

Amendment No. 2 to SB0503

Lundberg
Signature of Sponsor

AMEND Senate Bill No. 503*

House Bill No. 1183

by deleting all language after the caption and substituting instead the following:

WHEREAS, publicly supported educational freedom has a long history in Tennessee, with the Hope Scholarship providing funding that follows students to the public or private institution of their choice; and

WHEREAS, parents should be free to choose the school that best fits the educational needs of their specific child; and

WHEREAS, Tennessee has worked to expand choice through the successful ESA pilot program that is now helping primarily underserved, minority students in three of the State's largest school districts with 99% parent satisfaction with the program; and

WHEREAS, Tennessee recently invested a record \$1 billion in public education to fund students' unique needs while giving public school teachers the largest pay raise in State history; and

WHEREAS, the "Education Freedom Scholarship Act" will empower parents with the freedom to choose the right education for their child and provide parents a say in where their taxpayer dollars are spent; now, therefore,

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

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, is amended by adding the following as a new part:

49-6-3501. Short title.

This part is known and may be cited as the "Education Freedom Scholarship Act."

49-6-3502. Part definitions.

As used in this part, unless the context otherwise requires:

- (1) "Department" means the department of education;
- (2) "Eligible student" means a resident of this state who:
 - (A) Is entitled to attend a public school;
 - (B) Is not enrolled in a home school for which a parent is required to provide annual notice to the local director of schools prior to each school year of the parent's intent to conduct a home school, as described in § 49-6-3050(b); and
 - (C) Is not expelled from a school, or subject to disciplinary proceedings that may result in the student's expulsion from a school, at the time the student or the student's parent applies for a scholarship;
- (3) "Parent" means the parent, guardian, person who has custody of the child, or individual who has caregiving authority under § 49-6-3001;
- (4) "Private school" means a school that is:
 - (A) Located in this state;
 - (B) A church-related school or a private school, as those terms are defined in § 49-6-3001(c)(3)(A); and
 - (C) A category I, II, III, IV, or V school as approved by the commissioner of education in accordance with rules promulgated by the state board of education;
- (5) "Program" means the education freedom scholarship program created by this part;
- (6) "Public school" means a public charter school, a school operated by an LEA, or a school operated by this state with public funds that serves students in any of the grades kindergarten through twelve (K-12);

(7) "Recipient" means an eligible student who receives a scholarship for a given school year;

(8) "Scholarship" means an education freedom scholarship provided pursuant to this part; and

(9) "TISA" has the same meaning as defined in § 49-3-104.

49-6-3503. Creation.

(a) There is created an education freedom scholarship program to be administered by the department.

(b) Subject to appropriations and other available funds, the program must provide a scholarship to an eligible student who applies in the 2024-2025 school year or any subsequent school year, subject to the limitations of this part.

49-6-3504. Scholarship amounts – allowable uses.

(a) In order to receive a scholarship under this part, an eligible student, or the eligible student's parent, must:

(1) Submit a scholarship application to the department;

(2)

(A) Ensure the provision of an education for the eligible student that satisfies the compulsory school attendance requirement provided in § 49-6-3001(c)(1) through enrollment in:

(i) A private school; or

(ii) A public school located in an LEA other than the LEA in which the eligible student resides and is zoned to attend; and

(B) Provide documentation with the scholarship application showing that the eligible student will enroll in a private school or a public school as an out-of-district student for the school year for which the eligible student seeks a scholarship pursuant to this part;

(3) Not enroll the eligible student in a public school in the LEA in which the eligible student resides and is zoned to attend in any school year for which the eligible student receives a scholarship; and

(4) Release the LEA in which the eligible student resides and is zoned to attend from all obligations to educate the eligible student in any school year for which the eligible student receives a scholarship. Although an eligible student participating in the program through enrollment in a private school does not retain the right to receive special education and related services through an individualized education program, the student may be eligible under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1414) to receive equitable services through an individualized service plan.

