

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2949

By: Nelson, Newell, Rogers,
Strohm, Echols, Jordan,
Kern, Hall, Brumbaugh,
Moore, Fisher, Johnson and
McCullough

AS INTRODUCED

An Act relating to schools; creating the Oklahoma Education Savings Account Act; creating the Education Savings Account Program; stating purpose of the act; providing for establishment of individual education savings accounts by certain school year; providing definitions; requiring the parent of an eligible student to sign an agreement for enrollment; listing conditions for enrollment; listing eligible uses of money deposited into an education savings account; prohibiting use of money deposited into an education savings account for certain purposes; requiring annual renewal of an account; requiring submission of certain achievement test results; making the signed agreement represent school attendance for compliance with certain law; establishing dates for submission of requests; allowing for continuance in the Program; providing for calculation of the annual amount to be deposited into accounts; directing the State Board of Education to promulgate rules; providing for certain verification; requiring the State Department of Education to transfer the annual amount upon submission of a signed agreement; providing for source of money; authorizing the Department to retain a certain amount of funds; requiring the Department to transfer certain amount to the Office of the State Treasurer; establishing the Education Savings Account Administrative Fund; stating use of monies in the fund; exempting monies from certain laws; allowing the Department to request certain increases; establishing the Treasurer's Education Savings Account Administrative Fund; stating use of monies in

1 the fund; exempting monies from certain laws;
2 allowing the Treasurer to request certain increases;
3 directing the Department to maintain a list of
4 certain tests; prohibiting certain schools and
5 providers from sharing, refunding or rebating certain
6 money to parents or students; prohibiting parents
7 from receiving certain money from a school or
8 provider; providing for closure of an account;
9 providing for the amount of funds to be prorated
10 under certain circumstances; establishing duties of
11 the Department; stating that money is not taxable
12 income; requiring the Treasurer to make quarterly
13 deposits into accounts; authorizing the Treasurer to
14 contract for management of accounts; requiring the
15 Department to make random audits of accounts;
16 directing the Board to establish a notification
17 process for violations; providing process for
18 suspending an eligible student from the Program for
19 certain reasons; allowing a parent to appeal
20 suspension decisions; directing the Department to
21 refer certain cases to the Attorney General; limiting
22 regulatory authority of the state and school
23 districts; directing the State Board of Education to
24 set aside certain amount of money from State Aid
appropriations; providing for adding back certain
amount of money to State Aid funds; directing the
Board to promulgate certain rules; specifying certain
rules; limiting authority of state agencies over
nonpublic schools and certain students; providing for
status of certain providers; limiting liability of
certain entities; providing for a study and report by
an independent research organization; requiring the
reporting and sharing of data to comply with certain
act; prohibiting the disaggregation of certain data;
requiring Department to publish report on the
website; providing for codification; providing an
effective date; and declaring an emergency.

2 0
2 1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 2 SECTION 1. NEW LAW A new section of law to be codified
2 3 in the Oklahoma Statutes as Section 28-101 of Title 70, unless there
2 4 is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma
2 Education Savings Account Act".

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

6 A. There is hereby created the Education Savings Account
7 Program.

8 B. The purpose of the Oklahoma Education Savings Account Act is
9 to provide additional educational options to parents for the
10 education of students in this state, by creating education accounts
11 for individual students empowering parents to make educational
12 decisions for their children.

