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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2228 Session of  
2018

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INTRODUCED BY WARD, PICKETT, WHEELAND, GROVE, HEFFLEY,  
ZIMMERMAN, HICKERNELL, GILLEN, A. HARRIS, BERNSTINE, FEE,  
ROTHMAN, B. MILLER, PHILLIPS-HILL, STAATS, WALSH, BLOOM,  
SCHEMEL, CUTLER AND KEEFER, APRIL 9, 2018

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REFERRED TO COMMITTEE ON EDUCATION, APRIL 9, 2018

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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.

1 "Application." The application for participation in the  
2 program developed by the department under section 4(12).

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

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

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

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

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

18 (3) The Pennsylvania State University.

19 (4) The University of Pittsburgh.

20 (5) Temple University.

21 (6) Lincoln University.

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

24 (8) Thaddeus Stevens College of Technology.

25 (9) An independent institution of higher education.

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

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

30 (i) Attended a public school in this Commonwealth in

1 the preceding semester or school year.

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

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

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

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

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

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

20 (i) an individualized education program pursuant to  
21 the Individuals with Disabilities Education Act (Public  
22 Law 91-230, 20 U.S.C. § 1400 et seq.) and 22 Pa. Code Ch.  
23 14 (relating to special education services and programs);

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

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

1           (iv) a medical diagnosis in one of the categories  
2           for a child with a disability under 20 U.S.C. § 1401(3)  
3           (A) (relating to definitions); or  
4           (v) a child eligible for early intervention services  
5           under 55 Pa. Code § 4226.22 (relating to eligibility for  
6           early intervention services).

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

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

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

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

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

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

1 "School-age child." A child enrolling in kindergarten or in  
2 grades 1 through 12.

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

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

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

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

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

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

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

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

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

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

29           (3) A parent of an eligible student participating in the  
30 program shall agree in the application submitted under

1 paragraph (1) to use the funds deposited in the eligible  
2 student's account for the following qualifying expenses to  
3 educate the eligible student:

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

5 (ii) Textbooks required by a participating school.

6 (iii) Payment for tutoring.

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

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

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

16 (vii) Contribution to the eligible student's  
17 qualified tuition program established pursuant to section  
18 529 of the Internal Revenue Code of 1986 (Public Law 99-  
19 514, 26 U.S.C. § 529).

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

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

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

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

1           (xii) Costs associated with obtaining an industry  
2 certification.

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

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

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

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

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

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

28           (d) Unused funds.--Any unused funds at the end of a school  
29 year shall roll over to be used by the eligible student in  
30 subsequent years. Upon the eligible student reaching 26 years of



1 age, any unused funds shall be deposited into the General Fund.

2 (e) Regulations.--The State Board of Education shall  
3 promulgate regulations, subject to the act of June 25, 1982  
4 (P.L.633, No.181), known as the Regulatory Review Act, necessary  
5 to implement the program.

6 Section 4. Duties of department.

7 The department shall:

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

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

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

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

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

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

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

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

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

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

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

1           (12) By February 1, 2018, develop a standard application  
2 form which can be accessed and submitted electronically that  
3 parents of eligible students must use to apply to participate  
4 in the program and post the standard application form on the  
5 department's publicly accessible Internet website.

6 Section 5. Accountability standards for participating schools.

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

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

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

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

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

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

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

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

29               (i) a surety bond payable to the Commonwealth in an  
30 amount equal to the aggregate amount of the funds from

1 accounts expected to be paid during the school year on  
2 behalf of eligible students admitted at the participating  
3 school; or

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

9 (c) Academic accountability standards.--

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

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

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

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

30 (2) The department shall:

1           (i) Ensure compliance with all student privacy laws,  
2 including the Family Educational Rights and Privacy Act  
3 of 1974 (Public Law 90-247, 20 U.S.C. § 1232g).

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

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

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

20                   (A) Their satisfaction with the program.

21                   (B) The number of years their child has  
22 participated in the program.

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

26           (d) Participating school autonomy.--

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

29                   (2) The department or any other State agency may not in  
30 any way regulate the educational program of a participating

1 school or education provider that accepts funds from an  
2 account.

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

8 Section 6. Bar of certain participating schools.

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

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

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

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

24 Section 7. Duties of resident school districts.

25 (a) School records.--A resident school district shall  
26 provide a participating school or education provider that has  
27 admitted an eligible student participating in the program with a  
28 complete copy of the student's school records immediately upon  
29 the student's enrollment in the participating school or  
30 beginning of services from the education provider, subject to

1 the Family Educational Rights and Privacy Act of 1974 (Public  
2 Law 90-247, 20 U.S.C. § 1232g).

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

12 Section 8. Legal proceedings.

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

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

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

30 (d) Severability.--If any provision of this act or the

1 application thereof to any person or circumstance is held  
2 invalid, such invalidity shall not affect other provisions or  
3 applications of this act which can be given effect without the  
4 invalid provision or application, and to this end the provisions  
5 of this act are declared to be severable.

6 Section 9. Effective date.

7 This act shall take effect in 60 days.