

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 822

By: Daniels

AS INTRODUCED

An Act relating to students; creating the Oklahoma Education Freedom Act; providing short title; providing legislative intent; defining terms; creating the Oklahoma Education Freedom Account Program; providing for administration; providing method of application; providing for parent agreement; prohibiting certain discrimination; providing certain construction; requiring renewal of Oklahoma Education Freedom Accounts on annual basis; allowing closure of accounts under certain circumstances; requiring notification within certain time period of certain student enrolling in certain school; providing for suspension of deposits into account; providing for remittance of unused 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 certain system to share information about education service providers; providing for partial payment to an education service provider; authorizing certain auditing; providing for the removal of certain parent or student from eligibility under certain circumstances; allowing referral for certain investigation; providing for appeal; allowing for

1 payments to cease to certain providers under certain
2 circumstances; providing for appeal; allowing
3 acceptance of gifts and grants for certain purposes;
4 providing for promulgation of rules; providing
5 process for approving education service providers;
6 directing provision of certain student records in
7 accordance with certain act; providing certain
8 construction; directing certain decrease in state
9 funding upon certain finding of noncompliance;
10 creating cause of action for certain noncompliance;
11 creating the Oklahoma Education Freedom Account
12 Revolving Fund; specifying sources of fund; providing
13 for expenditures; providing purpose of fund;
14 providing for establishment of burden in certain
15 legal proceeding; providing immunity from liability
16 for certain actions; allowing certain parents to
17 intervene in certain legal proceeding; providing for
18 severability; providing legislative intent to
19 increase certain appropriated amount; providing for
20 codification; providing for noncodification;
21 providing an effective date; and declaring an
22 emergency.

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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
Education Freedom 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
their individual children by directing State Aid for which each
child is eligible to the education provider of their choice. The

1 Legislature affirms that parents and legal guardians are best suited
2 to make decisions to help children in this state reach their full
3 potential and achieve a brighter future.

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

7 A. As used in the Oklahoma Education Freedom Act:

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

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

11 3. "Oklahoma Education Freedom Account" means the account in
12 which funds are deposited by the Agency to pay for qualifying
13 education expenses for an eligible student;

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

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

22 6. "Oklahoma Education Freedom Account student" means an
23 eligible student approved to participate in the Oklahoma Education
24 Freedom Account Program;

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

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

- 6 a. tuition and/or fees at a private school accredited or
7 in the process of obtaining accreditation from the
8 State Board of Education or another accrediting
9 association approved by the State Board of Education,
- 10 b. tuition and/or fees for non-public online learning
11 programs,
- 12 c. tutoring services provided by an individual or a
13 tutoring facility,
- 14 d. services contracted for and provided by a public
15 school district, public charter school, or magnet
16 school including but not limited to classes and
17 extracurricular activities and programs,
- 18 e. textbooks, curriculum, or other instructional
19 materials including but not limited to supplemental
20 materials or associated online instruction required by
21 an education service provider,
- 22 f. computer hardware or other technological devices,
23 educational software, and applications that are used
24 to meet an eligible student's curriculum needs,

- 1 g. tuition and/or fees for a curriculum or program, along
2 with related instruments, supplies, accessories, and
3 materials, that provides instruction in drama, music,
4 speech and debate, agriculture, or other similar
5 activities,
- 6 h. school uniforms,
- 7 i. fees for nationally standardized assessments including
8 but not limited to assessments used to determine
9 college admission and advanced placement examinations
10 as well as tuition and/or fees for tutoring or
11 preparatory courses for the assessments,
- 12 j. tuition and/or fees for summer education programs and
13 specialized after-school education programs; provided,
14 however, that such expense does not include before-
15 school or after-school child care,
- 16 k. tuition, fees, instructional materials, and assessment
17 fees for a curriculum or program offered by a
18 technology center school,
- 19 l. educational services and therapies including but not
20 limited to occupational, behavioral, physical, speech-
21 language, and audiology therapies,
- 22 m. tuition and fees for concurrent enrollment at an
23 institution within The Oklahoma State System of Higher
24 Education,

1 n. fees for transportation paid to a fee-for-service
2 provider for the student to travel to and from an
3 education service provider, or

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

5 B. There is hereby created the Oklahoma Education Freedom
6 Account Program to be administered by the Agency to provide an
7 Oklahoma Education Freedom Account for qualified expenses to support
8 the education of Oklahoma Education Freedom Account students in this
9 state.