13 C. Education savings accounts shall be established for
14 individual students beginning with the 2016-2017 school year.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 28-103 of Title 70, unless there
17 is created a duplication in numbering, reads as follows:

18 As used in the Oklahoma Education Savings Account Act:

19 1. "Account" means an education savings account established for
20 an eligible student pursuant to this act;

21 2. "Board" means the State Board of Education;

22 3. "Department" means the State Department of Education;

23 4. "Eligible postsecondary institution" means an accredited
24 public or private postsecondary institution;

1 5. "Eligible private school" means any school recognized by the
2 Oklahoma Private School Accreditation Commission or that meets the
3 accreditation requirements set by the State Board of Education or
4 other nationally recognized accreditation association that has
5 notified the Department of its intention to accept students who are
6 in the Program and comply with the antidiscrimination provisions of
7 42 U.S.C., Section 2000d;

8 6. "Eligible student" means a person who is a resident of
9 Oklahoma and is eligible to attend a public school in Oklahoma and
10 either:

11 a. is a member of a household where the total annual
12 income is equal to or less than two times the amount
13 required to qualify for the federal free or reduced-
14 price lunch program and who:

15 (1) is currently eligible to attend prekindergarten
16 or kindergarten,

17 (2) is enrolled in a public school where the student
18 is being counted for funding purposes or was
19 enrolled and counted for funding purposes during
20 the most recently concluded school year if the
21 public school is not yet enrolling students for
22 the next school year, or

23 (3) is a new resident of this state,
24

1 b. is a member of a household where the total annual
2 income is greater than two times the amount required
3 to qualify for the federal free or reduced-priced
4 lunch program and who:

5 (1) is currently eligible to attend prekindergarten
6 or kindergarten,

7 (2) is enrolled in a public school where the student
8 is being counted for funding purposes or was
9 enrolled and counted for funding purposes during
10 the most recently concluded school year if the
11 public school is not yet enrolling students for
12 the next school year, or

13 (3) is a new resident of this state, or

14 c. meets any of the following:

15 (1) is participating in or was participating in the
16 Lindsey Nicole Henry Scholarships for Students
17 with Disabilities Program during the current or a
18 previous school year. A student shall not be
19 eligible to participate in both the Education
20 Savings Account Program and the Lindsey Nicole
21 Henry Scholarships for Students with Disabilities
22 Program concurrently, or

23 (2) is a child in the household of a member of the
24 United States Armed Forces transferred from out

1 of state or from a foreign country pursuant to a
2 permanent change-of-station order of the parent;

3 7. "Parent" means a resident of the state who is a parent,
4 legal guardian or other person with the authority to act on behalf
5 of an eligible student;

6 8. "Program" means the Education Savings Account Program;

7 9. "Resident school district" means the public school district
8 in which the student resides as defined in Section 1-113 of Title 70
9 of the Oklahoma Statutes; and

10 10. "Treasurer" means the Office of the State Treasurer.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 28-104 of Title 70, unless there
13 is created a duplication in numbering, reads as follows:

14 A. To enroll an eligible student in the Education Savings
15 Account Program, the parent of the eligible student shall sign an
16 agreement to do all the following:

17 1. Provide an education for the eligible student in at least
18 the subjects of English language arts, mathematics, social studies
19 and science or provide eligible students with special needs an
20 organized appropriate educational program with measurable annual
21 goals;

22 2. Notify the State Board of Education of the date the eligible
23 student withdraws from the public school to participate in the
24 Program, the date the eligible student stops participating in the

1 Program and the date the eligible student enrolls or reenrolls in a
2 public school or graduates;

3 3. Not enroll the eligible student in a public school or
4 charter school full-time without first notifying the Board of the
5 decision to discontinue participation in the Program;

6 4. Sign a document releasing the resident school district from
7 all obligation to educate the eligible student;

8 5. Use the money deposited in the education savings account
9 established for the eligible student only for the following expenses
10 of the student:

11 a. tuition and fees to an eligible private school,
12 virtual school or virtual coursework provider, or
13 eligible postsecondary institution,

14 b. purchasing, renting or subscribing to a service that
15 provides textbooks, other learning materials or
16 programs, or curriculum for a complete course of study
17 for a particular content area or grade level including
18 any supplementary materials recommended by the
19 curriculum,

20 c. educational therapies or services for the eligible
21 student from a licensed or accredited practitioner or
22 provider, including licensed or accredited
23 paraprofessionals or educational aides. The State
24 Board of Education shall promulgate rules defining

1 which therapies and services are eligible under the
2 Program and setting the required qualifications for
3 paraprofessionals and aides,

- 4 d. tutoring services. The Board shall promulgate rules
5 setting the required qualifications for tutors.