(b) The department shall develop a scholarship application form that requires an applicant to indicate by checking a box on the application form whether the eligible student possesses a valid social security number. An eligible student is not required to possess a valid social security number in order to receive a scholarship under this part, but an applicant's failure to indicate the eligible student's possession of a valid social security number may result in such information being reported to the United States department of homeland security or to the internal revenue service.

(c)

(1)

(A) The maximum amount of a scholarship awarded to an eligible student who enrolls in:

(i) A private school is the base funding amount, as defined in § 49-3-104, for the respective school year; or

(ii) A public school located in an LEA other than the LEA in which the eligible student resides and is zoned to attend is the greater of:

(a) The amount of tuition that may be charged to the eligible student pursuant to § 49-6-3003 by the local government for the LEA in which the eligible student enrolls as an out-of-district student; or

(b) The local share of the base funding amount generated by the eligible student for the LEA in which the eligible student is counted as enrolled.

(B) This state shall fund one hundred percent (100%) of the scholarships awarded to recipients. If a recipient generates TISA funding for an LEA pursuant to this subsection (c), then, except as provided in subdivision (c)(2)(C)(i), the state share of the TISA funding generated by the recipient must be allocated to the recipient's scholarship account and this state shall remit the remaining amount required for the recipient to receive the full scholarship amount provided in subdivision (c)(1)(A).

(2)

(A) Except as provided in subdivision (c)(2)(C)(i), a recipient must be counted in the enrollment figures for the LEA in which the recipient resides and is zoned to attend if the recipient, in the school year immediately preceding the first school year for which the recipient receives a scholarship pursuant to this part:

(i) Was enrolled in a public school;

(ii) Participated in the education savings account program created in part 26 of this chapter; or

(iii) Participated in the individualized education account program created in part 14, chapter 10 of this title.

(B)

(i) Except as provided in subdivision (c)(2)(C)(ii), the state share of the base funding amount generated by a recipient pursuant to subdivision (c)(2)(A)(i) must be subtracted from the state TISA funds otherwise payable to the respective LEA and remitted to the recipient's scholarship account.

(ii) Notwithstanding part 1, chapter 3 of this title to the contrary, the state shall pay one hundred percent (100%) of the local share of the base funding amount generated by a recipient who is counted in the enrollment figures of an LEA pursuant to subdivision (c)(2)(A)(i), as prescribed in the TISA, and remit such funds to the recipient's scholarship account.

(iii) A recipient who is counted in the enrollment figures for the LEA in which the recipient resides and is zoned to attend pursuant to subdivision (c)(2)(A)(i), or who generates TISA funding for the LEA in which the recipient is enrolled as an out-of-district student, continues to generate any applicable weights or direct allocations pursuant to part 1, chapter 3 of this title. The state share of any weights or direct allocations generated by a recipient must be remitted to the respective LEA. The respective local government shall contribute the local share of any weights or direct allocations generated by a recipient who is counted in the enrollment figures for the LEA. Any weights or direct allocations generated by a recipient must remain with the LEA and are not the entitlement of the recipient who generated the allocations pursuant to part 1, chapter 3 of this title.

(C)

(i) A recipient who uses the scholarship to enroll in a public school located in an LEA other than the LEA in which the recipient resides and is zoned to attend must be counted in the enrollment figures for the LEA in which the recipient is enrolled as an out-of-district student, as prescribed in the TISA.

(ii) The state share of the base funding amount generated by a recipient pursuant to subdivision (c)(2)(A)(i) who enrolls in a public school located in an LEA other than the LEA in which the recipient resides and is zoned to attend must be transferred to the LEA in which the recipient is enrolled.

(3) Scholarship funds awarded under this part are the entitlement of the recipient, under the supervision of the recipient's parent if the recipient is seventeen (17) years of age or younger.

(4) Scholarship funds received by an LEA that enrolls a recipient are excluded from the maintenance of local funding effort requirement in § 49-3-314(c) and from any apportionment requirement under § 49-3-315(a).

