

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 1647

6 By: Treat, Daniels, Newhouse,
7 and Jett

8 COMMITTEE SUBSTITUTE

9 An Act relating to students; creating the Oklahoma
10 Empowerment Act; providing short title; providing
11 legislative intent; defining terms; creating the
12 Oklahoma Empowerment Account Program; providing for
13 administration; providing method of application;
14 directing publication of application; requiring
15 procedures to approve applications within certain
16 time period; providing for contents of parent
17 agreement; providing certain construction; requiring
18 renewal of Oklahoma Empowerment Accounts on annual
19 basis; allowing closure of accounts under certain
20 circumstances; requiring notification within certain
21 time period of certain student re-enrolling in
22 certain school; providing for suspension of deposits
23 into account; providing for remittance of unused
24 funds; providing for calculation of State Aid amount;
requiring transfer of certain calculated amount on a
monthly basis; prohibiting certain provider from
sharing, refunding, or rebating an amount with a
parent or certain student; prohibiting personal
deposits into certain account; prohibiting certain
funds from being considered income; providing for
accrual of account funds; requiring certain agency to
maintain list of certain providers; requiring certain
agency to provide certain information to certain
parents; requiring notice to be provided to parents
of certain children; allowing certain agency to
contract with certain firm or organization; allowing
withholding of certain percentage of funds to
administer program; requiring the establishment of
certain payment system; requiring implementation of

1 certain system to share information about education
2 service providers; providing for partial payment to
3 an education service provider; authorizing certain
4 auditing; providing for the removal of certain parent
5 or student from eligibility under certain
6 circumstances; providing for appeal; allowing
7 referral for certain investigation; allowing for
8 payments to cease to certain providers under certain
9 circumstances; providing for appeal; allowing
10 acceptance of gifts and grants for certain purposes;
11 providing for promulgation of rules; providing
12 process for approving education service providers;
13 directing provision of certain student records in
14 accordance with certain act; providing certain
15 construction; creating the Oklahoma Empowerment
16 Account Revolving Fund; specifying sources of fund;
17 providing for expenditures; providing purpose of
18 fund; providing for establishment of burden in
19 certain legal proceeding; providing immunity from
20 liability for certain actions; allowing certain
21 parents to intervene in certain legal proceeding;
22 providing for severability; providing for
23 codification; providing an effective date; and
24 declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 28-100 of Title 70, unless there
is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Oklahoma
Empowerment Act".

B. It is the intent of the Legislature that parents, legal
guardians, and others with legal authority over children in this
state be able to access educational services that meet the needs of

1 their individual children by directing State Aid for which each
2 child is eligible to the education provider of their choice. The
3 Legislature affirms that parents and legal guardians are best suited
4 to make decisions to help children in this state reach their full
5 potential and achieve a brighter future.

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 28-101 of Title 70, unless there
8 is created a duplication in numbering, reads as follows:

9 A. As used in the Oklahoma Empowerment Act:

10 1. "Agency" means the Office of the State Treasurer;

11 2. "Curriculum" means a complete course of study for a
12 particular content area or grade level;

13 3. "Oklahoma Empowerment Account" means the account in which
14 funds are deposited by the Agency to pay for qualifying education
15 expenses for an empowerment student;

16 4. "Education service provider" means a person, business,
17 public school district, public charter school, magnet school,
18 institution within The Oklahoma State System of Higher Education, or
19 organization that receives payments from a parent directing an
20 Oklahoma Empowerment Account to provide educational goods and/or
21 services to empowerment students;

22 5. "Eligible student" means a resident of this state who is
23 eligible to enroll in a public school in this state;

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1 6. "Empowerment student" means an eligible student approved for
2 participation in the Oklahoma Empowerment Account Program;

3 7. "Parent" means a biological or adoptive parent, legal
4 guardian, custodian, or other person with legal authority to act on
5 behalf of an eligible student; and

6 8. "Qualified expense" means the following services provided by
7 an education service provider:

8 a. tuition and/or fees at a private school accredited or
9 in the process of obtaining accreditation by the State
10 Board of Education or another accrediting association
11 approved by the State Board of Education,