6 Tutors shall be required to notify the Board of their
7 intention to provide tutoring services to students in
8 the Program,

- 9 e. services provided by a public school, including
10 individual classes and extracurricular programs,

- 11 f. fees for a nationally standardized norm-referenced
12 achievement test, advanced placement examinations or
13 any exams related to college or university admissions,

- 14 g. contributions to a Coverdell Savings Account
15 established pursuant to 26 U.S.C., Section 530 for the
16 benefit of the eligible student, except that money
17 used for elementary or secondary education expenses
18 shall be for expenses otherwise allowed by this act,

- 19 h. fees for management of the account by firms or
20 institutions selected by the Treasurer, and

- 21 i. insurance or surety bond payments as required by the
22 Board; and

23 6. Not use monies deposited in the account of an eligible
24 student for any of the following:

- a. purchasing computer hardware, electronic equipment, assistive technological devices, or educational equipment or instruments. Nothing shall prohibit the renting of such items,
- b. regular or routine transportation of the student. Regular and routine transportation shall not include transporting the student for education-related field trips and other extracurricular activities, and
- c. consumable educational supplies including but not limited to paper, pens or markers.

B. A parent shall renew the account of an eligible student on an annual basis by submitting a renewal request to the Department. The renewal request shall also include documentation showing the results of the student on a nationally standardized norm-referenced achievement test taken during that school year.

C. A signed agreement under this section shall be deemed school attendance and shall constitute compliance with the compulsory attendance law as set forth in Section 10-105 of Title 70 of the Oklahoma Statutes.

D. The parent of an eligible student shall submit a request to participate in the Education Savings Account Program no later than December 1 of the school year during which an account is requested, in order to receive funding for the same school year. If a request

1 is made after December 1 the account will not begin receiving funds
2 until the following school year.

3 E. Students may continue in the Program once they are
4 determined to be eligible pursuant to this act until they graduate,
5 return to public school or it has been found by the Board that the
6 agreement required in this section has been violated.

7 SECTION 5. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 28-105 of Title 70, unless there
9 is created a duplication in numbering, reads as follows:

10 A. For a student who is determined to be an eligible student
11 pursuant to subparagraph a of paragraph 6 of Section 3 of this act,
12 the annual amount to be deposited to the education savings account
13 for the student shall be as follows:

14 1. If the total household annual income is equal to or less
15 than the amount required to qualify for the federal free or reduced-
16 price lunch program, the amount granted to the account shall be
17 equal to ninety percent (90%) of the total State Aid factors
18 multiplied by the Grade Level Weight and the Student Category
19 Weights that would be generated by that student for the applicable
20 school year; and

21 2. If the total household annual income is greater than the
22 amount required to qualify for the federal free or reduced-price
23 lunch program but is equal to or less than two times that amount,
24 the amount granted to the account shall be equal to sixty percent

1 (60%) of the total State Aid factors multiplied by the Grade Level
2 Weight and the Student Category Weights that would be generated by
3 that student for the applicable school year.

4 B. For a student who is determined to be an eligible student
5 pursuant to subparagraph b of paragraph 6 of Section 3 of this act,
6 the amount granted to the education savings account for the student
7 shall be equal to thirty percent (30%) of the total State Aid
8 factors multiplied by the Grade Level Weight and the Student
9 Category Weights that would be generated by that student for the
10 applicable school year.

11 C. For a student who is determined to be an eligible student
12 pursuant to subparagraph c of paragraph 6 of Section 3 of this act,
13 the annual amount granted to the education savings account for the
14 student shall be equal to ninety percent (90%) of the total State
15 Aid factors multiplied by the Grade Level Weight and the Student
16 Category Weights that would be generated by that student for the
17 applicable school year.