(5)

(A) Subject to appropriation, if a recipient enrolls in a public school located in an LEA other than the LEA in which the recipient resides and is zoned to attend and requires special education and related services in order for the recipient to receive a FAPE, then, for the first school year in which the recipient is enrolled in the LEA as an out-of-district student, the LEA may apply to the department for reimbursement in the amount of the weighted allocations generated by the recipient through the TISA for each of the recipient's unique learning needs. This subdivision (c)(5)(A) does not apply if the recipient was enrolled in the

LEA as an out-of-district student in the school year immediately preceding the first year for which the recipient received a scholarship.

(B) As used in this subdivision (c)(5):

(i) "FAPE," "related services," and "special education" have the same meanings as defined in § 49-10-102; and

(ii) "Unique learning need" and "weighted allocation" have the same meanings as defined in § 49-3-104.

(d) Scholarship funds may be used, subject to department approval, for one (1) or more of the following expenses:

(1) Tuition, fees, and uniforms required by the private school in which the recipient is enrolled;

(2) Tuition charged pursuant to § 49-6-3003, if the recipient is enrolled in a public school located in an LEA other than the LEA in which the recipient resides and is zoned to attend;

(3) Textbooks, curricula, and instructional materials required by the private school in which the recipient is enrolled;

(4) Tutoring services provided by a tutor or tutoring facility that meets the requirements established by the department;

(5) Fees for transportation to and from the private school or public school in which the recipient is enrolled, paid to a fee-for-service transportation provider that meets the requirements established by the department;

(6) Computer hardware, technological devices, and other technology fees that meet the requirements established by the department and that are used for the recipient's educational needs;

(7) Tuition, fees, textbooks, curricula, and instructional materials for summer academic programs and specialized afterschool academic programs

that meet the requirements established by the department. This subdivision

(d)(7) does not include afterschool childcare;

(8) Fees for early postsecondary opportunity courses or examinations, entrance examinations required for postsecondary admission, and industry credentials as approved by the department; and

(9) Educational therapy services provided by therapists that meet the requirements established by the department.

(e) A recipient's scholarship account must be closed, and all remaining scholarship funds returned to the state treasurer to be used to supplement future school years' scholarship allocations pursuant to this part, upon the earlier of:

(1) The recipient's graduation from high school or obtainment of a high school equivalency credential approved by the state board of education;

(2) The recipient's enrollment in a public school located in the LEA in which the recipient resides and is zoned to attend;

(3) The recipient's completion of thirteen (13) school years as a kindergarten through grade twelve (K-12) student;

(4) The recipient's voluntary withdrawal from the scholarship program; or

(5) The department disqualifying the recipient due to the recipient's noncompliance with program requirements.

49-6-3505. Prioritization of awards.

(a) For the 2024-2025 school year, the department shall award a maximum of twenty thousand (20,000) scholarships, to be awarded as follows:

(1) Ten thousand (10,000) scholarships for eligible students who meet one (1) of the following criteria:

(A) The student's household income does not exceed three hundred percent (300%) of the federal poverty level as defined by the

most recently revised poverty income guidelines published by the United States department of health and human services; or

(B) The student is an eligible student as defined in § 49-6-2602 or § 49-10-1402; and

(2) Ten thousand (10,000) scholarships for eligible students, regardless of whether the eligible student meets one (1) of the criteria listed in subdivision (a)(1)(A) or (a)(1)(B).

(b) The department shall award scholarships in the order in which the department receives scholarship applications.

(c) Beginning with the 2025-2026 school year, if the number of eligible students applying for a scholarship exceeds the number of scholarships available for the respective school year, then the department shall award scholarships in the following order:

(1) A student who received a scholarship in the immediately preceding school year;

(2) A student whose household income does not exceed two hundred percent (200%) of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services or a student who is an eligible student, as defined in § 49-6-2602 or § 49-10-1402, in the order in which the department receives scholarship applications;

(3) A student whose household income does not exceed three hundred percent (300%) of the federal poverty level, in the order in which the department receives scholarship applications;

(4) A student who, at the time of application, is currently enrolled in a public school, or who is eligible for kindergarten enrollment in a public school in

the upcoming school year, in the order in which the department receives scholarship applications; and

(5) An eligible student, in the order in which the department receives scholarship applications.

