

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
91st General Assembly  
Regular Session, 2017

As Engrossed: S3/16/17 S3/20/17  
**A Bill**

SENATE BILL 746

By: Senators B. Johnson, Hester, *J. Hendren*

By: Representatives Dotson, *Bragg*

### **For An Act To Be Entitled**

AN ACT TO ESTABLISH THE PARENTAL CHOICE *PILOT*  
PROGRAM; AND FOR OTHER PURPOSES.

### **Subtitle**

TO ESTABLISH THE PARENTAL CHOICE *PILOT*  
PROGRAM.

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

*SECTION 1. Arkansas Code Title 6, Chapter 15, is amended to add an additional subchapter to read as follows:*

*Subchapter 29 - Parental Choice Program*

*6-15-2901. Title.*

*This subchapter shall be known and may be cited as the "Parental Choice Program".*

*6-15-2902. Definitions.*

*As used in this subchapter:*

*(1) "Curriculum" means a complete course of study for a particular content area or grade level, including without limitation any required supplemental materials and associated online instruction;*

*(2) "Eligible contribution" means a monetary contribution from an eligible taxpayer or corporation, subject to the restrictions provided in this subchapter, to an eligible nonprofit organization;*

*(3) "Eligible nonprofit organization" means a charitable*



organization that:

(A) Is exempt from federal income tax under the Internal Revenue Code, 26 U.S.C. § 501(c)(3), as in effect on January 1, 2017;

(B) Is an Arkansas entity formed under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq., and whose principal office is located in the state;

(C) Is certified by the Department of Finance and Administration under § 6-15-2903;

(D) Complies with the operational requirements under § 6-15-2904; and

(E) Receives contributions to fund and administer education savings accounts;

(4) "Eligible student" means a resident of this state who is eligible to enroll in a public school in this state at any level from kindergarten through grade twelve (K-12);

(5) "Eligible taxpayer" means a business or individual, including without limitation a corporation, partnership, limited liability company, and sole proprietorship;

(6) "National school lunch student" means a student who is eligible for free or reduced-price meals under the National School Lunch Act, 42 U.S.C. § 1751 et seq., unless the student is eligible for free or reduced-price meals solely because the public school district is participating in the special assistance certification and reimbursement alternative implemented under 42 U.S.C. § 1759a;

(7) "Operator" means:

(A) A president, officer, or board member of an eligible nonprofit organization or a person with equivalent decision-making authority over an eligible nonprofit organization; or

(B) An owner or other person with equivalent decision-making authority over a provider of educational services that receives payment under § 6-15-2907 from an education savings account; and

(8) "Parent" means the parent or legal guardian of an eligible student.

6-15-2903. Application to become an eligible nonprofit organization.

(a) An organization that seeks to become an eligible nonprofit

organization shall apply to the Department of Finance and Administration for initial certification or renewal of certification as an eligible nonprofit organization by March 1 before the academic year for which the organization intends to fund education savings accounts.

(b)(1) An application for initial certification under subsection (a) of this section shall include:

(A) A copy of the organization's incorporation documents under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.;

(B) A copy of the organization's Internal Revenue Service determination letter as a Section 501(c)(3) not-for-profit organization;

(C) A description of the organization's:

(i) Financial plan that demonstrates sufficient funds to operate throughout the academic year; and

(ii) Organizational chart;

(D) A description of the methodology the organization will use to verify whether a student is eligible to establish an education savings account;

(E) A description of the application process and criteria for approving applications the organization will use;

(F) A description of the methodology the organization will use to establish and fund education savings accounts; and

(G) A description of how the organization will comply with the operational requirements under § 6-15-2904.

(2) The certification of an eligible nonprofit organization shall renew automatically unless the Department of Finance and Administration revokes the certification of the eligible nonprofit organization under § 6-15-2904.

(c)(1) Except as provided in subdivision (c)(2) of this section, within thirty (30) days after receipt of the application under this section, the Department of Finance and Administration shall certify the organization as an eligible nonprofit organization if the organization demonstrates that it meets the requirements under this subchapter.

