

House Bill 801

By: Representatives Hilton of the 95th, Cantrell of the 22nd, Casas of the 107th, Teasley of the 37th, Glanton of the 75th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to
2 elementary and secondary education, so as to extensively revise the Georgia Special Needs
3 Scholarship Program; to revise the short title; to revise definitions; to require a signed
4 agreement by parents; to extend the uses for which scholarship funds may be used; to revise
5 requirements for eligibility and participation; to provide for administration of certain aspects
6 of the program by the Office of the State Treasurer; to revise provisions relating to
7 scholarship funds; to provide for a Program Review Committee to review expenditures upon
8 request; to provide for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to elementary and
12 secondary education, is amended by revising Article 33, the "Georgia Special Needs
13 Scholarship Act," as follows:

14 style="text-align:center">"ARTICLE 33

15 20-2-2110.

16 This article shall be known and may be cited as the 'Georgia ~~Special Needs Scholarship~~
17 Individualized Education Account Act.'

18 20-2-2111.

19 The General Assembly finds that:

20 (1) Students with disabilities have special needs that merit educational alternatives which
21 will allow students to learn in an appropriate setting and manner;

22 (2) Parents are best equipped to make decisions for their children, including the
 23 educational setting that will best serve the interests and educational needs of their
 24 children;

25 (3) Children, parents, and families are the primary beneficiaries of the scholarship
 26 program authorized in this article and any benefit to private schools, sectarian or
 27 otherwise, is purely incidental;

28 (4) The scholarship program established in this article is for the valid secular purpose of
 29 tailoring a student's education to that student's specific needs and enabling families to
 30 make genuine and independent private choices to direct their resources to appropriate
 31 schools and service providers; and

32 (5) Nothing in this article shall be construed as a basis for granting vouchers or tuition
 33 tax credits for any other students, ~~with or without disabilities~~ beyond those specified in
 34 this article.

35 20-2-2112.

36 As used in this article, the term:

37 (1) 'Board' means the State Board of Education.

38 (2) 'Department' means the Department of Education.

39 (3) 'Parent' means a biological parent, legal guardian, custodian, or other person with
 40 legal authority to act on behalf of a child.

41 (4) 'Participating school' means a private school that has notified the department of its
 42 intention to participate in the program; and that complies with the department's
 43 requirements.

44 (5) 'Prior school year in attendance' means that the student was enrolled in a public
 45 preschool special education program during the preceding school year or was enrolled
 46 and reported by a public school system or school systems for funding purposes during the
 47 preceding October and March full-time equivalent (FTE) program counts in accordance
 48 with Code Section 20-2-160.

49 (6) 'Private school' means a nonpublic school, sectarian or nonsectarian, which is
 50 accredited or in the process of becoming accredited by one or more of the entities listed
 51 in subparagraph (A) of paragraph (6) of Code Section 20-3-519.

52 (7) 'Program' means the scholarship program established pursuant to this article.

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

55 (9) 'Scholarship' means a Georgia ~~Special Needs~~ Individualized Education Account
 56 Scholarship awarded pursuant to this article.

57 (10) 'Scholarship funds' means the funds awarded on behalf of a scholarship student.

58 ~~(10)~~(11) 'Scholarship student' means a student who receives a scholarship pursuant to
59 this article.

60 (12) 'Service provider' means a person or organization that provides one or more of the
61 services or other authorized expenses included in subparagraph (a)(4)(C) of Code
62 Section 20-2-2114.

63 (13) 'Treasurer' means the Office of the State Treasurer.

64 20-2-2113.

65 (a) The resident school system shall provide specific written notice of the options available
66 under this article to the parent at the initial Individualized Education Program (IEP)
67 meeting in which a disability of the parent's child is identified. Thereafter, the resident
68 school system shall annually notify prior to the beginning of each school year the parent
69 of a student with a disability by letter, electronic means, or by such other reasonable means
70 in a timely manner of the options available to the parent under this article.