49-6-3506. Scholarship recipients enrolled in public schools.

(a) Notwithstanding another law to the contrary, an LEA or public charter school shall not deny a recipient enrollment as an out-of-district student unless:

(1) There is a lack of available space or teaching staff within a particular program or public school requested by the recipient. This subdivision (a)(1):

(A) Does not require an LEA to admit or enroll a recipient who does not reside in the LEA before the open enrollment period prescribed in § 49-2-128 is completed or before all applications for transfer under § 49-2-128(c) have been acted upon in accordance with § 49-2-128(d);

(B) Does not prohibit an LEA from reserving a reasonable number of enrollment spaces pursuant to § 49-2-128(b)(2); and

(C) Does not require an LEA to identify a number of enrollment spaces each school year for recipients that differs from the number of enrollment spaces, if any, identified by the LEA pursuant to § 49-2-128;

(2) The recipient does not meet the established eligibility criteria for participation in a particular program or public school, including age requirements, course prerequisites, or required levels of performance; or

(3) A desegregation plan is in effect for the LEA or public charter school, and the denial is necessary for compliance with the desegregation plan.

(b) The parent of a recipient who uses the scholarship to enroll in a public school located in an LEA other than the LEA in which the recipient resides and is zoned to attend is responsible for providing transportation for the student to and from the respective public school.

49-6-3507. Annual administration of assessments for scholarship recipients.

(a) As a condition of participating in the program:

(1) Recipients in grades three through eleven (3-11) must be annually administered a normed referenced test approved by the state board of education;

(2) Recipients in third grade must be administered the Tennessee comprehensive assessment program (TCAP) test in English language arts (ELA) or a nationally normed referenced assessment in ELA approved by the state board of education, if the assessment is administered to recipients in a test environment, as determined by the department of education;

(3) Recipients in eighth grade must be administered the Tennessee comprehensive assessment program (TCAP) test in mathematics or a nationally normed referenced assessment in mathematics approved by the state board of education, if the assessment is administered to recipients in a test environment, as determined by the department of education; and

(4) Recipients in eleventh grade must take an examination to assess the recipient's readiness for postsecondary education, such as the ACT or SAT.

(b) For a recipient who is enrolled full time in a private school or in a public school, the private school or public school, as applicable, shall annually administer the tests required in subsection (a) to recipients.

(c)

(1) For a recipient who is seventeen (17) years of age or younger and who is not enrolled full time in a private school or public school for purposes of the program, the recipient's parent must ensure that the recipient is annually administered the tests required in subsection (a).

(2) A recipient who has reached the age of eighteen (18) and who is not enrolled full time in a private school or public school for purposes of the program

must ensure that the recipient is annually administered the tests required in subsection (a).

(d) The tests required in this section are for reporting purposes only.

49-6-3508. Use of scholarship funds – Separate scholarship accounts – Receipts for expenses – Requirements for private schools that enroll scholarship recipients.

(a) Scholarship funds must only be used for the expenses listed in § 49-6-3504(d).

(b) The department shall establish and maintain separate scholarship accounts for each recipient and shall verify that the uses of scholarship funds are permitted under § 49-6-3504(d) and institute fraud protection measures. Use of scholarship funds on tuition and fees, computer hardware or other technological devices, tutoring services, educational therapy services, summer academic programs and specialized afterschool academic programs, and any other expenses identified by the department must be preapproved by the department. Preapproval must be requested by completing and submitting the department's preapproval form. The department shall develop processes to effectuate this subsection (b).

(c) To document compliance with subsection (a), private schools, public schools, and providers of goods or services for which scholarship funds may be used pursuant to § 49-6-3504(d) shall provide parents of recipients or recipients, as applicable, with a receipt for all expenses paid to the school or provider using scholarship funds.

(d) A private school, public school, or provider shall not, in any manner, refund, rebate, or share funds from a scholarship with a parent of a recipient or a recipient. The department shall establish a process for scholarship funds to be returned to a scholarship account by a private school, public school, or provider.

