

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1717 Session of  
2017

---

INTRODUCED BY NEILSON, MURT, BARRAR, CALTAGIRONE, TOPPER,  
McNEILL, READSHAW, DRISCOLL, SAYLOR, BULLOCK, GROVE,  
D. COSTA, RAPP, PASHINSKI, DUSH AND DONATUCCI,  
AUGUST 16, 2017

---

REFERRED TO COMMITTEE ON EDUCATION, AUGUST 16, 2017

---

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An  
2 act relating to the public school system, including certain  
3 provisions applicable as well to private and parochial  
4 schools; amending, revising, consolidating and changing the  
5 laws relating thereto," providing for individual empowerment  
6 scholarship accounts; and establishing the Pennsylvania  
7 Empowerment Scholarship Accounts Program, the Department of  
8 Education Empowerment Scholarship Fund and the State  
9 Treasurer Empowerment Scholarship Fund.

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

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

15 ARTICLE XXVI-J

16 INDIVIDUAL EMPOWERMENT SCHOLARSHIP ACCOUNTS

17 Section 2601-J. Definitions.

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

1 "Annual education plan." An initial individualized  
2 evaluation and subsequent annual reviews that are developed for  
3 a student who meets the requirements under section 2602-J(b) to  
4 determine ongoing annual eligibility through the school year in  
5 which the student reaches 22 years of age.

6 "Curriculum." A complete course of study approved by the  
7 department for content areas or grade levels, including  
8 supplemental materials required by the curriculum.

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

11 "Eligible postsecondary institution." A community college as  
12 defined in section 1901-A, a university under the jurisdiction  
13 of the Pennsylvania State System of Higher Education or an  
14 accredited private postsecondary institution.

15 "Parent." A resident of this Commonwealth who is the parent  
16 or legal guardian of a qualified student.

17 "Qualified school." A preschool for pupils with disabilities  
18 or a nongovernmental primary or secondary school that is located  
19 in this Commonwealth and that does not discriminate on the basis  
20 of race, color or national origin.

21 "Qualified student." A person who meets the requirements  
22 under section 2602-J(b).

23 "Treasurer." The State Treasurer of the Commonwealth.  
24 Section 2602-J. Pennsylvania Empowerment Scholarship Accounts  
25 Program.

26 (a) Establishment.--The Pennsylvania Empowerment Scholarship  
27 Accounts Program is established in the Department of Education  
28 to provide options for the education of students in this  
29 Commonwealth.

30 (b) Qualified students.--A resident of this Commonwealth is

1 qualified for an individual empowerment scholarship account if  
2 the person meets any of the following requirements:

3 (1) Is identified as having a disability under section  
4 504 of the Rehabilitation Act of 1973 (Public Law 93-112, 29  
5 U.S.C. § 794 et seq.).

6 (2) Is identified as a student with a disability as  
7 defined in section 1301-A.

8 (3) Is attending a school or school district that has  
9 been assigned a score below 60 in its School Performance  
10 Profile under section 603-B or who is currently eligible to  
11 attend kindergarten and who resides within the attendance  
12 boundary of a school that has been assigned a score below 60  
13 in its School Performance Profile.

14 (4) Is a previous recipient of a scholarship issued  
15 under this article, unless the qualified student's enrollment  
16 agreement has been terminated under section 2603-J(e).

17 (5) A child of a parent who is a member of the armed  
18 forces of the United States and who is on active duty or was  
19 killed in the line of duty. A child who meets the  
20 requirements of this paragraph is not subject to subsection  
21 (c).

22 (c) Enrollment agreement.--To enroll a qualified student for  
23 an individual empowerment scholarship account, the parent of the  
24 qualified student must sign an enrollment agreement to do all of  
25 the following:

26 (1) Use a portion of the individual empowerment  
27 scholarship account money allocated annually to provide an  
28 education for the qualified student in the subjects of  
29 reading, grammar, mathematics, social studies and science,  
30 unless the individual empowerment scholarship account is

1 allocated money according to a transfer schedule other than  
2 the quarterly transfers under section 2603-J(a).