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

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

19 a. use the Oklahoma Education Freedom Account only for
20 qualified expenses to provide an education for an
21 eligible student in at least the subjects of reading,
22 English language arts, mathematics, science, and
23 social studies,

- 1 b. not enroll the eligible student as a full-time student
2 in a public school district, public charter school, or
3 magnet school after acceptance of an Oklahoma
4 Education Freedom Account,
5 c. comply with rules and requirements of the Oklahoma
6 Education Freedom Account Program established by the
7 Agency, and
8 d. not accept a scholarship from the Lindsey Nicole Henry
9 Scholarships for Students with Disabilities Program
10 created by Section 13-101.2 of Title 70 of the
11 Oklahoma Statutes while participating in the Oklahoma
12 Education Freedom Account Program.

13 3. No student shall, on the grounds of race, color, or national
14 origin, be excluded from participation in, be denied the benefits
15 of, or be subjected to discrimination under this program.

16 D. Nothing in this act shall be construed to require that an
17 Oklahoma Education Freedom Account student be enrolled full time or
18 part time in a private school or a nonpublic online school.

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

21 1. The parent of an Oklahoma Education Freedom Account student
22 enrolls the student as a full-time student in a public school, as
23 provided for by subsection F of this section;

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

3 3. The Oklahoma Education Freedom Account student graduates
4 from high school or reaches the age of twenty-one (21), whichever
5 comes first.

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

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

1 2. The State Department of Education on a monthly basis shall
2 transfer to the Agency for deposit into the Oklahoma Education
3 Freedom Account Revolving Fund created pursuant to Section 5 of this
4 act an amount equal to one-twelfth (1/12) of the total amount
5 necessary to fund all Oklahoma Education Freedom Accounts requested
6 for the applicable school year. Within ten (10) business days of a
7 deposit required by this paragraph, the Agency shall make funds
8 available in Oklahoma Education Freedom Accounts.

9 3. Prior to the monthly deposit required by this subsection,
10 the Agency shall notify the State Department of Education if changes
11 to the number of participating Oklahoma Education Freedom Account
12 students will result in a modification of the monthly deposit
13 amount.

14 H. An education service provider shall not share, refund, or
15 rebate any amount of an Oklahoma Education Freedom Account with the
16 parent or the Oklahoma Education Freedom Account student. A refund
17 or rebate for goods or services purchased with an Oklahoma Education
18 Freedom Account shall be credited to the Oklahoma Education Freedom
19 Account.

20 I. Parents shall be prohibited from making personal deposits
21 into an Oklahoma Education Freedom Account. However, no parent
22 shall be restricted from making payments for educational goods and
23 services not covered by funds in a student's Oklahoma Education
24 Freedom Account.

1 J. Monies received pursuant to the Oklahoma Education Freedom
2 Account Program shall not constitute taxable income to the parent or
3 Oklahoma Education Freedom Account student.

4 K. Funds deposited into an Oklahoma Education Freedom Account
5 but unused shall accrue from month to month and from year to year
6 unless the account is closed pursuant to the provisions of
7 subsection E of this section.

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

11 A. To implement the provisions of the Oklahoma Education
12 Freedom Act, the Agency shall maintain and make publicly available
13 on its website an updated list of education service providers.

14 B. The Agency shall provide parents of Oklahoma Education
15 Freedom Account students a written explanation of qualified expenses
16 for which an Oklahoma Education Freedom Account may be used, the
17 responsibilities of parents, the duties of the Agency, and the role
18 of any private financial management firm or other private
19 organization with which the Agency may contract to administer the
20 Oklahoma Education Freedom Act.

21 C. The Agency shall provide parents of Oklahoma Education
22 Freedom Account students with disabilities notice that participation
23 in the Oklahoma Education Freedom Account Program shall have the
24 same effect as a parental revocation of consent pursuant to 20

1 U.S.C., Sections 1414(a)(1)(D) and 1414(C) of the Individuals with
2 Disabilities Education Act (IDEA) and an explanation of the rights
3 parents of Oklahoma Education Freedom Account students with
4 disabilities have under IDEA and any applicable state laws and
5 regulations.

6 D. The Agency may contract with a private financial management
7 firm or other private organization to administer in full or in part
8 the Oklahoma Education Freedom Account Program.

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

14 F. The Agency shall establish a commercially viable, cost-
15 effective, and parent-friendly system of payment for services from
16 Oklahoma Education Freedom Accounts to education service providers
17 by electronic or online funds transfer.

