

SENATE BILL 486

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 49
and Title 67, relative to scholarships for children
with special needs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 10, is amended by adding the following language as a new part 14:

49-10-1401. Sections 49-10-1402—49-10-1409 shall be known and may be cited as the “The Special Needs Scholarship Act.”

49-10-1402. As used in this part and part 15, unless the context otherwise requires:

(1) "Department" means the department of education;

(2)

(A) "Eligible student" means any Tennessee elementary or secondary student who has an intellectual disability; hearing impairment, including deafness, speech or language impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; specific learning disability; developmental delay or functional delay.

(B) "Eligible student" does not include an intellectually gifted student;

(3) "IEP" means individualized education plan;

(4) "Parent" includes a guardian, custodian, or other person with authority to act on behalf of the child;

(5) "Participating school" means either a public school outside of the resident school district, a school run by another public entity or any private school that provides education to elementary or secondary students that has notified the department of its

intention to accept students with special needs scholarships and comply with requirements of this part and part 15;

(6) "Resident school district" means the public school district in which the student resides;

(7)

(A) "Special needs scholarship" means a scholarship awarded under § 49-10-1401—49-10-1409.

(B) "Special needs scholarship" does not include tax credit scholarships and tax credit tuition grants under part 15;

(8) "Student scholarship organization" means a charitable organization in this state that:

(A) Is exempt from federal income taxation under § 501(a) of the Internal Revenue Code, 26 U.S.C. § 501(a), as an organization described in § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3);

(B) Allocates at least ninety percent (90%) of its annual revenue to educational scholarships or tuition grants that permit students to attend any participating school of their or their parent's choice; and

(C) Does not limit the use of such scholarships or tuition grants to attendance at a specifically designated school; and

(9)

(A) "Tax credit scholarship and tax credit tuition grant" means a scholarship or grant awarded by a student scholarship organization under part 15.

(B) "Tax credit scholarship or tax credit tuition grant" does not include special needs scholarships under this part.

49-10-1403.

(a) Any parent of an eligible student shall qualify for a scholarship from the state for the parent's child to enroll in and attend a participating private school if:

(1) The student with special needs has had an IEP written in accordance with the rules of the department;

(2) The student has been accepted for admission at a participating school; and

(3) The parent has requested a scholarship from the state before the deadline established by the department.

(b) The department shall inform the resident school district that a student with special needs has requested a special needs scholarship. The resident school district shall, within three (3) business days, provide the department with a copy of the student's most current IEP.

(c) Upon receipt of the eligible student's request for a scholarship, the department shall review the IEP drafted by the student's public school to determine the amount of the scholarship. The department shall provide the student's parent with a timely written explanation of its determination for the amount of the scholarship.

(d) The maximum scholarship granted to an eligible student shall be an amount equivalent to the cost of the educational program that would have been provided for the student in the resident school district. Although the scholarship amount is a function of a student's IEP, the participating school is not required to abide by the IEP. The parent and the participating school shall mutually determine the best services and educational plan for the student.

(e) The amount of the special needs scholarship shall be the lesser of the amount calculated under subsections (c) and (d) or the amount of the participating

school's estimated costs for serving the student. The costs of any assessment by the participating school of the student's special needs may be included in the scholarship amount.

(f) A participating student shall be counted in the enrollment of the student's resident school district. The funds needed to provide a scholarship shall be subtracted from state funding to the student's resident school district.

(g) The special needs scholarship shall remain in force until the student returns to a public school from a participating school, graduates from high school or reaches twenty-one (21) years of age, whichever comes first.

(h) At any time, the student's parent may remove the student from the participating school and place the student in another participating school or in a public school.

(i) A participating school may not refund, rebate or share a student's scholarship with a parent or the student in any manner. A student's scholarship may only be used for educational purposes.

49-10-1404.

(a) A resident school district shall annually notify the parents of a student with special needs of the special needs scholarship and offer that student's parents an opportunity to enroll the student in a participating school of their choice.