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

78 (2) The parent may choose to enroll the student in and transport the student to a public
79 school outside of the student's resident school system which has available space and
80 which has a program with the services agreed to in the student's existing individualized
81 education program. The public school system may accept the student, and if it does, such
82 system shall report the student for purposes of funding to the department;

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

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

89 20-2-2114.

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

91 (1) The student's parent currently resides within Georgia and has been a Georgia resident
92 for at least one year; provided, however, that the one-year requirement shall not apply if

- 93 the student's parent is an active duty military service member stationed in Georgia within
 94 the previous year or if the student has been adopted from foster care;
- 95 (2) The student has one or more of the following disabilities:
- 96 (A) Autism;
 - 97 (B) Deaf/blind;
 - 98 (C) Deaf/hard of hearing;
 - 99 (D) Emotional and behavioral disorder;
 - 100 (E) Intellectual disability;
 - 101 (F) Orthopedic impairment;
 - 102 (G) Other health impairment;
 - 103 (H) Specific learning disability;
 - 104 (I) Speech-language impairment;
 - 105 (J) Traumatic brain injury; or
 - 106 (K) Visual impairment;
- 107 (3) The student:
- 108 (A) Has spent the prior school year in attendance at a Georgia public school; provided,
 109 however, that this requirement shall not apply if:
 - 110 (i) ~~The~~ the student's parent is an active duty military service member stationed in
 111 Georgia within the previous year;
 - 112 (ii) The student has been adopted from foster care; or
 - 113 (iii) The student previously received a scholarship pursuant to this article; and
 - 114 (B) Has an Individualized Education Program written in accordance with federal and
 115 state laws and regulations; provided, however, that the State Board of Education shall
 116 be authorized to require a local board of education to expedite the development of an
 117 Individualized Education Program and to waive the prior school year requirement
 118 contained in subparagraph (A) of this paragraph, in its sole discretion, on a case-by-case
 119 basis for specific medical needs of the student upon the request of a parent or guardian
 120 in accordance with state board procedures. If an expedited Individualized Education
 121 Program is required by the state board pursuant to this subparagraph, the state board
 122 may additionally require such expedited process to be completed prior to the beginning
 123 of the school year. ~~The State Board of Education shall provide an annual report by
 124 December 31 of each year through December 31, 2015, regarding the number of
 125 waivers approved pursuant to this paragraph to the General Assembly;~~
- 126 ~~(4) The parent obtains acceptance for admission of the student to a participating school;~~
 127 ~~and~~
- 128 (4) The parent signs an agreement promising:

- 129 (A) To provide an education for the scholarship student in at least the subjects of
 130 reading, grammar, mathematics, social studies, and science;
- 131 (B) Not to enroll the student in a public school while participating in the program; and
- 132 (C) To only use scholarship funds for the following authorized expenses of the
 133 scholarship student:
- 134 (i) Tuition and fees at a participating school;
- 135 (ii) Textbooks required by a participating school;
- 136 (iii) Private tutoring services provided by an educator certified by the Professional
 137 Standards Commission, by an individual with experience teaching in higher education
 138 who is a demonstrated subject matter expert, or in a private tutoring facility;
- 139 (iv) Payment for the purchase of a curriculum, including any supplemental materials
 140 required by the curriculum;
- 141 (v) No more than \$500.00 per year to a fee-for-service transportation provider for
 142 transportation to or from a participating school or service provider;
- 143 (vi) Tuition and fees for a nonpublic online learning program or course;
- 144 (vii) Educational therapies or services from a licensed or accredited practitioner or
 145 provider, paraprofessional, or educational aide, including but not limited to
 146 occupational, behavioral, physical, and speech-language therapies;
- 147 (viii) Services provided under a contract with a public school, including individual
 148 classes and extracurricular programs; or
- 149 (ix) Computer hardware or other technological devices approved by the treasurer or
 150 a physician if the computer hardware or other technological device is used for the
 151 student's educational needs; and
- 152 (5) The parent submits an application for a scholarship to the department no later than
 153 the deadline established by the department; provided, however, that the department shall
 154 provide application deadline opportunities on September 15, December 15, and February
 155 15 of each school year for a student to transfer enroll in the program. The department
 156 shall include the following information in the application materials and on the program's
 157 web page:
- 158 (A) An explanation of the allowable uses of scholarship funds, the responsibilities of
 159 parents, and the duties of the department and the treasurer with respect to the program;
- 160 (B) An explanation of parental placement pursuant to the Individuals with Disabilities
 161 Education Act, 20 U.S.C.A. Section 1412(a)(10)(A); and
- 162 (C) An explanation of how a parent may choose to reenroll their child in a public
 163 school at any time.
- 164 The department shall process applications in the order they are received.

