
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 353 Session of
2019

INTRODUCED BY J. WARD, MARTIN, ARGALL, YUDICHAK, KILLION,
PHILLIPS-HILL AND REGAN, MARCH 4, 2019

REFERRED TO EDUCATION, MARCH 4, 2019

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 who resides in this
26 Commonwealth, has not yet received a high school diploma and
27 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 that is operated not for profit,
8 located in and incorporated or chartered by the Commonwealth and
9 entitled to confer degrees as specified in 24 Pa.C.S. § 6505
10 (relating to power to confer degrees) and to apply to itself the
11 designation "college" or "university" as provided for by the
12 standards and qualifications prescribed by the State Board of
13 Education under 24 Pa.C.S. Ch. 65 (relating to private colleges,
14 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 the
21 nonpublic school's intention to participate in the program and
22 comply with the 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 2020-2021 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, in an amount which, when combined with an award
12 made under the program, exceeds the tuition, costs and
13 fees of attendance at the student's chosen school for a
14 school year in which the eligible student is
15 participating in the program.

16 (iv) For a student with special needs who is awarded
17 funds under this program, participation in the program is
18 a parental placement of the child under 20 U.S.C. §
19 1412(a)(10) (relating to State eligibility) of the
20 Individuals with Disabilities Education Act.

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

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

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

7 (ii) Textbooks required by a participating school.

8 (iii) Payment for tutoring.

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

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

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

18 (vii) Contribution to the eligible student's
19 qualified tuition program established pursuant to section
20 529 of the Internal Revenue Code of 1986 (Public Law 99-
21 514, 26 U.S.C. § 529).

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

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

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

30 (xi) Fees for account management by private

1 financial management firms identified by the department
2 under section 4(1).

3 (xii) Costs associated with obtaining an industry
4 certification.

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

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

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

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

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

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

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

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

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

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

14 Section 4. Duties of department.

15 The department shall:

16 (1) Solicit requests for proposals from private
17 financial management firms to manage the eligible student
18 accounts financially.

19 (2) Conduct or contract for the auditing of eligible
20 student accounts and, at a minimum, conduct random audits of
21 the accounts on an annual basis. An eligible student shall be
22 ineligible for the program in the event that the parent of
23 the eligible student engages in fraudulent misuse of the
24 eligible student account. A parent may appeal the
25 department's decision to make an eligible student ineligible
26 under 2 Pa.C.S. Chs. 1 (relating to general provisions), 5
27 (relating to practice and procedure) and 7 (relating to
28 judicial review).

29 (3) Refer cases of fraudulent misuse of eligible student
30 accounts to law enforcement agencies for investigation. The

1 balance of money in an eligible student account in which
2 fraudulent misuse of the account has occurred shall revert to
3 the General Fund.

4 (4) Within 45 days of receipt of an application for
5 participation in the program submitted by a parent under
6 section 3(b)(1), notify the parent of a student's acceptance
7 or nonacceptance into the program. An eligible student shall
8 be accepted into the program if the student meets the
9 requirements of this act. A parent may appeal the
10 department's decision under this paragraph.

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

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

18 (7) Establish reasonable fees for private financial
19 management firms that manage the accounts based upon market
20 rates.

21 (8) Make payments to the accounts on a quarterly basis
22 on August 1, November 1, February 1 and May 1 of each year of
23 participation in the program.

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

1 be reimbursed for out-of-pocket expenses.

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

6 (11) Ensure that eligible students and their parents are
7 informed annually of the participating schools in the program
8 by posting a list of participating schools on its publicly
9 accessible Internet website by April 1, 2019, and by April 1
10 of each year thereafter.

11 (12) By February 1, 2019, develop a standard application
12 form which can be accessed and submitted electronically that
13 parents of eligible students must use to apply to participate
14 in the program and post the standard application form on the
15 department's publicly accessible Internet website.

16 Section 5. Accountability standards for participating schools.

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

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

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

22 (3) Comply with the applicable nondiscrimination
23 policies set forth in section 1981 of the Civil Rights Act of
24 1964 (Public Law 88-352, 78 Stat. 241) and with section 1521
25 of the act of March 10, 1949 (P.L.30, No.14), known as the
26 Public School Code of 1949.

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

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

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

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

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

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

19 (c) Academic accountability standards.--

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

21 (i) Each year in grades three through eight and once
22 in grades nine through twelve the eligible student takes
23 either the State assessment or nationally norm-referenced
24 tests that measure learning gains in mathematics,
25 language arts and, for students in grades four and eight
26 and in grades nine through twelve, science and provide
27 for value-added assessment. An eligible student for whom
28 standardized testing is not appropriate under the
29 student's individualized education program shall be
30 exempt from this requirement.

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

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

10 (2) The department shall:

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

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

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

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

30 (A) Their satisfaction with the program.

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

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

6 (d) Participating school autonomy.--

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

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

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

18 Section 6. Bar of certain participating schools.

19 (a) General rule.--The department may bar a participating
20 school or education provider from participation in the program
21 if the department establishes that the participating school or
22 education provider has:

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

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

28 (b) Notice.--If the department decides to bar a
29 participating school or education provider from participation in
30 the program, the department shall post the decision on the

1 department's publicly accessible Internet website. A
2 participating school or education provider may appeal the
3 department's decision.

4 Section 7. Duties of resident school districts.

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

13 (b) Transportation.--

14 (1) A resident school district shall provide
15 transportation for an eligible student to and from the
16 participating school or education provider under the same
17 conditions as the resident school district provides
18 transportation of other resident students to nonpublic
19 schools under section 1361 of the act of March 10, 1949
20 (P.L.30, No.14), known as the Public School Code of 1949.

21 (2) The resident school district shall qualify for State
22 transportation reimbursement for each eligible student so
23 transported.

24 Section 8. Legal proceedings.

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

30 (b) Liability.--No liability shall arise on the part of the

1 agency, the Commonwealth or a public school or school district
2 based on the award of or use of an account under this act.

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

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

19 Section 9. Effective date.

20 This act shall take effect in 60 days.