

Laws of the State of Georgia – Georgia Special Needs Scholarship Act

(Current through the 2021 Legislative Session)

§ 20-2-2110. Short title

This article shall be known and may be cited as the "Georgia Special Needs Scholarship Act."

§ 20-2-2111. Legislative findings; purpose

The General Assembly finds that:

- (1) Students with disabilities have special needs that merit educational alternatives which will allow students to learn in an appropriate setting and manner;
- (2) Parents are best equipped to make decisions for their children, including the educational setting that will best serve the interests and educational needs of their children;
- (3) Children, parents, and families are the primary beneficiaries of the scholarship program authorized in this article and any benefit to private schools, sectarian or otherwise, is purely incidental;
- (4) The scholarship program established in this article is for the valid secular purpose of tailoring a student's education to that student's specific needs and enabling families to make genuine and independent private choices to direct their resources to appropriate schools; and
- (5) Nothing in this article shall be construed as a basis for granting vouchers or tuition tax credits for any other students, with or without disabilities.

§ 20-2-2112. Definitions

As used in this article, the term:

- (1) "Board" means the State Board of Education.
- (2) "Department" means the Department of Education.
- (3) "Parent" means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of a child.
- (4) "Participating school" means a private school that has notified the department of its intention to participate in the program, and that complies with the department's requirements.
- (5) "Prior school year in attendance" means that the student was enrolled and reported by a public school system or school systems for funding purposes during the preceding October and March full-time equivalent (FTE) program counts in accordance with Code Section 20-2-160.
- (6) "Private school" means a nonpublic school, sectarian or nonsectarian, which is accredited or in the process of becoming accredited by one or more of the entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519.
- (7) "Program" means the scholarship program established pursuant to this article.

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(8) "Resident school system" means the public school system in which the student would be enrolled based on his or her residence.

(9) "Scholarship" means a Georgia Special Needs Scholarship awarded pursuant to this article.

(10) "Scholarship student" means a student who receives a scholarship pursuant to this article.

§ 20-2-2113. Annual notification of options available to parents of special needs students

(a) The resident school system shall provide specific written notice of the options available under this article to the parent at the initial Individualized Education Program (IEP) meeting in which a disability of the parent's child is identified or at the time the child is determined to be eligible for accommodations or services under Section 504 of the federal Rehabilitation Act of 1973. Thereafter, the resident school system shall annually notify prior to the beginning of each school year the parent of a student with a disability by letter, electronic means, or by such other reasonable means in a timely manner of the options available to the parent under this article.

(b)

(1) The parent may choose for the student to attend another public school within the resident school system which has available space and which has a program with the services agreed to in the student's existing Individualized Education Program or Section 504 Plan. If the parent chooses this option, then the parent shall be responsible for transportation to such school. The student may attend such public school pursuant to this paragraph until the student completes all grades of the school, graduates, or reaches the age of 21, whichever occurs first, in accordance with federal and state requirements for disabled students;

(2) The parent may choose to enroll the student in and transport the student to a public school outside of the student's resident school system which has available space and which has a program with the services agreed to in the student's existing Individualized Education Program or Section 504 Plan. The nonresident public school system may accept the student, and if it does, such system shall report the student for purposes of funding to the department;

(3) The parent may choose for the student to attend one of the state schools for the deaf and blind operated by the State Board of Education, if appropriate for the student's needs. Funding for such students shall be provided in accordance with Code Section 20-2-302; or

(4) The parent may request and receive from the department a scholarship for the student to enroll in and attend a participating private school in accordance with this article.