(e) To ensure the safety and equitable treatment of recipients, private schools that enroll recipients shall:

(1) Comply with all state and federal health and safety laws applicable to nonpublic schools;

(2) Certify that the private school will not discriminate against recipients on the basis of race, color, or national origin;

(3) Comply with § 49-5-202;

(4) Conduct criminal background checks on employees; and

(5) Exclude from employment:

(A) Any person who is not permitted by state law to work in a nonpublic school; and

(B) Any person who might reasonably pose a threat to the safety of students.

(f) An LEA shall provide a private school that has admitted a recipient with a complete copy of the recipient's school records in the LEA's possession to the extent permitted by state and federal student privacy laws.

49-6-3509. Suspension or termination of schools or providers — Suspension or termination of scholarship recipients — Restitution — Criminal prosecution.

(a)

(1) The department may suspend or terminate a private school, public school, or provider from participating in the program if the department determines that the school or provider has failed to comply with the requirements of this part.

(2) The state board of education shall promulgate rules allowing the department to suspend or terminate a private school or public school from participating in the program due to low academic performance, as determined by the department. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) If the department suspends or terminates a private school, public school, or provider from participating in the program under this subsection (a),

then the department shall notify affected recipients of the department's decision.

If a private school, public school, or provider is suspended or terminated from participating in the program pursuant to this section, or if a private school, public school, or provider withdraws from the program, then affected recipients remain eligible to participate in the program.

(b) The department may suspend or terminate a recipient from the program, or close a recipient's scholarship account, if the department determines that the recipient's parent or the recipient has failed to comply with the requirements of this part. If the department terminates a recipient's participation in the program, then the department shall close the recipient's scholarship account.

(c) If a parent of a recipient, a recipient, or any other person uses funds deposited into a recipient's scholarship account for expenses that do not constitute one (1) or more of the qualified expenses listed in § 49-6-3504(d), or if a parent of a recipient, a recipient, or any other person misrepresents the nature, receipts, or any other evidence of one (1) or more of the expenses paid using scholarship funds, then such person is liable for restitution to the department in an amount equal to the amount of the expenses.

(d) If a person knowingly uses scholarship funds for expenses that do not constitute one (1) or more of the qualified expenses listed in § 49-6-3504(d) with the intent to defraud the program, or knowingly misrepresents the nature, receipts, or any other evidence of one (1) or more of the expenses paid by the person with the intent to defraud the program, then the department may refer the matter to the appropriate enforcement authority for criminal prosecution.

(e) Any funds remaining in a scholarship account that is closed in accordance with subsection (b) must be returned to the state treasurer to be placed in the Tennessee investment in student achievement formula (TISA) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(f) The state board shall promulgate rules to effectuate this section, including rules to establish a process for suspending or terminating a private school, public school, provider, and recipient from the program. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-6-3510. Limitations on participation.

Notwithstanding another law to the contrary, a scholarship shall not be awarded to an eligible student for the same school year in which the student is participating in the Tennessee education savings account pilot program, established in part 26 of this chapter, or the individualized education account program, established in chapter 10, part 14 of this title.

49-6-3511. Competitive procurement policy.

The department of education shall procure any good or service selected or approved by the department to effectuate this part competitively and in compliance with all state laws and administrative rules regarding the procurement of goods and services by state agencies, including §§ 12-3-101 – 12-3-104. The department shall submit all contracts for the procurement of any good or service selected or approved by the department to effectuate this part to the fiscal review committee of the general assembly for review according to the timelines and requirements established in § 4-56-107(b)(5)(A).

49-6-3512. Promulgation of rules.

The state board of education shall promulgate rules, including emergency rules, to effectuate this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

49-6-3513. Payment - state or local public benefit.

(a) A scholarship awarded under this part:

(1) Shall not be paid directly to an eligible student or to an eligible student's parent; and

(2) Is a state or local public benefit under § 4-58-102.

(b) Funds received pursuant to this part do not constitute income taxable to the parent of the participating student or to the student under title 67, chapter 2.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it, and applies to the 2024-2025 school year and subsequent school years.