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

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

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

177 (e) The scholarship shall remain in force until the student ~~returns to his or her assigned~~
 178 ~~school in the resident~~ enrolls in a public school system, graduates from high school, ~~or~~
 179 reaches the age of 21, or moves out of the state, whichever occurs first. ~~However, at any~~
 180 ~~time, the student's parent may remove the student from the participating school and place~~
 181 ~~the student in another participating school or public school as provided for in Code Section~~
 182 ~~20-2-2113. A scholarship student may return to the school in which the student is zoned~~
 183 ~~for attendance based on his or her residence at any time after enrolling in the program in~~
 184 compliance with rules promulgated by the department.

185 (f) Acceptance of a scholarship shall have the same effect as a parental ~~refusal to consent~~
 186 ~~to services placement~~ pursuant to the Individuals with Disabilities Education Act, 20
 187 U.S.C.A. Section ~~1400~~, et seq 1412(a)(10)(A).

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

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

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

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

197 20-2-2115.

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

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

- 201 (2) Demonstrate fiscal soundness by having been in operation for one school year or by
 202 submitting a financial information report for the school that complies with uniform
 203 financial accounting standards established by the department and conducted by a certified
 204 public accountant. The report must confirm that the school desiring to participate is
 205 insured and the owner or owners have sufficient capital or credit to operate the school for
 206 the upcoming school year serving the number of students anticipated with expected
 207 revenues from tuition and other sources that may be reasonably expected. The report
 208 shall be limited in scope to those records that are necessary for the department to make
 209 a determination on fiscal soundness and to make payments to schools for scholarships;
- 210 (3) Comply with the antidiscrimination provisions of 42 U.S.C. Section 2000d;
- 211 (4) Comply with all health and safety laws or codes that apply to private schools;
- 212 (5) Comply with all provisions of Code Section 20-2-690 and any other state law
 213 applicable to private schools;
- 214 (6) Regularly report to the parent and the department on the student's academic progress,
 215 including the results of pre-academic assessments and post-academic assessments given
 216 to the student, in accordance with department guidelines; and
- 217 (7) Employ or contract with teachers who hold a bachelor's degree or higher degree or
 218 have at least three years of experience in education or health and annually provide to the
 219 parents the relevant credentials of the teachers who will be teaching their students.
- 220 ~~(b) A home school operating under the provisions of Code Section 20-2-690 shall not be~~
 221 ~~eligible to enroll scholarship students.~~
- 222 ~~(c)~~(b) Residential treatment facilities licensed or approved by the state shall not be eligible
 223 to enroll scholarship students.
- 224 ~~(d)~~(c) The creation of the program shall not be construed to expand the regulatory
 225 authority of the state, its officers, or any public school system to impose any additional
 226 regulation of nonpublic schools beyond those reasonably necessary to enforce the
 227 requirements of this article.
- 228 ~~(e)~~(d) A participating school intending to enroll scholarship students shall submit an
 229 application to the department by June 30 of the school year preceding the school year in
 230 which it intends to enroll scholarship students. The notice shall specify the grade levels
 231 and services that the school has available for students with disabilities who are participating
 232 in the scholarship program. ~~A school intending to enroll scholarship students in the~~
 233 ~~2007-2008 school year shall submit an application no later than June 30, 2007.~~
- 234 ~~(f)~~(e) The board shall approve a participating school's application to enroll scholarship
 235 students if the school meets the eligibility requirements of this article and complies with
 236 board rules established pursuant to Code Section 20-2-2117. The board shall make
 237 available to local school systems and the public a list of participating schools.