(b) The resident school district shall provide a participating school that has admitted an eligible student with a complete copy of the student's school records, in compliance with the Family Educational Rights and Privacy Act of 1974, 20 USC §1232g.

(c) The resident school district shall provide transportation for an eligible student to and from the participating school under the same conditions as the resident school

district is required to provide transportation for children with disabilities. State financial aid for transportation shall be provided in accordance with § 49-10-113.

(d) The resident school district of an eligible participating student shall count the student in its enrollment for state funding purposes.

(e) If the parent of an eligible participating student requests that the student take the statewide assessments, the resident school district shall provide locations and times for the student to take all statewide assessments if they are not offered at the student's participating school.

49-10-1405.

(a) The department shall adopt rules and procedures regarding:

(1) The eligibility and participation of private schools, including timelines that shall maximize student and public and private school participation;

(2) The calculation and distribution of scholarships to eligible students and participating schools; and

(3) The application and approval procedures for eligible students and participating schools.

(b) No liability shall arise on the part of the department or the state based on the award or use of a special needs scholarship.

(c) The department may bar a school from participation under this part if the department establishes that the participating school has:

(1) Intentionally and substantially misrepresented information required under § 49-10-1406;

(2) Routinely failed to comply with the accountability standards established in § 49-10-1406;

(3) Failed to comply with § 49-10-1403(i); or

(4) Failed to refund to the state any scholarship overpayments in a timely manner.

(d) If the department decides to bar a participating school, it shall notify eligible students and their parents of this decision as quickly as possible. Participating students attending a school barred by the department shall retain scholarship eligibility to attend another participating school.

49-10-1406.

(a) To ensure that students are treated fairly and kept safe, a participating private school shall:

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

(2) Hold a valid occupancy permit if required by its municipality;

(3) Certify that it will comply with 42 U.S.C. § 2000d regardless of whether the school receives federal financial assistance; and

(4) Conduct criminal background checks on employees. The participating school then shall exclude from employment any person:

(A) Not permitted by state law to work in a private school; and

(B) Who might reasonably pose a threat to the safety of students.

(b) To ensure that public funds are spent appropriately, each participating private school shall:

(1) Demonstrate its financial accountability by:

(A) Annually submitting to the department a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant; and

(B) Having an auditor certify the report is free of material misstatements and fairly represents the costs per pupil. The auditor's report shall be limited in scope to those records that are necessary for the department to make payments to participating schools on behalf of parents for special needs scholarships; and

(2) Demonstrate its financial viability by showing it can repay any funds that might be owed the state, if it is to receive fifty thousand dollars (\$50,000) or more during the school year, by:

(A) Filing with the department prior to the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of the special needs scholarships expected to be paid during the school year to students admitted to the participating school; or

(B) Filing with the department prior to the start of the school year financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the special needs scholarships expected to be paid during the school year to students admitted to the participating school.

(c) To ensure that schools provide academic accountability to parents of the students with scholarships, all participating schools shall regularly report to the parent on the student's progress and ensure that the person providing special education or related services holds the appropriate license issued by the department.

(d) A participating private school is autonomous and not an agent of the state or federal government and therefore:

(1) The department or any other state agency may not in any way regulate the educational program of a participating private school that accepts a student with a special needs scholarship;

(2) The creation of the special needs scholarship does not expand the regulatory authority of the state, its officers or any school district to impose any additional regulation of private schools beyond that reasonably necessary to enforce the requirements of this part; and

(3) Participating private schools shall be given the maximum freedom to provide for the educational needs of their students without governmental control.

49-10-1407.

(a) It shall be the responsibility of a parent to select the parent's child's school, apply for admission and apply for a special needs scholarship.

(b) Any participating student shall comply fully with a participating school's written code of conduct and shall remain in attendance throughout the school year unless excused by the school for illness or other good cause. However, a parent may transfer an eligible student to a public school or another participating school at any time. The scholarship amount shall be prorated between participating schools according to the period of attendance at each school.