18 D. The State Board of Education shall promulgate rules
19 establishing a process for initial verification of the household
20 income of a student for purposes of this section. Household income
21 verification shall not be required at anytime for students who
22 qualify pursuant to subsection B of this section.

23 Upon the request of a student for a change in the amount granted
24 to an account, the Board may conduct another verification of

1 household income but shall not require the student to submit to any
2 other eligibility verification that is not otherwise provided for in
3 this act.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 28-106 of Title 70, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Upon submission of the signed agreement by the parent as
8 required pursuant to Section 4 of this act, the State Department of
9 Education shall transfer the amount of funds calculated pursuant to
10 Section 5 of this act to the State Treasurer for deposit into the
11 education savings account for each eligible student pursuant to a
12 schedule established by the State Board of Education. The total
13 calculated amount shall be transferred in equal allocations
14 according to the schedule established by the Board for such
15 transfers and deposits, but such transfers shall not be made less
16 often than quarterly. Monies for deposit into the accounts shall be
17 from the funds set aside by the Board as provided for in Section 11
18 of this act for purposes of the Education Savings Account Program
19 and as directed by the Oklahoma Education Savings Account Act.

20 B. The Department may retain an amount equal to five percent
21 (5%) of the total amount set aside for the Program for
22 administrative services. The retained funds shall be deposited in
23 the Education Savings Account Administrative Fund established in
24 subsection C of this section. The Department shall transfer one

1 percent (1%) of the total deposited into the Education Savings
2 Account Administrative Fund to the Treasurer's Education Savings
3 Account Administrative Fund established in subsection D of this
4 section.

5 C. There is hereby established the Education Savings Account
6 Administrative Fund. The fund shall consist of monies retained by
7 the Department pursuant to subsection B of this section. The
8 Department shall administer the fund. Monies in the fund shall be
9 used by the Department for the costs in administering the Education
10 Savings Account Program. Monies in the fund shall be exempt from
11 the provisions of law relating to lapsing of appropriations. If the
12 number of education savings accounts significantly increases after
13 the fiscal year ending June 30, 2017, the Department may request the
14 Legislature to increase the amount allowed to be retained as set
15 forth in subsection B of this section to cover administrative costs
16 for the additional accounts.

17 D. There is hereby established the Treasurer's Education
18 Savings Account Administrative Fund. The fund shall consist of
19 monies transferred by the Department pursuant to subsection B of
20 this section for use by the Treasurer. The Treasurer shall
21 administer the fund. Monies in the fund shall be used by the
22 Treasurer for the costs of administering education savings accounts.
23 Monies in the fund shall be exempt from the provisions of law
24 relating to lapsing of appropriations. If the number of education

1 savings accounts significantly increases after the fiscal year
2 ending June 30, 2017, the Treasurer may request the Legislature to
3 increase the amount allowed to be retained as set forth in
4 subsection B of this section to cover administrative costs for the
5 additional accounts.

6 E. The Department shall maintain and publish a list of
7 nationally norm-referenced tests identified for purposes of
8 satisfying the testing requirements of subsection B of Section 4 of
9 this act. The tests shall meet industry standards of quality in
10 accordance with rules promulgated by the State Board of Education.

11 SECTION 7. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 28-107 of Title 70, unless there
13 is created a duplication in numbering, reads as follows:

14 A. An eligible private school or a provider of educational
15 services receiving funds from an education savings account shall not
16 share with, or refund or rebate to, the parent or eligible student,
17 in any manner, any of the funds from an education savings account.

18 B. Parents shall not receive or accept rebates, discounts or
19 payments from an eligible private school or a provider of
20 educational services using funds from an education savings account.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 28-108 of Title 70, unless there
23 is created a duplication in numbering, reads as follows:

1 A. Upon graduation from a postsecondary institution by an
2 eligible student or after a period of four (4) consecutive years
3 after high school graduation if the eligible student is not enrolled
4 in a postsecondary institution, the education savings account of the
5 student shall be closed and any remaining funds shall be returned to
6 the State Board of Education to be allocated to school districts
7 through the State Aid funding formula.