3 (2) Not enroll the qualified student in a school  
4 district or charter school and release the school district or  
5 charter school from all obligations.

6 (3) Not accept a scholarship from a school tuition  
7 organization for the qualified student in the same year a  
8 parent signs the agreement under this section.

9 (4) Not file an affidavit of intent to homeschool.

10 (5) Not use money deposited in the qualified student's  
11 account for any of the following:

12 (i) Computer hardware or other technological  
13 devices.

14 (ii) Transportation of the pupil.

15 (iii) Consumable educational supplies, including  
16 paper, pens or markers.

17 (6) Use the money deposited in the individual  
18 empowerment scholarship account only for the following  
19 expenses of the qualified student:

20 (i) Tuition or fees at a qualified school.

21 (ii) Textbooks required by a qualified school.

22 (iii) If the qualified student meets the criteria  
23 specified in subsection (b)(1) or (2) as determined by a  
24 school district or by an independent third party  
25 contracted for under section 2603-J(i), any of the  
26 following additional expenses:

27 (A) Educational therapies from a licensed or  
28 accredited practitioner or provider.

29 (B) Services of a licensed or accredited  
30 paraprofessional or educational aide.

1           (C) Tuition for vocational and life skills  
2           education approved by the department.

3           (D) Associated services that include educational  
4           and psychological evaluations, assistive technology  
5           rentals and braille translation services approved by  
6           the department.

7           (iv) Tutoring or teaching services provided by an  
8           individual or facility accredited by a national, regional  
9           or State accrediting organization.

10          (v) Curricula.

11          (vi) Tuition or fees for a nonpublic online learning  
12          program.

13          (vii) Fees for a nationally standardized norm-  
14          referenced achievement test, an advanced placement  
15          examination or an exam related to college or university  
16          admission.

17          (viii) Contributions to a Coverdell education  
18          savings account established under section 530(b)(1) of  
19          the Internal Revenue Code of 1986 (Public Law 99-514, 26  
20          U.S.C. § 530(b)(1)) for the benefit of the qualified  
21          student, except that money used for elementary or  
22          secondary education expenses must be for expenses  
23          otherwise allowed under this section.

24          (ix) Tuition or fees at an eligible postsecondary  
25          institution.

26          (x) Textbooks required by an eligible postsecondary  
27          institution.

28          (xi) Fees for management of the individual  
29          empowerment scholarship account.

30          (xii) Services provided by a public school,

1 including individual classes and extracurricular  
2 programs.

3 (xiii) Insurance or surety bond payments.

4 (xiv) Uniforms purchased from or through a qualified  
5 school.

6 (xv) Beginning January 1, 2018, if the qualified  
7 student is in the second year prior to the final year of  
8 a contract executed under this article, costs associated  
9 with an annual education plan conducted by an independent  
10 evaluation team. The department shall prescribe minimum  
11 qualifications for independent evaluation teams in  
12 accordance with this article and factors that teams must  
13 use to determine whether the qualified student shall be  
14 eligible to continue to receive money under this article  
15 through the school year in which the qualified student  
16 reaches 22 years of age. An independent evaluation team  
17 that provides an annual education plan under this article  
18 shall submit a written report that summarizes the results  
19 of the evaluation to the parent of the qualified student  
20 and to the department on or before July 31 each year. The  
21 written report submitted by the independent evaluation  
22 team shall be valid for one year. If the department  
23 determines that the qualified student meets the  
24 eligibility criteria prescribed in the annual education  
25 plan, the qualified student is eligible to continue to  
26 receive money under this article until the qualified  
27 student reaches 22 years of age, subject to annual  
28 review. A parent may appeal the department's decision. As  
29 an addendum to a qualified student's final-year contract,  
30 the department shall provide the following information in

1 writing to the parent of the qualified student:

2 (A) That the qualified student will not be  
3 eligible to continue to receive money under this  
4 article unless the results of an annual education  
5 plan conducted under this article demonstrate that  
6 the qualified student meets the eligibility criteria  
7 prescribed in the annual education plan.