(c) A parent's decision for the parent's student to receive a special needs scholarship and to attend a participating school constitutes a private placement for purposes of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.

49-10-1408.

(a) The office of education accountability established in § 4-3-308 may contract with one (1) or more qualified researchers who have previous experience evaluating

school choice programs to conduct a study of the special needs scholarship with funds other than state funds.

(b) The study shall assess:

(1) The level of participating students' satisfaction with the scholarship;

(2) The level of parental satisfaction with the scholarship;

(3) The percentage of participating students who were victimized because of their special needs status in their resident school district compared with the percentage of such students so victimized at participating schools;

(4) The percentage of participating students who exhibited behavioral problems in their resident school district compared with the percentage of such students exhibiting behavioral problems at their participating schools;

(5) The class size experienced by participating students in their resident school district and at their participating schools; and

(6) The fiscal effect on the state and resident school districts of the scholarship.

(c) The researchers who conduct the study shall:

(1) Apply appropriate analytical and behavioral science methodologies to ensure public confidence in the study;

(2) Protect the identity of participating schools and students by, among other things, keeping anonymous all disaggregated data other than that for the categories of grade level, gender and race and ethnicity; and

(3) Provide the general assembly with a final copy of the evaluation of the scholarship.

(d) The public and private participating schools to which participating students transfer shall cooperate with the research effort by providing student assessment results and any other data necessary to complete this study.

(e) The office of education accountability may accept grants to assist in funding this study.

(f) The office of education accountability may require periodic reports from the researchers. The researchers shall make their data and methodology available for public review while complying with the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

49-10-1409. Special needs scholarships shall be first awarded under this part for the 2012-2013 school year.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 10, is further amended by adding the following language as a new part 15:

49-10-1501. To financially assist eligible students to attend participating schools charging tuition and fees that exceed the amount of a special needs scholarship under part 14, student scholarship organizations may provide tax credit scholarships or tax credit tuition grants pursuant to this part.

49-10-1502 Each student scholarship organization:

(1) Shall obligate at least ninety percent (90%) of its annual revenue to scholarships or tuition grants; however, up to twenty-five percent (25%) of the obligated amount may be carried forward for use in the next fiscal year;

(2) Shall maintain separate accounts for scholarship funds and operating funds;

(3) May transfer funds to another student scholarship organization;

(4) Shall engage an independent certified public accountant to conduct an audit of the organization's accounts to be completed within one hundred twenty (120) days after the end of the student scholarship organization's fiscal year;

(5) Shall provide the audit to the department of revenue in accordance with § 49-10-1503; and

(6) Shall annually submit notice to the department of education in accordance with department guidelines of its participation as a student scholarship organization under this part.

49-10-1503.

(a) Each student scholarship organization shall report to the department of revenue each tax year, on a form provided by the department of revenue and on a date established by the department of revenue the following:

(1) The total number and dollar value of contributions and tax credits approved; and

(2) A list of donors, including the dollar value of each donation and the dollar value of each approved tax credit.

(b) A copy of the audit required under § 49-10-1502 shall be filed with the report required under subsection (a).

(c) The department of revenue shall not require any other information from student scholarship organizations, except as expressly authorized under this part.

49-10-1504. The department of revenue shall provide a list of all student scholarship organizations receiving contributions from taxpayers, as defined in § 67-4-2004(37), who have been granted a tax credit under § 67-4-2020 to the general assembly by January 30 of each year.

49-10-1505. The parent of an eligible student to whom a scholarship or tuition grant is awarded under this part shall restrictively endorse the scholarship warrant to the participating school for deposit into the account of the participating school. The parent may not designate any entity or individual associated with the participating school as the parent's attorney-in-fact to endorse a scholarship warrant. An eligible student whose parent fails to comply with this section shall forfeit the scholarship. If an eligible student is eighteen (18) years of age or older and competent, then the eligible student shall be required to restrictively endorse the scholarship warrant.