12 b. tuition and/or fees for non-public online learning
13 programs,

14 c. tutoring services provided by an individual or a
15 tutoring facility,

16 d. services contracted for and provided by a public
17 school district, public charter school, or magnet
18 school including but not limited to classes and
19 extracurricular activities and programs,

20 e. textbooks, curriculum, or other instructional
21 materials including but not limited to supplemental
22 materials or associated online instruction required by
23 an education service provider,

- 1 f. computer hardware or other technological devices,
2 educational software, and applications that are used
3 to meet an empowerment student's curriculum needs,
- 4 g. tuition and/or fees for a curriculum or program, along
5 with related instruments, supplies, accessories, and
6 materials, that provides instruction in drama, music,
7 speech and debate, agriculture, or other similar
8 activities,
- 9 h. school uniforms,
- 10 i. fees for nationally standardized assessments including
11 but not limited to assessments used to determine
12 college admission and advanced placement examinations
13 as well as tuition and/or fees for tutoring or
14 preparatory courses for the assessments,
- 15 j. tuition and/or fees for summer education programs and
16 specialized after-school education programs; provided,
17 however, that such expense does not include before-
18 school or after-school childcare,
- 19 k. tuition, fees, instructional materials, and assessment
20 fees for a curriculum or program offered by a
21 technology center school,
- 22 l. educational services and therapies including but not
23 limited to occupational, behavioral, physical, speech-
24 language, and audiology therapies,

1 m. tuition and fees for concurrent enrollment at an
2 institution within The Oklahoma State System of Higher
3 Education,

4 n. fees for transportation paid to a fee-for-service
5 provider for the student to travel to and from an
6 education service provider, or

7 o. any other qualified expense approved by the Agency.

8 B. There is hereby created the Oklahoma Empowerment Account
9 Program to be administered by the Agency to provide an Oklahoma
10 Empowerment Account for qualified expenses to support the education
11 of empowerment students in this state.

12 C. 1. To apply for an Oklahoma Empowerment Account, a parent
13 of an eligible student shall submit an application to the Agency on
14 a form prescribed by the Agency and published on its website. The
15 application may be submitted online or by mail.

16 2. The Agency shall establish procedures to approve
17 applications within ten (10) business days after receipt. There
18 shall be no deadline for submission of applications. Applications
19 shall be approved if the parent signs an agreement to do all of the
20 following:

21 a. use the Oklahoma Empowerment Account only for
22 qualified expenses to provide an education for an
23 eligible student in at least the subjects of reading,
24

1 English language arts, mathematics, science, and
2 social studies,

3 b. not enroll the eligible student as a full-time student
4 in a public school district, public charter school, or
5 magnet school after acceptance of an Oklahoma
6 Empowerment Account,

7 c. comply with rules and requirements of the Oklahoma
8 Empowerment Account Program established by the Agency,
9 and

10 d. not accept a scholarship from the Lindsey Nicole Henry
11 Scholarships for Students with Disabilities Program
12 created by Section 13-101.2 of Title 70 of the
13 Oklahoma Statutes while participating in the Oklahoma
14 Empowerment Account Program.

15 D. Nothing in this act shall be construed to require that an
16 empowerment student be enrolled full time or part time in a private
17 school or a nonpublic online school.

18 E. The Agency shall renew Oklahoma Empowerment Accounts on an
19 annual basis. An account may be closed if:

20 1. The parent of an empowerment student re-enrolls the student
21 as a full-time student in a public school, as provided for by
22 subsection F of this section;

23 2. The Agency closes the account due to intentional misuse as
24 provided for in Section 3 of this act; or

1 3. The empowerment student graduates from high school or
2 reaches the age of twenty-one (21), whichever comes first.

3 F. The parent of an empowerment student shall notify the Agency
4 within five (5) days of the student re-enrolling in a public school
5 district, public charter school, or magnet school. Upon receipt of
6 the notification required by this subsection, the Agency shall
7 suspend deposits into the student's Oklahoma Empowerment Account.
8 Any unused funds remaining in the Oklahoma Empowerment Account at
9 the end of the applicable calendar year shall be remitted to the
10 General Revenue Fund.