238 (f) A participating school that meets the requirements of this Code section as of
 239 June 30, 2018, shall be deemed eligible as a participating school for the 2018-2019 school
 240 year.

241 20-2-2116.

242 (a) The ~~maximum~~ scholarship granted a scholarship student pursuant to this article shall
 243 be an amount equivalent to the costs of the educational program that would have been
 244 provided for the student in the resident school system, including appropriate weights, as
 245 calculated under Code Section 20-2-161 based on the March full-time equivalent (FTE)
 246 program count conducted pursuant to Code Section 20-2-160. This shall not include any
 247 federal funds.

248 ~~(b) The amount of the scholarship shall be the lesser of the amount calculated in~~
 249 ~~subsection (a) of this Code section or the amount of the participating school's tuition and~~
 250 ~~fees, if applicable. The amount of any assessment fee required by the participating school~~
 251 ~~may be paid from the total amount of the scholarship.~~

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

259 ~~(d)~~(c) Each local school system shall submit quarterly reports to the department on dates
 260 established by the department stating the number of scholarship students in the resident
 261 school system. Following each notification, the department shall transfer from the state
 262 allotment to each school system the amount calculated under subsection ~~(b)~~(a) of this Code
 263 section to a separate account for the scholarship program for quarterly disbursement by the
 264 treasurer to the parents of scholarship students. The department shall either transfer the
 265 funds in the separate account to the treasurer or shall authorize the treasurer to access the
 266 separate account for purposes of making quarterly disbursements to parents of scholarship
 267 students.

268 (d) When a student enters the program, the ~~department~~ treasurer must receive all
 269 documentation required for the student's participation, ~~including the participating school's~~
 270 ~~and student's fee schedules~~; at least 30 days before the first quarterly scholarship payment
 271 is made for the student. The ~~department~~ treasurer may not make any retroactive payments.

272 (e) Upon proper documentation received by the ~~department~~ treasurer, the ~~department~~
 273 treasurer shall make quarterly scholarship payments to the parents of scholarship students

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

286 (f)(1) The treasurer shall develop a system for parents to direct scholarship funds to
 287 participating schools and to purchase authorized services pursuant to Code
 288 Section 20-2-2114 by electronic funds transfer, automated clearinghouse transfer, or other
 289 system that the treasurer finds to be commercially viable, cost-effective, and easy for
 290 parents to use. The treasurer shall not adopt a system that relies solely on reimbursing
 291 parents for out-of-pocket expenses, but may determine authorized expenses that require
 292 reimbursement or preapproval for purchase. The treasurer is authorized to qualify private
 293 financial management firms to develop or manage the payment system. The treasurer,
 294 at its discretion, is authorized to create a system of individually funded accounts or
 295 notional accounts funded through a single state omnibus account.

296 ~~(f)(2) At a parent's request, payment may~~ ~~Payment to the parents must~~ be made by
 297 individual warrant made payable to the student's parent and mailed by the ~~department~~
 298 treasurer to the participating school of the parent's choice, ~~and in which case,~~ the parent
 299 shall restrictively endorse the warrant to the participating school for deposit into the
 300 account of such school.

301 ~~(g)(3) A person, on behalf of a participating school or service provider,~~ may not accept
 302 a power of attorney from a parent to sign a warrant or to direct scholarship funds, and a
 303 parent of a scholarship student may not give a power of attorney designating a person, on
 304 behalf of a participating school or service provider, as the parent's attorney in fact.

305 (4) The treasurer shall adopt rules and procedures as necessary to carry out its
 306 responsibilities regarding the program.