8 B. If an eligible student begins or ends participation in the
9 Education Savings Account Program after the start of a full school
10 year, the amount of the funds deposited into an education savings
11 account for the student shall be prorated to reflect the actual
12 amount of time the student participated in the Program during the
13 current school year.

14 C. The State Department of Education shall:

15 1. Upon request provide to the parent of a student the
16 calculated amount of funds the student would be eligible to receive
17 in an education savings account within ten (10) days after receiving
18 the request or within ten (10) days after the total State Aid
19 factors have been determined for the current fiscal year. Upon
20 request of a parent prior to submission of an application, the
21 Department shall provide to the parent an estimate of the
22 approximate amount of funds the student may receive in an education
23 savings account;

1 2. Not be responsible for any additional costs associated with
2 the education of eligible students incurred by the parents;

3 3. Establish a toll-free telephone number and website that
4 provides information about the Program to parents, private schools
5 and providers;

6 4. Require an annual, notarized, sworn statement by parents
7 participating in the Program certifying compliance with provisions
8 of the Oklahoma Education Savings Account Act, which statement shall
9 be retained by the Department; and

10 5. Cross-check the list of eligible students participating in
11 the Program with the public school enrollments prior to each deposit
12 to avoid duplication of funding.

13 D. Monies received and used by the parent of an eligible
14 student in compliance with the provisions of this act shall not
15 constitute taxable income to the parent.

16 E. The Treasurer shall make deposits into education savings
17 accounts upon verification by the Department that the student is
18 still participating in the Program.

19 F. The Treasurer may contract with private financial management
20 firms to manage education savings accounts with the supervision of
21 the Treasurer.

22 G. The Department shall conduct or contract for random audits
23 at least quarterly of education savings accounts to ensure
24 compliance with provisions of this act.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 28-109 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The State Board of Education shall establish a process by
5 which the public may notify the Board of any violation of the
6 Oklahoma Education Savings Account Act.

7 B. The Board may suspend an eligible student from the Education
8 Savings Account Program if the parent or the eligible student fails
9 to comply with the provisions of this act or if the Board has reason
10 to believe that the parent or eligible student failed to comply with
11 the provisions of this act with intent to defraud. Upon the
12 suspension of an eligible student from the Program, the Board shall:

13 1. Notify the Treasurer to suspend the account of the eligible
14 student until a final determination is made by the Board;

15 2. Notify the parent in writing that the account has been
16 suspended and that no further transactions will be allowed. The
17 notification shall specify the reason or reasons for the suspension
18 and state that the parent or student has ten (10) days, not
19 including weekends, to respond and take corrective action;

20 3. If the parent responds within the ten-day period, the Board
21 shall review the information provided by the parent and make a
22 decision to reinstate the student or to terminate participation of
23 the student in the Program; and
24

1 4. If the parent or eligible student refuses or fails to
2 contact the Board, to furnish any information or make any report
3 that may be required for reinstatement within the ten-day period,
4 the Board shall terminate participation of the student in the
5 Program and any remaining funds shall be returned to the State Board
6 of Education to be allocated to school districts through the State
7 Aid funding formula.

8 C. A parent may appeal the decision made by the Board pursuant
9 to subsection B of this section.

10 D. The Board shall refer cases of misuse of monies to the
11 Attorney General for investigation when it obtains evidence that the
12 parent or eligible student failed to comply with the provisions of
13 this act with intent to defraud.