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§ 20-2-2114. Qualifications for scholarship; financial responsibility; state-wide assessments; exception; compliance

(a) A student shall qualify for a scholarship under this article if:

(1) The student's parent currently resides within Georgia and has been a Georgia resident for at least one year; provided, however, that the one-year requirement shall not apply if the student's parent is an active duty military service member stationed in Georgia within the previous year;

(2) The student has spent the prior school year in attendance at a Georgia public school or received preschool special education or related services pursuant to Section 619 of Part B of the federal Individuals with Disabilities Education Act; provided, however, that this requirement shall not apply if:

(A) The student's parent is an active duty military service member stationed in Georgia within the previous year;

(B) The student has been adopted or placed in a permanent guardianship from foster care pursuant to an order issued by a court of competent jurisdiction within the previous year;

(C) The student previously qualified for a scholarship pursuant to this article; or

(D) The scholarship application is made for the 2021-2022 school year on behalf of a student who was enrolled in a Georgia public school at the time of at least one count provided for in Code Section 20-2-160 during either the 2019-2020 or 2020-2021 school years;

(3) (A) The student has an Individualized Education Program (IEP) written in accordance with federal and state laws and regulations; provided, however, that the State Board of Education shall be authorized to require a local board of education to expedite the development of an Individualized Education Program and to waive the prior school year requirement contained in paragraph (2) of this subsection, in its sole discretion, on a case-by-case basis for specific medical or behavioral needs of the student upon the request of a parent or guardian in accordance with state board procedures. If an expedited Individualized Education Program is required by the state board pursuant to this subparagraph, the state board may additionally require such expedited process to be completed prior to the beginning of the school year. The State Board of Education shall provide an annual report by December 31 of each year regarding the number of waivers approved pursuant to this paragraph to the General Assembly; or

(B) (i) The student has a Section 504 Plan relating to one or more conditions that are included among the conditions which shall be identified by the State Board of Education for the purposes of this Code section and which shall, at a minimum, include the following:

(I) Attention deficit hyperactivity disorder (ADHD);

(II) Autism spectrum disorder;

(III) Bipolar disorder;

(IV) Cancer;

(V) Cerebral palsy;

(VI) Cystic fibrosis;

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(VII) Deafness;

(VIII) Down syndrome;

(IX) Drug or alcohol abuse;

(X) Dual sensory impairment;

(XI) Dyslexia;

(XII) Emotional or behavioral disorder;

(XIII) Epilepsy;

(XIV) Hearing impairment;

(XV) Intellectual disability;

(XVI) Muscular dystrophy;

(XVII) Specific learning disability;

(XVIII) Spina bifida;

(XIX) Traumatic brain injury;

(XX) Visual impairment; or

(XXI) Any rare disease identified by the National Institutes of Health's Genetic and Rare Diseases Information Center's list of rare disease disorders.

(ii) The State Board of Education shall adopt rules to provide for the verification that a student who qualifies for this scholarship through a Section 504 Plan has met the eligibility requirements.

(4) The parent obtains acceptance for admission of the student to a participating school; and

(5) The parent submits an application for a scholarship to the department no later than the deadline established by the department; provided, however, that the department shall establish periodic application deadlines during the school year, which shall occur no less frequently than on September 15, December 15, and February 15 of each school year, for a student to transfer.

(b) Upon acceptance of the scholarship, the parent assumes full financial responsibility for the education of the scholarship student, including transportation to and from the participating school.

(c) For a student who participates in the program whose parents request that the student take the state-wide assessments pursuant to Code Section 20-2-281, the resident school system shall make available to the student locations and times to take all state-wide assessments. Test scores of private school students participating in the state-wide assessments shall not be applied to the system averages of the resident school system for data reported for federal and state requirements.

(d) Students enrolled in a school operated by the Department of Juvenile Justice or operated by a state charter school on behalf of the Department of Juvenile Justice pursuant to Code Section 20-2-2084.1 are not eligible for the scholarship.

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(e) The scholarship shall remain in force until the student returns to his or her assigned school in the resident public school system, graduates from high school, or reaches the age of 21, whichever occurs first. However, at any time, the student's parent may remove the student from the participating school and place the student in another participating school or public school as provided for in Code Section 20-2-2113.

(f) With respect to local school systems, the acceptance of a scholarship shall have the same effect as a parental refusal to consent to services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.A. Section 1400, et seq., and a parental waiver of rights to educational accommodations under Section 504 of the federal Rehabilitation Act of 1973, 29 U.S.C.A. Section 701, et seq.