11 G. 1. For each eligible student approved to participate in the
12 Oklahoma Empowerment Account Program, the Agency shall notify the
13 State Department of Education and request calculation of the amount
14 of State Aid for which the student is eligible. Within ten (10)
15 business days of receiving the request, the State Department of
16 Education shall notify the Agency of the calculated amount, which
17 shall be equivalent to the total State Aid factors including pupil
18 category weights for the applicable school year multiplied by the
19 grade weight generated by the student for the applicable school
20 year.

21 2. The State Department of Education on a monthly basis shall
22 transfer to the Agency for deposit into the Oklahoma Empowerment
23 Account Revolving Fund created pursuant to Section 5 of this act an
24 amount equal to one-twelfth (1/12) of the total amount necessary to

1 fund all Oklahoma Empowerment Accounts requested for the applicable
2 school year. Within ten (10) business days of a deposit required by
3 this paragraph, the Office of the State Treasurer shall make funds
4 available in Oklahoma Empowerment Accounts.

5 3. Prior to the monthly deposit required by this subsection,
6 the Agency shall notify the State Department of Education if changes
7 to the number of participating empowerment students will result in a
8 modification of the monthly deposit amount.

9 H. An education service provider shall not share, refund, or
10 rebate any amount of an Oklahoma Empowerment Account with the parent
11 or empowerment student. A refund or rebate for goods or services
12 purchased with an Oklahoma Empowerment Account shall be credited to
13 the Oklahoma Empowerment Account.

14 I. Parents shall be prohibited from making personal deposits
15 into an Oklahoma Empowerment Account. However, no parent shall be
16 restricted from making payments for educational goods and services
17 not covered by funds in a student's Oklahoma Empowerment Account.

18 J. Monies received pursuant to the Oklahoma Empowerment Account
19 Program shall not constitute taxable income to the parent or
20 empowerment student.

21 K. Funds deposited into an Oklahoma Empowerment Account but
22 unused shall accrue from month to month and from year to year unless
23 the account is closed pursuant to the provisions of subsection E of
24 this section.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 28-102 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. To implement the provisions of the Oklahoma Empowerment Act,
5 the Agency shall maintain and make publicly available on its website
6 an updated list of education service providers.

7 B. The Agency shall provide parents of empowerment students a
8 written explanation of qualified expenses for which an Oklahoma
9 Empowerment Account may be used, the responsibilities of parents,
10 the duties of the Agency, and the role of any private financial
11 management firm or other private organization with which the Agency
12 may contract to administer the Oklahoma Empowerment Act.

13 C. The Agency shall provide parents of empowerment students
14 with disabilities notice that participation in the Oklahoma
15 Empowerment Account Program shall have the same effect as a parental
16 revocation of consent pursuant to 20 U.S.C., Sections 1414(a)(1)(D)
17 and 1414(C) of the Individuals with Disabilities Education Act
18 (IDEA) and an explanation of the rights parents of empowerment
19 students with disabilities have under IDEA and any applicable state
20 laws and regulations.

21 D. The Agency may contract with a private financial management
22 firm or other private organization to administer in full or in part
23 the Oklahoma Empowerment Account Program.

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1 E. The Agency may withhold funding from deposits made pursuant
2 to subsection G of Section 2 of this act to administer the Oklahoma
3 Empowerment Account Program in an amount not to exceed five percent
4 (5%) annually for the first two years after the effective date of
5 this act and three percent (3%) annually thereafter.

6 F. The Agency shall establish a commercially viable, cost-
7 effective, and parent-friendly system of payment for services from
8 Oklahoma Empowerment Accounts to education service providers by
9 electronic or online funds transfer.

10 1. The system of payment established pursuant to this
11 subsection shall provide maximum flexibility for parents by
12 facilitating direct payments to education service providers whenever
13 possible, provide a parent-friendly system for requests for pre-
14 approval of qualified expenses, and timely reimbursement for
15 qualified expenses.