307 ~~(h)(g)~~ (g) If ~~the~~ a participating school requires partial payment of tuition prior to the start of
 308 the academic year to reserve space for students admitted to the school, that partial payment
 309 may be paid by the ~~department~~ treasurer prior to the first quarterly payment of the year in
 310 which the scholarship is awarded, up to a maximum of \$1,000.00, and deducted from

311 subsequent scholarship payments. If a student decides not to attend the participating
312 school, the partial reservation payment must be returned to the ~~department~~ treasurer by
313 such school. Only one reservation payment per student may be made per year.

314 (h) Scholarship funds may only be used for authorized expenses pursuant to this article.
315 Any refund or rebate for services purchased with scholarship funds shall be credited
316 directly back to the payment system developed by the treasurer or directly to the treasurer
317 to disburse as scholarship funds to the participating student.

318 (i) Scholarship funds received pursuant to this article shall not constitute taxable income
319 of the parent or scholarship student.

320 (j) Parents shall not be required to spend the entire sum of scholarship funds each year.
321 However, no more than 50 percent of a scholarship student's annual award may roll over
322 to the following year.

323 (k) Nothing in this article shall be deemed to prohibit a parent or student from making a
324 payment for any tuition, fee, service, or product described in this article from a source other
325 than the scholarship funds of the student.

326 20-2-2117.

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

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

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

341 (d) The treasurer shall have the authority to conduct or contract for the auditing of
342 scholarship funds and shall, at a minimum, conduct random audits on an annual basis. The
343 treasurer shall have the authority to make any parent or scholarship student ineligible for
344 the program in the event of misuse of scholarship funds.

345 (e) The treasurer or the department may refer cases of substantial misuse of scholarship
346 funds to the Attorney General for investigation if evidence of fraudulent use is obtained.

347 (f) To cover the costs of overseeing and administering the program, the treasurer may
 348 withhold a maximum of 2 percent of scholarship funds annually.

349 20-2-2118.

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

356 (b) The report shall include, but not be limited to, numbers and demographics of students
 357 participating and numbers of participating schools. The report shall also include:

358 (1) The participating parents' level of satisfaction with the program;

359 (2) The percentage of funds used for each type of authorized expense included in
 360 subparagraph (a)(4)(C) of Code Section 20-2-2114; and

361 (3) The fiscal impact to the state and resident school systems of the program, taking into
 362 consideration both the impact on revenue and the impact on expenses. The fiscal savings
 363 associated with students departing public schools shall be explicitly quantified, even if
 364 the public school losing the student or students does not reduce its spending.

365 (c) The report shall apply appropriate analytical and behavioral science methodologies to
 366 ensure public confidence in such report.

367 (d) The report shall protect the identity of scholarship students and participating schools
 368 through whatever means the office deems appropriate, including, but not limited to, by
 369 keeping anonymous all disaggregated data and complying with state and federal guidelines
 370 for student privacy.

371 20-2-2119.

372 (a) To assist in the determination of whether certain expenses meet the requirements to be
 373 considered an authorized expense under Code Section 20-2-2114, the Program Review
 374 Committee shall be established.

375 (b)(1) The committee shall be composed of:

376 (A) Five parents of scholarship students;

377 (B) Three special education teachers certified by the Professional Standards
 378 Commission; and

379 (C) Two physicians or therapists licensed in this state with experience working with
 380 students with disabilities.

381 (2) Members of the committee shall be appointed by and serve at the pleasure of the
382 treasurer.

383 (3) Members of the committee shall serve for one-year terms and may be reappointed.

384 (4) The treasurer or his or her designee shall serve as chairperson of the committee and
385 shall only vote in the event of a tie.

386 (c) The treasurer may request the committee to determine whether an expenditure of
387 scholarship funds from an account qualifies as an authorized expense under Code
388 Section 20-2-2114.

389 (d) The treasurer may request the committee to review appeals of participating schools or
390 service provider application denials."

391 **SECTION 2.**

392 All laws and parts of laws in conflict with this Act are repealed.