program.

(B) The number of years their children have participated in the program.

(C) Their opinions on other topics, items or issues that the department determines will elicit information about the effectiveness of the program.

(d) Participating school autonomy.--

(1) A participating school shall be autonomous and not an agent of the department or the Commonwealth.

(2) The department or any other State agency may not regulate the educational program of a participating school or education provider that accepts money from an eligible student account.

(3) The establishment of the program shall not be construed to expand the regulatory authority of the State, its officers or any school district to impose any additional regulation of nonpublic schools or education providers beyond those necessary to enforce the requirements of the program.

Section 6. Bar of certain participating schools.

(a) General rule.--The department may bar a participating school or education provider from participation in the program

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if the department establishes that the participating school or education provider has:

(1) routinely failed to comply with the accountability standards established in section 5; or

(2) failed to provide an eligible student with the educational services funded by the eligible student's account.

(b) Notice.--If the department decides to bar a participating school or education provider from participation in the program, the department shall post the decision on the department's publicly accessible Internet website. A participating school or education provider may appeal the department's decision.

Section 7. Duties of resident school districts.

(a) School records.--A resident school district shall provide a participating school or education provider that has admitted an eligible student participating in the program with a complete copy of the eligible student's school records immediately upon the eligible student's enrollment in the participating school or beginning of services from the education provider, subject to the Family Educational Rights and Privacy Act of 1974 (Public Law 90-247, 20 U.S.C. § 1232g).

(b) Transportation.--

(1) A resident school district shall provide transportation for an eligible student to and from the participating school or education provider under the same conditions as the resident school district provides transportation of other resident students to nonpublic schools under section 1361 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.
(2) The resident school district shall qualify for State transportation reimbursement for each eligible student so transported.

Section 8. Legal proceedings.

(a) General rule.--In a legal proceeding challenging the application of this act to an education service provider, the Commonwealth bears the burden of establishing that the law is necessary and does not impose an undue burden on the education service provider.

(b) Liability.--No liability shall arise on the part of the agency, the Commonwealth or a public school or school district based on the award of or use of an account under this act.

(c) Challenges.--If any part of this act is challenged in a State court as violating either the Constitution of the United States or the Constitution of Pennsylvania, parents of eligible students and eligible students who have an account shall be permitted to intervene as of right in such lawsuit for the purposes of defending the account program's constitutionality. For the purposes of judicial administration, a court may require that all parents file a joint brief so long as they are not required to join a brief filed on behalf of a named State defendant.

(d) Severability.--If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 9. Effective date.

This act shall take effect in 60 days.