18 1. The system of payment established pursuant to this
19 subsection shall provide maximum flexibility for parents by
20 facilitating direct payments to education service providers whenever
21 possible, provide a parent-friendly system for requests for pre-
22 approval of qualified expenses, and timely reimbursement for
23 qualified expenses.

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

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

6 H. If an education service provider requires partial payment of
7 tuition or fees to reserve a place for an Oklahoma Education Freedom
8 Account student prior to the start of the school year, the partial
9 payment may be paid by the Agency prior to the start of the school
10 year in which the Oklahoma Education Freedom Account is opened and
11 may be deducted in equal amounts from monthly deposits into Oklahoma
12 Education Freedom Accounts. If the parent of an Oklahoma Education
13 Freedom Account student chooses not to use the education service
14 provider, the partial reservation payment shall be remitted to the
15 Agency within fifteen (15) business days of notification of the
16 decision and credited to the student's Oklahoma Education Freedom
17 Account.

18 I. The Agency shall have the authority to conduct an audit or
19 contract for the auditing of Oklahoma Education Freedom Accounts and
20 shall conduct random audits of ten percent (10%) of Oklahoma
21 Education Freedom Accounts on an annual basis.

22 J. The Agency shall have the authority to remove any parent or
23 Oklahoma Education Freedom Account student from eligibility for an
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1 Oklahoma Education Freedom Account in the event of intentional and
2 substantial misuse of Oklahoma Education Freedom Account funds.

3 1. The Agency shall create procedures to ensure a fair process
4 to determine whether an intentional and substantial misuse of
5 Oklahoma Education Freedom Account funds has occurred. If misuse by
6 a parent is established but the Oklahoma Education Freedom Account
7 student is determined to be free from personal misconduct, he or she
8 shall be eligible for an Oklahoma Education Freedom Account in the
9 future if placed with a different parent, guardian, or other person
10 with legal authority to act on behalf of the student.

11 2. The Agency shall have the authority to refer suspected cases
12 of intentional and substantial misuse of Oklahoma Education Freedom
13 Account funds to the Attorney General for investigation if evidence
14 of fraudulent use of funds is obtained.

15 3. A parent or Oklahoma Education Freedom Account student may,
16 pursuant to the Administrative Procedures Act, appeal the Agency's
17 decision to remove the parent or student from eligibility for an
18 Oklahoma Education Freedom Account.

19 K. The Agency may cease payments to an education service
20 provider from Oklahoma Education Freedom Accounts if the Agency
21 determines the education service provider has:

22 1. Intentionally and substantially misrepresented information
23 or failed to refund any overpayments in a timely manner; or
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1 2. Routinely failed to provide Oklahoma Education Freedom
2 Account students with promised educational goods or services.

3 L. The Agency shall create procedures to ensure a fair process
4 to determine whether an education service provider should be
5 prohibited from receiving payments from Oklahoma Education Freedom
6 Accounts.

7 1. If the Agency prohibits an education service provider from
8 receiving payments pursuant to this subsection, the Agency shall
9 notify parents and Oklahoma Education Freedom Account students of
10 its decision within ten (10) days.

11 2. Education service providers may, pursuant to the
12 Administrative Procedures Act, appeal the Agency's decision to
13 prohibit them from receiving Oklahoma Education Freedom Account
14 payments.

15 M. The Agency may accept gifts and grants from any source to
16 support administration of the Oklahoma Education Freedom Account
17 Program, to inform the public about the Oklahoma Education Freedom
18 Account Program, and to fund additional Oklahoma Education Freedom
19 Accounts.

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

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

1 2. Establishing an anonymous telephone hotline for fraud
2 reporting;

3 3. Requiring a surety bond for education service providers
4 receiving more than One Hundred Thousand Dollars (\$100,000.00) in
5 Oklahoma Education Freedom Account funds; and

6 4. Refunding payments from education service providers back to
7 Oklahoma Education Freedom Accounts.

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

11 A. The Agency may approve education service providers on its
12 own initiative, at the request of parents, or at the request of a
13 prospective education service provider.

14 B. A prospective education service provider seeking to
15 participate in the Oklahoma Education Freedom Account Program shall:

16 1. Submit notice to the Agency that it wishes to participate
17 and receive Oklahoma Education Freedom Account funds designated by
18 parents for payment of educational goods and services; and

19 2. Agree not to refund, rebate, or share Oklahoma Education
20 Freedom Account funds with parents or Oklahoma Education Freedom
21 Account students in any manner, except that funds may be remitted or
22 refunded to an Oklahoma Education Freedom Account.