14 SECTION 10. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 28-110 of Title 70, unless there
16 is created a duplication in numbering, reads as follows:

17 Acceptance by private schools of students participating in the
18 Education Savings Account Program shall not expand the regulatory
19 authority of the state or any school district to impose any
20 additional regulation on private schools.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 28-111 of Title 70, unless there
23 is created a duplication in numbering, reads as follows:

1 A. For the 2016-2017 school year, the State Board of Education
2 shall set aside an amount of money from the total amount
3 appropriated to the State Board of Education for State Aid purposes
4 and any other revenue available for allocation for State Aid
5 purposes to cover expected demand for education savings accounts
6 during the 2016-2017 school year. At the beginning of each
7 subsequent school year the Board shall set aside one hundred twenty
8 percent (120%) of the total amount deposited into education savings
9 accounts the previous school year and of the total amount for which
10 applications were received but for which no funds were available, to
11 allow for potential growth in participation.

12 B. Prior to the end of the fiscal year, the Board shall
13 determine the amount of funding that was set aside during that
14 fiscal year for deposit into education savings accounts but was not
15 needed and was not deposited into individual student education
16 savings accounts and shall allocate that amount to school districts
17 through the State Aid funding formula.

18 C. The Board shall promulgate rules necessary for the
19 administration of the Education Savings Account Program, including:

20 1. Provisions for conducting or contracting for examinations of
21 the use of education savings account monies by eligible students;

22 2. Provisions for conducting or contracting for random,
23 quarterly and annual reviews or audits of education savings
24 accounts;

1 3. Establishing or contracting for the establishment of an
2 online anonymous fraud-reporting service;

3 4. Establishing a telephone number to receive anonymous fraud
4 reporting; and

5 5. Requirements for a surety bond or insurance for education
6 savings account holders.

7 SECTION 12. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 28-112 of Title 70, unless there
9 is created a duplication in numbering, reads as follows:

10 A. The Oklahoma Education Savings Account Act shall not be
11 construed to authorize or permit any state agency to exercise
12 control or supervision over any nonpublic school or students being
13 educated by other means. Students who are being provided an
14 education by other means shall not be eligible to participate in the
15 Education Savings Account Program.

16 B. Educational service providers which accept payment from an
17 education savings account shall not be considered agents of the
18 state or federal government.

19 C. No liability shall arise on the part of the state, the State
20 Treasurer, the State Board of Education, the State Department of
21 Education or a school district based on participation in the Program
22 by an eligible student.
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1 SECTION 13. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 28-113 of Title 70, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The State Board of Education may select an independent
5 research organization, which may be a public or private entity or
6 university, to conduct a study of and report on the academic gains
7 of eligible students participating in the Education Savings Account
8 Program. The Board shall provide the standardized test scores on
9 the nationally norm-referenced tests of eligible students which have
10 been submitted as required pursuant to Section 4 of this act to the
11 independent research organization. Beginning in the third year of
12 the Program the independent research organization shall annually
13 report to the Board on the year-to-year learning gains of
14 participating students on a statewide basis. The report shall also
15 include, to the extent possible, a comparison of the learning gains
16 of participating students to the learning gains of public school
17 students in the state with socioeconomic backgrounds similar to
18 those participating students. To minimize costs and reduce time
19 required for the analysis and evaluation by the independent research
20 organization, the Department shall conduct analyses of matched
21 students from public school assessment data and calculate control-
22 group learning gains using an agreed-upon methodology outlined in
23 the contract approved by the Board with the independent research
24 organization.

1 B. The reporting and sharing of student learning-gain data as
2 required by this section shall be made in accordance with the
3 requirements of the Family Educational Rights and Privacy Act
4 (FERPA) and shall be for the sole purpose of creating the annual
5 report. All parties with access to the data shall preserve the
6 confidentiality of the information as required by law.

7 C. The annual report made pursuant to this section shall not
8 disaggregate data to a level that will identify individual students
9 or providers, or disclose the academic level of individual students.

10 D. The annual report made pursuant to this section shall be
11 published by the Department on its website.

12 SECTION 14. This act shall become effective July 1, 2016.

13 SECTION 15. It being immediately necessary for the preservation
14 of the public peace, health and safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

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