(2) There shall be no more than five (5) organizations certified as eligible nonprofit organizations at any given time.

(d) The Department of Finance and Administration and the Department of Education shall maintain a public registry of currently certified eligible

nonprofit organizations on the Department of Finance and Administration website and the Department of Education website.

6-15-2904. Operation of an eligible nonprofit organization.

(a) An eligible nonprofit organization:

(1) Shall comply with the antidiscrimination provisions of 42 U.S.C. § 1981 in approving an application for an education savings account;

(2)(A) Shall allocate one hundred percent (100%) of the eligible nonprofit organization's annual revenue from eligible contributions under § 26-51-515 for funding education savings accounts.

(B) An eligible nonprofit organization may use any of its revenue other than eligible contributions under § 26-51-515, including without limitation contributions not made under § 26-51-515, for:

(i) Administrative expenses of the eligible nonprofit organization; and

(ii) Funding education savings accounts.

(C) All interest accrued from eligible contributions shall be used for funding education savings accounts;

(3) Shall not have an operator or employee who owns, operates, or is employed by an entity that receives a payment for services from an education savings account under § 6-15-2907;

(4) Shall not establish an education savings account for the child of an operator or employee of the eligible nonprofit organization;

(5) Shall not allow donors to designate their eligible contributions to specific student beneficiaries or any specific expense under § 6-15-2907(a) as a condition of an eligible contribution to the eligible nonprofit organization;

(6) Shall maintain separate accounts for education savings account funds and operating funds;

(7)(A) With prior approval of the Department of Finance and Administration, may transfer funds to another eligible nonprofit organization if additional funds are required to meet education savings account demand at the receiving eligible nonprofit organization.

(B) A transfer shall be limited to the greater of five hundred thousand dollars (\$500,000) or twenty percent (20%) of the total eligible contributions received by the eligible nonprofit organization making

the transfer.

(C) All transferred funds shall be deposited by the receiving eligible nonprofit organization into its account for education savings accounts.

(D) All transferred funds received by any eligible nonprofit organization shall be separately disclosed in the annual financial audit under § 6-15-2909;

(8)(A) Shall:

(i) Prepare and submit quarterly reports to the Department of Finance and Administration;

(ii) Submit an annual report to the Department of Education containing the information under § 6-15-2907(d); and

(iii) Submit in a timely manner any information requested by the Department of Education relating to the education savings accounts established by the eligible nonprofit organization.

(B) The reports and information under subdivision (a)(8)(A) of this section shall also be made available on the website of the eligible nonprofit organization;

(9)(A) Establish a process by which individuals may notify the eligible nonprofit organization of any violation by a parent, provider of educational services that receives payment from an education savings account under § 6-15-2907, or public school district of state laws relating to the establishment and use of education savings accounts.

(B) The eligible nonprofit organization shall conduct an inquiry of any written complaint of a violation of this section or make a referral to the appropriate agency for an investigation; and

(10) Shall not charge:

(A) An application fee; or

(B) Any other fee for administering the education savings accounts.

(b)(1) The Department of Finance and Administration shall send written notice to an eligible nonprofit organization if the Department of Finance and Administration determines that the eligible nonprofit organization has violated any provision of this subchapter.

(2)(A) The eligible nonprofit organization that receives notice under subdivision (b)(1) of this section has sixty (60) days to correct the

violation identified by the Department of Finance and Administration in the notice.

(B) If the eligible nonprofit organization fails or refuses to comply after sixty (60) days, the Department of Finance and Administration may revoke the certification of the eligible nonprofit organization.

(c)(1) An eligible nonprofit organization may request an administrative hearing under the Arkansas Tax Procedure Act, § 26-18-101 et seq., on the revocation of the eligible nonprofit organization's certification.

(2) A final decision of the Department of Finance and Administration under this section is subject to judicial review.