(g) The creation of the program or the granting of a scholarship pursuant to this article shall not be construed to imply that a public school did not provide a free and appropriate public education for a student or constitute a waiver or admission by the state.

(h) Any scholarship directed to a participating school is so directed wholly as a result of the genuine and independent private choice of the parent.

(i) The parent of each student participating in the scholarship program shall comply fully with the participating school's rules and policies.

(j) Any parent who fails to comply with the provisions of this article and department regulations relating to the scholarship shall forfeit the scholarship.

§ 20-2-2115. Eligibility requirements for schools participating in scholarship program; application of participating school

(a) To be eligible to enroll a scholarship student, a participating school shall:

(1) Have a physical location in Georgia where the scholarship students attend classes and have direct contact with the school's teachers;

(2) Demonstrate fiscal soundness by having been in operation for one school year or by submitting a financial information report for the school that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant. The report must confirm that the school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming school year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. The report shall be limited in scope to those records that are necessary for the department to make a determination on fiscal soundness and to make payments to schools for scholarships;

(3) Comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;

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

(5) Comply with all provisions of Code Section 20-2-690 and any other state law applicable to private schools;

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(6) Regularly report to the parent and the department on the student's academic progress, including the results of pre-academic assessments and post-academic assessments given to the student, in accordance with department guidelines; and

(7) Employ or contract with teachers who hold a bachelor's degree or higher degree or have at least three years of experience in education or health and annually provide to the parents the relevant credentials of the teachers who will be teaching their students.

(b) A home school operating under the provisions of Code Section 20-2-690 shall not be eligible to enroll scholarship students.

(c) Residential treatment facilities licensed or approved by the state shall not be eligible to enroll scholarship students.

(d) The creation of the program shall not be construed to expand the regulatory authority of the state, its officers, or any public school system to impose any additional regulation of nonpublic schools beyond those reasonably necessary to enforce the requirements of this article.

(e) A participating school intending to enroll scholarship students shall submit an application to the department by June 30 of the school year preceding the school year in which it intends to enroll scholarship students. The notice shall specify the grade levels and services that the school has available for students with disabilities who are participating in the scholarship program. A school intending to enroll scholarship students in the 2007-2008 school year shall submit an application no later than June 30, 2007.

(f) The board shall approve a participating school's application to enroll scholarship students if the school meets the eligibility requirements of this article and complies with board rules established pursuant to Code Section 20-2-2117. The board shall make available to local school systems and the public a list of participating schools.

§ 20-2-2116. Amount of scholarship; method of payments

(a) The maximum scholarship granted a scholarship student pursuant to this article shall be an amount equivalent to the costs of the educational program that would have been provided for the student in the resident school system as calculated under Code Section 20-2-161 and, if a scholarship student has an Individualized Education Program (IEP), based upon services specified in the Individualized Education Program in place at the time of the most recent enrollment count, as described in Code Section 20-2-160. This shall not include any federal funds.

(b) The amount of the scholarship shall be the lesser of the amount calculated in subsection (a) of this Code section or the amount of the participating school's tuition and fees, if applicable, including, but not limited to, fees for:

(1) Student assessment;

(2) Uniforms;

(3) Physical therapy, speech therapy, or occupational therapy;

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(4) Transportation provided by the participating school;

(5) Meals;

(6) Summer school programs;

(7) Tutoring; and

(8) Other materials, services, or activities as authorized by the department.

(c) Scholarship students shall be counted in the enrollment of their resident school system; provided, however, that this count shall only be for purposes of determining the amount of the scholarship and the scholarship students shall not be included as enrolled for purposes of state or federal accountability requirements, including, but not limited to, the federal Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 (P.L. 107-110). The funds needed to provide a scholarship shall be subtracted from the allotment payable to the resident school system.

(d) Each local school system shall submit quarterly reports to the department on dates established by the department stating the number of scholarship students in the resident school system. Following each notification, the department shall transfer from the state allotment to each school system the amount calculated under subsection (b) of this Code section to a separate account for the scholarship program for quarterly disbursement to the parents of scholarship students. When a student enters the program, the department must receive all documentation required for the student's participation, including the participating school's and student's fee schedules, at least 30 days before the first quarterly scholarship payment is made for the student. The department may not make any retroactive payments.