49-10-1506. The department shall maintain on its web site a current list of all student scholarship organizations that have provided notice pursuant to § 49-10-1502(6).

49-10-1507. Tax credit scholarships or tax credit tuition grants shall be first awarded under this part for the 2012-2013 school year.

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, Part 20, is amended by adding the following language as a new section:

67-4-2020.

(a) As used in this section, unless the context otherwise requires:

(1) "Qualified education donation" means the donation of funds by a taxpayer during the tax year to a student scholarship organization operating pursuant to title 49, chapter 10, parts 14 and 15;

(2) "Participating school" has the same meaning as the term is defined in § 49-10-1402;

(3) "Student scholarship organization" has the same meaning as the term is defined in § 49-10-1402; and

(4) "Student scholarship organization tax credit" means the tax credit authorized under this part.

(b) A taxpayer shall be allowed a credit against the taxes imposed by this part and the Franchise Tax Law of 1999, compiled in part 21 of this chapter, for qualified education donations in an amount not to exceed the actual amount donated or seventy-five percent (75%) of the taxpayer's franchise and excise tax liability for the tax year in which the donation is made, whichever is less.

(c) No student scholarship organization tax credit shall be allowed if the taxpayer designates the taxpayer's qualified education donation for the direct benefit of a specific eligible student. No student scholarship organization tax credit shall be allowed to a taxpayer if a dependent of an officer, employee or stockholder who has authority to make the donation on behalf of the taxpayer receives a scholarship or tuition grant from the donee student scholarship organization.

(d) The taxpayer shall be allowed to claim any unused student scholarship organization tax credit against the taxpayer's franchise and excise tax liability in the five (5) years following the donation or until such credit is exhausted, whichever occurs first. No such credit shall be allowed the taxpayer against prior years' tax liability. In no event shall the total amount of the student scholarship organization tax credit for a taxable year exceed the taxpayer's tax liability.

(f)

(1) The aggregate amount of student scholarship organization tax credits allowed under this part shall not exceed fifty million dollars (\$50,000,000) in any tax year.

(2) The commissioner shall allow the student scholarship organization tax credits on a first come, first served basis.

(3) Before making a qualified education donation to a student scholarship organization, a taxpayer shall notify the department of the total amount of the

donation that the taxpayer intends to make to the student scholarship organization and request a student scholarship organization tax credit preapproval letter from the commissioner. The commissioner shall issue a tax credit preapproval letter in accordance with subdivisions (f)(1) and (2) or deny the request for the tax credit within thirty (30) days after receiving the request from the taxpayer. Such letter shall be sent to the taxpayer's address by United States mail, return receipt requested. In order to receive the tax credit, the taxpayer shall make the donation to the student scholarship organization within thirty (30) days after receiving the tax credit preapproval letter. If the taxpayer fails to make the donation within thirty (30) days of the receipt of the tax credit preapproval letter, the commissioner shall not include the amount of the taxpayer's preapproved donation when calculating the limit prescribed in subdivision (f)(1) and the taxpayer shall not be allowed the tax credit.

(4) Preapproval of donations by the commissioner shall be based solely on the availability of student scholarship organization tax credits subject to the aggregate total limit established under subdivision (f)(1).

(g) In order for the taxpayer to claim the student scholarship organization tax credit, a letter of confirmation of donation issued by the student scholarship organization to which the contribution was made shall be attached to the taxpayer's tax return. The letter of confirmation of donation shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the date of the contribution and the amount of the credit.

(h) No credit shall be allowed under this section with respect to any amount deducted from net earnings and losses by the taxpayer pursuant to § 67-4-2006 as a

charitable contribution to a bona fide charitable organization qualified under § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

SECTION 4. The commissioner of revenue and the commissioner of education are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 5. Section 3 of this act shall take effect January 1, 2012, the public welfare requiring it, and shall apply to tax years beginning on or after that date. All remaining sections shall take effect upon becoming a law, the public welfare requiring it.