(d)(1) An eligible nonprofit organization whose certification has been revoked under subdivision (b)(2)(B) of this section shall not accept any further eligible contributions to the eligible nonprofit organization for the purpose of funding education savings accounts.

(2) If the eligible nonprofit organization received any contributions for the purpose of funding education savings accounts after the date of notice of the revocation of its certification, the eligible nonprofit organization shall refund the contributions.

(e)(1) An eligible nonprofit organization whose certification has been revoked under subdivision (b)(2)(B) of this section shall transfer all remaining funds held by the eligible nonprofit organization for the purpose of funding education savings accounts to other eligible nonprofit organizations to fund education savings accounts.

(2) An eligible nonprofit organization that transfers funds to other eligible nonprofit organizations under subdivision (e)(1) of this section shall notify the Department of Finance and Administration of the amount of funds transferred and the eligible nonprofit organizations that received the transfers.

(f)(1) If an eligible nonprofit organization determines it cannot continue in operation for any reason the eligible nonprofit organization, with the approval of the Department of Finance and Administration, shall transfer its funds to another eligible nonprofit organization.

(2) An eligible nonprofit organization that receives a transfer of funds under subdivision (f)(1) of this section shall operate the education

savings accounts established by the eligible nonprofit organization that transferred the funds, if funds are available.

(g) To ensure compliance with § 6-15-2907, an eligible nonprofit organization shall conduct:

(1) Annual audits of all education savings accounts; and

(2) Random audits of some education savings accounts throughout the year.

6-15-2905. Establishment of education savings accounts – Payments.

(a) An eligible nonprofit organization may contract with financial institutions to establish education savings accounts for eligible students.

(b)(1)(A) An eligible nonprofit organization shall make available:

(i) For each eligible student enrolled full-time in a nonpublic school in this state in which virtual technology is not the primary method of delivering instruction, an equivalent of the foundation funding amount under § 6-20-2305(a)(2) for each academic year plus any amount carried over from previous academic years under § 6-15-2907(c); and

(ii)(a) For each eligible student who does not meet the requirements of subdivision (b)(1)(A)(i) of this section, an equivalent of one-third (1/3) of the foundation funding amount under § 6-20-2305(a)(2) for each academic year plus any amount carried over from previous academic years under § 6-15-2907(c).

(b) In addition to the amount under subdivision (b)(1)(A)(ii)(a) of this section, an eligible nonprofit organization shall make available for an eligible student who contracts with a public school district under § 6-15-2907(a)(7) to enroll in an academic course one-sixth of the foundation funding amount under § 6-20-2305(a)(2) for each academic course in which the eligible student enrolls.

(c) An eligible nonprofit organization shall not make available to an eligible student under this subdivision (b)(1)(A)(ii) an aggregate amount of new funds for an academic year that exceeds the foundation funding amount under § 6-20-2305(a)(2).

(B) Before making available the funds under subdivision (b)(1)(A) of this section, the eligible nonprofit organization shall verify that the eligible student meets the requirements under subdivision (b)(1)(A) of this section for the amount of funding to be made available.

(C) The new funds for an academic year under subdivision (b)(1)(A) of this section shall be made available in equal quarterly installments of the foundation funding amount under § 6-20-2305(a)(2) throughout the academic year.

(2) An eligible nonprofit organization shall maintain:

(A) A single account for education savings account funds from which the eligible nonprofit organization shall make available the funds under subdivision (b)(1) of this section for each eligible student; and

(B) Separate accounts for all other funds of the eligible nonprofit organization, including without limitation funds for administrative expenses.

(c) Funds received under this subchapter do not constitute taxable income to the:

(1) Parent of the eligible student; or

(2) Eligible student.

(d) An eligible nonprofit organization:

(1) Shall develop a system for payment of funds that allows for:

(A) Direct payment from an education savings account to education service providers or other entities for expenses under § 6-15-2907; and

(B) Reimbursement to a parent via check, electronic funds transfer, or other payment deemed to be commercially viable or cost-effective upon the production by the parent of a receipt for expenses under § 6-15-2907; and

(2) Except for reimbursements under subdivision (d)(1) of this section, shall not issue funds directly to a parent.