8 (B) That the parent is entitled to obtain a copy  
9 of an annual education plan under this article to  
10 determine whether the qualified student meets the  
11 eligibility criteria prescribed in the annual  
12 education plan.

13 (C) A list of independent evaluation teams that  
14 meet the minimum qualifications prescribed by the  
15 department under this subdivision.

16 (d) Transfer to individual empowerment scholarship  
17 account.--Upon execution of the parent's agreement under  
18 subsection (c), the department shall transfer from the money  
19 that would otherwise be allocated to a qualified student's prior  
20 school district, or, if the child is currently eligible to  
21 attend kindergarten, the money that the department determines  
22 would otherwise be allocated to a qualified student's expected  
23 school district of attendance, to the treasurer for deposit into  
24 an individual empowerment scholarship account an amount that is  
25 equivalent to 90% of the sum of the amount prescribed in section  
26 2502.53, divided by average daily membership, for the qualified  
27 student if the qualified student were attending a charter  
28 school. The department may retain up to 5% of the sum of the  
29 base support level and additional assistance prescribed in  
30 section 2502.53, divided by average daily membership, for each

1 student with an individual empowerment scholarship account for  
2 deposit in the Department of Education Empowerment Scholarship  
3 Fund established under subsection (e), out of which the  
4 department shall transfer 1% of the sum of the amount prescribed  
5 in section 2502.53, divided by average daily membership, for  
6 each student with an individual empowerment scholarship account  
7 to the treasurer for deposit in the State Treasurer Empowerment  
8 Scholarship Fund established in subsection (f).

9 (e) Department of Education Empowerment Scholarship Fund.--  
10 The Department of Education Empowerment Scholarship Fund is  
11 established and shall consist of money retained by the  
12 department under subsection (d). The department shall administer  
13 the fund. Money in the fund is subject to legislative  
14 appropriation and shall be used for the department's costs in  
15 administering individual empowerment scholarship accounts under  
16 this article. If the number of individual empowerment  
17 scholarship accounts significantly increases after fiscal year  
18 2018-2019, the department may request an increase in the amount  
19 appropriated to the fund in any subsequent fiscal year in the  
20 budget estimate submitted.

21 (f) State Treasurer Empowerment Scholarship Fund.--The State  
22 Treasurer Empowerment Scholarship Fund is established and shall  
23 consist of money transferred by the department to the treasurer  
24 under subsection (d). The treasurer shall administer the fund.  
25 Money in the fund shall be used for the treasurer's costs in  
26 administering the individual empowerment scholarship accounts  
27 under this article. If the number of individual empowerment  
28 scholarship accounts significantly increases after fiscal year  
29 2018-2019, the treasurer may request an increase in the amount  
30 appropriated to the fund in a subsequent fiscal year in the

1 budget estimate submitted. Money in the fund is subject to  
2 legislative appropriation.

3 (g) Account renewal.--A parent must renew the qualified  
4 student's individual empowerment scholarship account on an  
5 annual basis. Notwithstanding any changes to the student's  
6 individualized education program or plan under section 504 of  
7 the Rehabilitation Act of 1973 (Public Law 93-112, 29 U.S.C. §  
8 794), a student who has previously qualified for an individual  
9 empowerment scholarship account shall remain eligible to apply  
10 for renewal until the student finishes high school.

11 (h) School attendance.--A signed enrollment agreement under  
12 this section constitutes school attendance required under  
13 Article XIII.

14 (i) Prohibition.--A qualified school or a provider of  
15 services purchased under subsection (c) (6) may not share with,  
16 refund or rebate to a parent or the qualified student any  
17 individual empowerment scholarship account money.

18 (j) Return of funds.--Upon the qualified student's  
19 graduation from a postsecondary institution or after a period of  
20 four consecutive years after high school graduation in which the  
21 student is not enrolled in an eligible postsecondary  
22 institution, the qualified student's individual empowerment  
23 scholarship account shall be closed and any remaining money  
24 shall be returned to the Commonwealth.

25 (k) Tax implications.--Money received under this article  
26 does not constitute taxable income to the parent of the  
27 qualified student.

