

AN ACT

1 Establishing the Keystone Scholarship Program for Exceptional
2 Students; and imposing duties on the Department of Education,
3 participating schools and resident school districts.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Keystone
8 Scholarship Program for Exceptional Students Act.

9 Section 2. Definitions.

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

13 "Advanced Placement Program." A program authorized by the
14 college board that allows a student to study college-level
15 subjects while enrolled in high school and to receive advanced
16 placement and college credit for earning a qualified score on
17 the course-related Advanced Placement Program exam.

18 "Application." The application for participation in the

1 program developed by the department under section 4(12).

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

4 "Educational Excellence Flexible Spending Account" or
5 "account." An account held in the name of an eligible student
6 into which the Commonwealth may make grants for the purpose of
7 paying certain education-related expenses as permitted under
8 section 3(b)(3).

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

11 (1) A community college operating under Article XIX-A of
12 the act of March 10, 1949 (P.L.30, No.14), known as the
13 Public School Code of 1949.

14 (2) A university within the State System of Higher
15 Education established under Article XX-A of the Public School
16 Code of 1949.

17 (3) The Pennsylvania State University.

18 (4) The University of Pittsburgh.

19 (5) Temple University.

20 (6) Lincoln University.

21 (7) Any other institution that is designated as "State-
22 related" by the Commonwealth.

23 (8) Thaddeus Stevens College of Technology.

24 (9) An independent institution of higher education.

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

28 (1) Is the subject of one of the following:

29 (i) Attended a public school in this Commonwealth in
30 the preceding semester or school year.

1 (ii) Received funds from this program in the
2 preceding school year.

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

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

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

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

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

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

23 (ii) a section 504 service agreement pursuant to
24 section 504 of the Rehabilitation Act of 1973 (Public Law
25 93-112, 29 U.S.C. § 701 et seq.) and 22 Pa. Code Ch. 15
26 (relating to protected handicapped students);

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

30 (iv) a medical diagnosis in one of the categories

1 for a child with a disability under 20 U.S.C. § 1401(3)

2 (A) (relating to definitions); or

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

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

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

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

23 "Program." The Keystone Scholarship Program for Exceptional
24 Students established by this act.

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

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

30 "School-age child." A child enrolling in kindergarten or in

1 grades 1 through 12.

2 "State assessment." The Pennsylvania System of School
3 Assessment test, the Keystone Exam or another test established
4 or approved by the State Board of Education or the General
5 Assembly to meet the requirements of section 2603-B or 2604-B of
6 the Public School Code of 1949 or 22 Pa. Code § 4.51 (relating
7 to State assessment system) or required under the Every Student
8 Succeeds Act (Public Law 114-95, 129 Stat. 1802) or its
9 successor Federal statute.

10 "Tutoring." Tutoring services provided by a tutor or a
11 tutoring facility accredited by a regional or national
12 accrediting organization, a person holding a certificate listed
13 in section 1201 of the Public School Code of 1949, a person with
14 National Board Certification or with experience teaching in
15 higher education or a properly qualified private tutor as
16 defined in section 1327 of the Public School Code of 1949.
17 Section 3. Program.

18 (a) Establishment.--Beginning with the 2019-2020 school
19 year, the Keystone Scholarship Program for Exceptional Students
20 is established in the department.

21 (b) Administration.--The program shall be administered by
22 the department as follows:

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

30 (i) To provide an education for the eligible student

1 in at least the subjects of reading, grammar,
2 mathematics, social studies and science.

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

6 (iii) Not to accept a scholarship for the eligible
7 student under the educational improvement tax credit
8 program or opportunity scholarship tax credit program
9 established under Article XX-B of the act of March 10,
10 1949 (P.L.30, No.14), known as the Public School Code of
11 1949, for a school year in which the eligible student is
12 participating in the program.

13 (iv) For students with special needs who are awarded
14 funds under this program, participation in the program is
15 a parental placement of their child under 20 U.S.C. §
16 1412(a)(10) (relating to State eligibility) of the
17 Individuals with Disabilities Education Act.

18 (2) If the department approves an eligible student's
19 application for participation in the program, the
20 Commonwealth shall deposit into the account of the eligible
21 student participating in the program an amount equal to 90%
22 of all State payments made to the resident school district of
23 the eligible student for the immediately preceding school
24 year divided by the resident school district's average daily
25 membership for the immediately preceding school year. This
26 amount shall be deposited on a quarterly basis, as provided
27 in section 4(8).

28 (3) A parent of an eligible student participating in the
29 program shall agree in the application submitted under
30 paragraph (1) to use the funds deposited in the eligible

1 student's account for the following qualifying expenses to
2 educate the eligible student:

3 (i) Tuition and fees at a participating school.

4 (ii) Textbooks required by a participating school.

5 (iii) Payment for tutoring.

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

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

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

15 (vii) Contribution to the eligible student's
16 qualified tuition program established pursuant to section
17 529 of the Internal Revenue Code of 1986 (Public Law 99-
18 514, 26 U.S.C. § 529).

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

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

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

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

30 (xii) Costs associated with obtaining an industry

1 certification.