23 C. A public school district, public charter school, or magnet
24 school in which an Oklahoma Education Freedom Account student was

1 enrolled shall provide a private school that is an education service
2 provider and that has an Oklahoma Education Freedom Account student
3 enrolled with a complete copy of the student's records within five
4 (5) business days of receiving the request for records. The
5 provision of records pursuant to this subsection shall be in
6 accordance with the provisions of the Family Educational Rights and
7 Privacy Act of 1974 (FERPA).

8 D. Nothing in this act shall limit the independence or autonomy
9 of an education service provider or make the actions of an education
10 service provider the actions of state government. Education service
11 providers shall be given maximum freedom to provide for the
12 educational needs of Oklahoma Education Freedom Account students
13 without governmental control.

14 1. An education service provider that accepts payment from an
15 Oklahoma Education Freedom Account as directed by parents pursuant
16 to this act shall not be considered an agent of the state or federal
17 government.

18 2. An education service provider shall not be required to alter
19 its creed, practices, admissions policy, or curriculum to accept
20 payments as directed by parents from an Oklahoma Education Freedom
21 Account.

22 E. Nothing in this act shall be construed to expand the
23 regulatory authority of the state, its officers, or any public
24 school to impose any additional regulation of education service

1 providers beyond those necessary to enforce the requirements of the
2 Oklahoma Education Freedom Account Program.

3 F. Upon a judicial finding of noncompliance with the provisions
4 of subsections D and E of this section, the Agency shall receive a
5 five percent (5%) decrease in state funding for the fiscal year
6 following the year of noncompliance.

7 G. A parent or legal guardian of an Oklahoma Education Freedom
8 Account student shall have a cause of action against the Agency for
9 noncompliance with the provisions of subsections D and E of this
10 section.

11 SECTION 5. 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 There is hereby created in the State Treasury a revolving fund
15 for the Office of the State Treasurer to be designated the "Oklahoma
16 Education Freedom Account Revolving Fund". The fund shall be a
17 continuing fund, not subject to fiscal year limitations, and shall
18 consist of all monies received by the Office of the State Treasurer
19 from appropriations, gifts, grants, donations, and bequests. All
20 monies accruing to the credit of the fund are hereby appropriated
21 and may be budgeted and expended by the Office of the State
22 Treasurer for the purpose of implementing the provisions of the
23 Oklahoma Education Freedom Act. Expenditures from the fund shall be
24 made upon warrants issued by the State Treasurer against claims

1 filed as prescribed by law with the Director of the Office of
2 Management and Enterprise Services for approval and payment.

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

6 A. In any legal proceeding challenging the application of the
7 Oklahoma Education Freedom Act to an education service provider, the
8 state shall bear the burden of establishing both that its action is
9 necessary and that it does not impose any undue burden on the
10 education service provider.

11 B. No liability shall arise on the part of the Agency, the
12 state, a public school district, a public charter school, or a
13 magnet school based on the award of or use of an Oklahoma Education
14 Freedom Account pursuant to this act.

15 C. If any part of the Oklahoma Education Freedom Act is
16 challenged in a state court as violating either the state or federal
17 constitutions, parents of eligible students and Oklahoma Education
18 Freedom Account students shall be permitted to intervene for the
19 purposes of defending the Oklahoma Education Freedom Account
20 Program's constitutionality. However, for the purposes of judicial
21 administration, a court may require that all parents of eligible
22 students and Oklahoma Education Freedom Account students file a
23 joint brief so long as they are not required to join any brief filed
24 on behalf of any named state defendant.

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

7 SECTION 7. NEW LAW A new section of law not to be
8 codified in the Oklahoma Statutes reads as follows:

9 It is the intent of the Legislature to increase the amount
10 appropriated to the State Board of Education for the financial
11 support of public schools from the midyear adjusted level of Two
12 Billion Four Hundred Twenty-five Million Two Hundred Fifty-six
13 Thousand Five Hundred Ninety-eight Dollars (\$2,425,256,598.00) for
14 the fiscal year ending June 30, 2023, to Two Billion Seven Hundred
15 Million Dollars (\$2,700,000,000.00) for the fiscal year ending June
16 30, 2024, to accomplish the purposes of this act.

17 SECTION 8. This act shall become effective July 1, 2023.

18 SECTION 9. It being immediately necessary for the preservation
19 of the public peace, health, or safety, an emergency is hereby
20 declared to exist, by reason whereof this act shall take effect and
21 be in full force from and after its passage and approval.

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