(e) Upon proper documentation received by the department, the department shall make quarterly scholarship payments to the parents of scholarship students on or before October 15, December 15, February 15, and May 15 for quarterly periods corresponding, respectively, to August 1 through September 30, October 1 through November 30, December 1 through the last day of February, and March 1 through May 31 during each academic year in which the scholarship is in force. As nearly as practical, such quarterly payments shall be equal; provided, however, that this shall not prevent payments from being adjusted due to budgetary midterm adjustments made pursuant to Code Section 20-2-162. The state auditor shall cite as an audit exception any failure by the department to meet any payment deadlines and shall include such audit exceptions on the website established pursuant to Code Section 50-6-32. The initial payment shall be made upon evidence of admission to the participating school, and subsequent payments shall be made on evidence of continued enrollment and attendance at the participating school.

(f) Payment to the parents must be made by individual warrant made payable to the student's parent and mailed by the department to the participating school of the parent's choice, and the parent shall restrictively endorse the warrant to the participating school for deposit into the account of such school.

(g) A person, on behalf of a participating school, may not accept a power of attorney from a parent to sign a warrant, and a parent of a scholarship student may not give a power of attorney designating a person, on behalf of a participating school, as the parent's attorney in fact.

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(h) If the participating school requires partial payment of tuition prior to the start of the academic year to reserve space for students admitted to the school, that partial payment may be paid by the department prior to the first quarterly payment of the year in which the scholarship is awarded, up to a maximum of \$1,000.00, and deducted from subsequent scholarship payments. If a student decides not to attend the participating school, the partial reservation payment must be returned to the department by such school. Only one reservation payment per student may be made per year.

§ 20-2-2117. Adoption and promulgation of rules; immunity from liability for scholarship decisions; schools may be barred from program participation for certain actions

(a) The board shall adopt rules to administer the program regarding eligibility and participation of participating schools, including, but not limited to, timelines that will maximize student and public and private school participation, the calculation and distribution of scholarships to eligible students and participating schools, and the application and approval procedures for eligible students and participating schools. The department shall develop and utilize a compliance form for completion by participating schools. The department shall be authorized to require any pertinent information as it deems necessary from participating schools for the purpose of implementing the program. Participating schools shall be required to complete such forms and certify their accuracy.

(b) The board shall adopt rules to administer the program regarding student eligibility, transparency, and awareness of the impact of the program, including, but not limited to, the following:

(1) The department shall conduct an annual survey of participating parents' satisfaction with the program, their satisfaction with the private school, and their likelihood of recommending the program. Survey results shall be collected using only numerical measures and made publicly available in the annual report provided for in Code Section 20-2-2118; and

(2) The department shall post on its publicly accessible website the basic unit cost for general instructional programs as a minimum estimate for scholarship amounts. The department shall provide parents of scholarship students the actual scholarship amounts upon appropriation of state funds to the department for disbursement. Within 30 calendar days of receipt of the actual scholarship amount, a parent of a scholarship student who believes that such student's program weights have been incorrectly reported by the local school system may make a request in writing to the department for a review of the accuracy of the local school system's reported program weights. The department shall provide a written response within 30 days of receipt of the parent's written request.

(c) No liability shall arise on the part of the department or the state or of any local board of education based on the award or use of a scholarship awarded pursuant to this article.

(d) The department may bar a school from participation in the program if the department determines that the school has intentionally and substantially misrepresented information or failed to refund to the state any scholarship overpayments in a timely manner.

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§ 20-2-2118. Annual report

The Office of Student Achievement, in conjunction with the department, shall provide the General Assembly not later than December 1 of each year with a report regarding the scholarship program for the previous fiscal year. The report shall include, but not be limited to, numbers and demographics of students participating and numbers of participating schools. Such report shall also be posted on the Office of Student Achievement's website.