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

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

7 (3.1) A parent may appeal the department's decision to
8 deny acceptance into the program under 2 Pa.C.S. Chs. 1
9 (relating to general provisions), 5 (relating to practice and
10 procedure) and 7 (relating to judicial review).

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

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

24 (c) Tax consequences.--The money in an account of an
25 eligible student is not taxable income to the parent of the
26 eligible student or to the eligible student.

27 (d) Unused funds.--Any unused funds at the end of a school
28 year shall roll over to be used by the eligible student in
29 subsequent years.

30 (e) Regulations.--The State Board of Education shall

1 promulgate regulations, subject to the act of June 25, 1982
2 (P.L.633, No.181), known as the Regulatory Review Act, necessary
3 to implement the program.

4 Section 4. Duties of department.

5 The department shall:

6 (1) Solicit requests for proposals from private
7 financial management firms to manage the accounts
8 financially.

9 (2) Conduct or contract for the auditing of accounts
10 and, at a minimum, conduct random audits of accounts on an
11 annual basis. An eligible student shall be ineligible for the
12 program in the event that the parent of the eligible student
13 engages in fraudulent misuse of the funds in the account. A
14 parent may appeal the department's decision to make an
15 eligible student ineligible under 2 Pa.C.S. Chs. 1 (relating
16 to general provisions), 5 (relating to practice and
17 procedure) and 7 (relating to judicial review).

18 (3) Refer cases of fraudulent misuse of funds to law
19 enforcement agencies for investigation. Remaining funds in an
20 account in which fraudulent misuse of funds has occurred will
21 revert to the General Fund.

22 (4) Within 45 days of receipt of an application for
23 participation in the program submitted by a parent under
24 section 3(b)(1), notify the parent of a student's acceptance
25 or nonacceptance into the program. An eligible student shall
26 be accepted into the program if the student meets the
27 requirements of this act. A parent may appeal the
28 department's decision under this paragraph.

29 (5) Provide parents of eligible students with a written
30 explanation of the allowable uses of accounts, the

1 responsibilities of parents and the duties of the department.

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

6 (7) Establish reasonable fees for private financial
7 management firms that manage accounts based upon market
8 rates.

9 (8) Make payments to eligible students' accounts on a
10 quarterly basis on August 1, November 1, February 1 and May 1
11 of each year of participation in the program.

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

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

24 (11) Ensure that eligible students and their parents are
25 informed annually of the participating schools in the program
26 by posting a list of participating schools on its publicly
27 accessible Internet website by April 1, 2018, and by April 1
28 of each year thereafter.

29 (12) By February 1, 2018, develop a standard application
30 form which can be accessed and submitted electronically that

1 parents of eligible students must use to apply to participate
2 in the program and post the standard application form on the
3 department's publicly accessible Internet website.

4 Section 5. Accountability standards for participating schools.

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

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

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

10 (3) Comply with the nondiscrimination policies set forth
11 in section 1981 of the Civil Rights Act of 1964 (Public Law
12 88-352, 78 Stat. 241) and with section 1521 of the act of
13 March 10, 1949 (P.L.30, No.14), known as the Public School
14 Code of 1949.

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

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

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

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

27 (i) a surety bond payable to the Commonwealth in an
28 amount equal to the aggregate amount of the funds from
29 accounts expected to be paid during the school year on
30 behalf of eligible students admitted at the participating

1 school; or

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

7 (c) Academic accountability standards.--

8 (1) A parent of an eligible student shall ensure that:

9 (i) Each year in grades three through eight and once
10 in grades nine through twelve the eligible student takes
11 either the State assessment or nationally norm-referenced
12 tests that measure learning gains in mathematics,
13 language arts and, for students in grades four and eight
14 and in grades nine through twelve, science and provide
15 for value-added assessment. Eligible students for whom
16 standardized testing is not appropriate under the
17 student's individualized education program are exempt
18 from this requirement.

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

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

28 (2) The department shall:

29 (i) Ensure compliance with all student privacy laws,
30 including the Family Educational Rights and Privacy Act

1 of 1974 (Public Law 90-247, 20 U.S.C. § 1232g).

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

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

15 (iv) Administer an annual parental satisfaction
16 survey that shall ask parents of eligible students
17 participating in the program to express:

18 (A) Their satisfaction with the program.

19 (B) The number of years their child has
20 participated in the program.

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

24 (d) Participating school autonomy.--

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

27 (2) The department or any other State agency may not in
28 any way regulate the educational program of a participating
29 school or education provider that accepts funds from an
30 account.

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

6 Section 6. Bar of certain participating schools.

7 (a) General rule.--The department may bar a participating
8 school or education provider from participation in the program
9 if the department establishes that the participating school or
10 education provider has:

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

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

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

22 Section 7. Duties of resident school districts.

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

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

10 Section 8. Legal proceedings.

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

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

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

28 (d) Severability.--If any provision of this act or the
29 application thereof to any person or circumstance is held
30 invalid, such invalidity shall not affect other provisions or

1 applications of this act which can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this act are declared to be severable.

4 Section 9. Effective date.

5 This act shall take effect in 60 days.