16 2. The Agency may contract with private entities to develop the
17 payment system.

18 G. The Agency shall implement a commercially viable, cost-
19 effective, and parent-friendly system for parents to publicly rate,
20 review, and share information about education service providers.

21 H. If an education service provider requires partial payment of
22 tuition or fees to reserve a place for an empowerment student prior
23 to the start of the school year, the partial payment may be paid by
24 the Agency prior to the start of the school year in which the

1 Oklahoma Empowerment Account is opened and deducted in equal amounts
2 from monthly deposits into Oklahoma Empowerment Accounts. If the
3 parent of an empowerment student chooses not to use the education
4 service provider, the partial reservation payment shall be remitted
5 to the Agency within fifteen (15) business days of notification of
6 the decision and credited to the empowerment student's Oklahoma
7 Empowerment Account.

8 I. The Agency shall have the authority to conduct an audit or
9 contract for the auditing of Oklahoma Empowerment Accounts and shall
10 conduct random audits of ten percent (10%) of Oklahoma Empowerment
11 Accounts on an annual basis.

12 J. The Agency shall have the authority to remove any parent or
13 empowerment student from eligibility for an Oklahoma Empowerment
14 Account in the event of intentional and substantial misuse of
15 Oklahoma Empowerment Account funds.

16 1. The Agency shall create procedures to ensure a fair process
17 to determine whether an intentional and substantial misuse of
18 Oklahoma Empowerment Account funds has occurred. If misuse by a
19 parent is established but the empowerment student is determined to
20 be free from personal misconduct, he or she shall be eligible for an
21 Oklahoma Empowerment Account in the future if placed with a
22 different parent, guardian, or other person with legal authority to
23 act on behalf of the student.

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1 2. The Agency shall have the authority to refer suspected cases
2 of intentional and substantial misuse of Oklahoma Empowerment
3 Account funds to the Attorney General for investigation if evidence
4 of fraudulent use of funds is obtained.

5 3. A parent or empowerment student may, pursuant to the
6 Administrative Procedures Act, appeal the Agency's decision to
7 remove the parent or student from eligibility for an Oklahoma
8 Empowerment Account.

9 K. The Agency may cease payments to an education service
10 provider from Oklahoma Empowerment Accounts if the Agency determines
11 the education service provider has:

12 1. Intentionally and substantially misrepresented information
13 or failed to refund any overpayments in a timely manner; or

14 2. Routinely failed to provide empowerment students with
15 promised educational goods or services.

16 L. The Agency shall create procedures to ensure a fair process
17 to determine whether an education service provider should be
18 prohibited from receiving payments from Oklahoma Empowerment
19 Accounts.

20 1. If the Agency prohibits an education service provider from
21 receiving payments pursuant to this subsection, the Agency shall
22 notify parents and empowerment students of its decision within ten
23 (10) days.

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1 2. Education service providers may, pursuant to the
2 Administrative Procedures Act, appeal the Agency's decision to
3 prohibit them from receiving Oklahoma Empowerment Account payments.

4 M. The Agency may accept gifts and grants from any source to
5 support administration of the Oklahoma Empowerment Account Program,
6 to inform the public about the Oklahoma Empowerment Account Program,
7 and to fund additional Oklahoma Empowerment Accounts.

8 N. The Agency may promulgate rules to implement the provisions
9 of this act, which shall include but not be limited to:

10 1. Establishing or contracting for the establishment of an
11 online anonymous fraud reporting service;

12 2. Establishing an anonymous telephone hotline for fraud
13 reporting;

14 3. Requiring a surety bond for education service providers
15 receiving more than One Hundred Thousand Dollars (\$100,000.00) in
16 Oklahoma Empowerment Account funds; and

17 4. Refunding payments from education service providers back to
18 Oklahoma Empowerment Accounts.

19 SECTION 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 28-103 of Title 70, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The Agency may approve education service providers on its
23 own initiative, at the request of parents, or at the request of a
24 prospective education service provider.