28 Section 2603-J. Administration of individual empowerment  
29 scholarship accounts.

30 (a) Account deposits.--The department shall make quarterly

1 transfers of the amount calculated under section 2602-J(d) to  
2 the treasurer for deposit into the individual empowerment  
3 scholarship account of each qualified student. The department  
4 may make transfers according to another transfer schedule if the  
5 department determines a transfer schedule other than quarterly  
6 transfers is necessary for the operation of the individual  
7 empowerment scholarship account.

8 (b) Scholarship award.--The department shall accept  
9 applications between July 1 and June 30 of each year. The  
10 department shall enroll and issue an award letter to eligible  
11 applicants within 45 days after receipt of a completed  
12 application and all required documentation.

13 (c) Private management.--The treasurer may contract with  
14 private financial management firms to manage individual  
15 empowerment scholarship accounts.

16 (d) Audits.--The department shall conduct or contract for  
17 annual audits of individual empowerment scholarship accounts to  
18 ensure compliance with section 2602-J(c)(6). The department  
19 shall also conduct or contract for random audits of individual  
20 empowerment scholarship accounts as needed.

21 (e) Account suspension.--The department may suspend an  
22 individual empowerment scholarship account if the parent or  
23 qualified student fails to comply with the terms of the  
24 enrollment agreement or applicable laws, rules or orders. The  
25 department shall notify the treasurer to suspend the individual  
26 empowerment scholarship account and shall notify the parent and  
27 qualified student in writing that the account has been suspended  
28 and that no further transactions will be allowed or  
29 disbursements made. The notification shall specify the reason  
30 for the suspension and state that the parent or qualified

1 student has 10 days, not including weekends or Federal or State  
2 holidays, to respond and take corrective action. If the parent  
3 or qualified student fails to contact the department, furnish  
4 information or make a report that may be required for  
5 reinstatement within the 10-day period, the department may  
6 terminate the enrollment agreement. A parent may appeal the  
7 department's decision.

8 (f) Referral to Attorney General.--The department may refer  
9 cases of substantial misuse of money to the Attorney General for  
10 the purpose of collection or for the purpose of a criminal  
11 investigation if the department obtains evidence of fraudulent  
12 use of an individual empowerment scholarship account.

13 (g) Budget submission.--On or before May 30 of each year,  
14 the department shall furnish to the Legislative Budget and  
15 Finance Committee an estimate of the amount required to fund  
16 individual empowerment scholarship accounts for the following  
17 fiscal year. The department shall include in the budget request  
18 for the following fiscal year the amount estimated under section  
19 2602-J(d), for each qualified student.

20 (h) Rules and policies.--The department may adopt rules and  
21 policies necessary for the administration of individual  
22 empowerment scholarship accounts including:

23 (1) Conducting or contracting for audits of the use of  
24 account money.

25 (2) Establishing or contracting for the establishment of  
26 an online anonymous fraud reporting service.

27 (3) Establishing an anonymous telephone hotline for  
28 fraud reporting.

29 (4) Requiring a surety bond or insurance for individual  
30 empowerment scholarship account holders.

1 (i) Contract for third party assessment.--The department  
2 shall contract with an independent third party for the purposes  
3 of determining if a qualified student is eligible to receive  
4 educational therapies or services under section 2602-J(c)(6)  
5 (iii).

6 Section 2604-J. State control over nonpublic schools.

7 (a) General rule.--This article does not permit a State  
8 agency to exercise control or supervision over a nonpublic  
9 school or home school. A qualified school that accepts a payment  
10 from a parent from an individual empowerment scholarship account  
11 under this article is not an agent of the Federal or State  
12 government.

13 (b) Prohibition.--A qualified school may not be required to  
14 alter the qualified school's creed, practices, admissions policy  
15 or curriculum in order to accept students whose parents pay  
16 tuition or fees from an individual empowerment scholarship  
17 account in order to participate as a qualified school.

18 (c) Applicability.--In any legal proceeding challenging the  
19 application of this article to a qualified school, the  
20 Commonwealth bears the burden of establishing that the law is  
21 necessary and does not impose any undue burden on qualified  
22 schools.

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