1 B. A prospective education service provider seeking to
2 participate in the Oklahoma Empowerment Account Program shall:

3 1. Submit notice to the Agency that it wishes to participate
4 and receive Oklahoma Empowerment Account funds designated by parents
5 for payment of educational goods and services; and

6 2. Agree not to refund, rebate, or share Oklahoma Empowerment
7 Account funds with parents or empowerment students in any manner,
8 except that funds may be remitted or refunded to an Oklahoma
9 Empowerment Account.

10 C. A public school district, public charter school, or magnet
11 school in which an empowerment student was enrolled shall provide a
12 private school that is an education service provider and that has an
13 empowerment student enrolled with a complete copy of the empowerment
14 student's records within five (5) business days of receiving the
15 request for records. The provision of records pursuant to this
16 subsection shall be in accordance with the provisions of the Family
17 Educational Rights and Privacy Act of 1974 (FERPA).

18 D. Nothing in this act shall limit the independence or autonomy
19 of an education service provider or make the actions of an education
20 service provider the actions of state government. Education service
21 providers shall be given maximum freedom to provide for the
22 educational needs of empowerment students without governmental
23 control.

1 1. An education service provider that accepts payment from an
2 Oklahoma Empowerment Account as directed by parents pursuant to this
3 act shall not be considered an agent of the state or federal
4 government.

5 2. An education service provider shall not be required to alter
6 its creed, practices, admissions policy, or curriculum to accept
7 payments as directed by parents from an Oklahoma Empowerment
8 Account.

9 E. Nothing in this act shall be construed to expand the
10 regulatory authority of the state, its officers, or any public
11 school to impose any additional regulation of education service
12 providers beyond those necessary to enforce the requirements of the
13 Oklahoma Empowerment Account Program.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 28-104 of Title 70, unless there
16 is created a duplication in numbering, reads as follows:

17 There is hereby created in the State Treasury a revolving fund
18 for the Office of the State Treasurer to be designated the "Oklahoma
19 Empowerment Account Revolving Fund". The fund shall be a continuing
20 fund, not subject to fiscal year limitations, and shall consist of
21 all monies received by the Office of the State Treasurer from
22 appropriations, gifts, grants, donations, and bequests. All monies
23 accruing to the credit of the fund are hereby appropriated and may
24 be budgeted and expended by the Office of the State Treasurer for

1 the purpose of implementing the provisions of the Oklahoma
2 Empowerment Act. Expenditures from the fund shall be made upon
3 warrants issued by the State Treasurer against claims filed as
4 prescribed by law with the Director of the Office of Management and
5 Enterprise Services for approval and payment.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 28-105 of Title 70, unless there
8 is created a duplication in numbering, reads as follows:

9 A. In any legal proceeding challenging the application of the
10 Oklahoma Empowerment Act to an education service provider, the state
11 bears the burden of establishing both that its action is necessary
12 and that it does not impose any undue burden on the education
13 service provider.

14 B. No liability shall arise on the part of the Agency, the
15 state, a public school district, a public charter school, or a
16 magnet school based on the award of or use of an Oklahoma
17 Empowerment Account pursuant to this act.

18 C. If any part of the Oklahoma Empowerment Act is challenged in
19 a state court as violating either the state or federal
20 constitutions, parents of eligible students and empowerment students
21 shall be permitted to intervene for the purposes of defending the
22 Oklahoma Empowerment Account Program's constitutionality. However,
23 for the purposes of judicial administration, a court may require
24 that all parents of eligible students and empowerment students file

1 a joint brief so long as they are not required to join any brief
2 filed on behalf of any named state defendant.

3 D. The provisions of the Oklahoma Empowerment Act shall be
4 severable, and if any provision of the Oklahoma Empowerment Act or
5 the application thereof to any person or circumstances is held
6 invalid, such invalidity shall not affect the other provisions or
7 applications of this Act, which can be given effect without the
8 invalid provision or application.

9 SECTION 7. This act shall become effective July 1, 2022.

10 SECTION 8. It being immediately necessary for the preservation
11 of the public peace, health, or safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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