6-15-2906. Application for an education savings account.

(a) A parent may apply to an eligible nonprofit organization to establish an education savings account for an eligible student.

(b)(1) The eligible nonprofit organization shall approve by June 1 an application for an education savings account upon:

(A) Verifying that the student on whose behalf the parent is applying is an eligible student who satisfies the eligible nonprofit organization's criteria for approving an application for an education savings account; and

(B) Entering into the agreement with the parent under subsection (c) of this section.

(2)(A) The eligible nonprofit organization shall approve applications for education savings accounts in the following order of priority:

(i) First, to eligible students who received funding in an education savings account during the previous academic year;

(ii) Second, to the sibling or siblings of an eligible student who has an education savings account established on behalf of the eligible student under this subchapter if the sibling or siblings meet the criteria of an eligible student;

(iii) Third, to eligible students retained on the previous academic year's wait list who would meet the qualifications as national school lunch students if the eligible students were enrolled in a public school district;

(iv) Fourth, to new applicants who are eligible students who would meet the qualifications as national school lunch students if the eligible students were enrolled in a public school district;

(v) Fifth, to eligible students who are dependents of members of the United States Armed Forces or National Guard who are deployed in this state if the dependents are eligible to enroll in a public school in this state in any level from kindergarten through grade twelve (K-12);

(vi) Sixth, to all other eligible students retained on the previous academic year's wait list; and

(vii) Seventh, to all other new applicants.

(B)(i) The eligible nonprofit organization shall approve under subdivision (b)(2)(A) of this section a minimum of two (2) applications from eligible students who attended a public school during the prior academic year for every one (1) application the eligible nonprofit organization approves from eligible students who attended a nonpublic school during the prior academic year for the following applicants:

(a) For the first academic year education savings accounts are established under this subchapter, all applicants; and

(b) For all academic years subsequent to the first year education savings accounts are established under this subchapter,

applicants who did not receive funding in an education savings account during the previous academic year.

(ii) For the purposes of subdivision (b)(2)(B)(i) of this section, the following shall be considered eligible students who attended a public school during the prior academic year:

(a) Eligible students who are entering kindergarten for the first time;

(b) Eligible students who attended school in another state during the previous academic year; and

(c) Eligible students who are new residents of a public school district and are eligible to enroll in that public school district.

(3)(A) An eligible nonprofit organization shall include in the application for an education savings account:

(i) An income verification form used by the Department of Education or a similar form to ascertain if an eligible student would meet the qualifications as a national school lunch student if the eligible student were enrolled in a public school district; and

(ii) A form to ascertain:

(a) If an eligible student attended a public school during the prior academic year; and

(b) The public school district or open-enrollment public charter school where the eligible student attended public school.

(B) A parent shall complete the form under subdivision (b)(3)(A)(i) of this section if the parent of the eligible student is applying for priority approval under subdivisions (b)(2)(A)(iii) and (iv) of this section.

(C) Each parent shall complete the form under subdivision (b)(3)(A)(ii) of this section.

(4)(A)(i)(a) A maximum of one percent (1%) of eligible students who were enrolled in a particular public school district as of October 1 of the immediately preceding academic year may be approved per academic year for an education savings account under this subchapter.

(b) Before approving an application for an eligible student who was enrolled in a public school district during the

previous academic year, the eligible nonprofit organization shall obtain certification from the Department of Education that approving the application will not result in a violation of subdivision (b)(4)(A)(i)(a) of this section.

(ii) Applications that are approved from eligible students who reside in a particular public school district but who attended a nonpublic school during the previous academic year do not count toward the one percent (1%) maximum of eligible students who attended that public school district under subdivision (b)(4)(A)(i) of this section.

(B)(i) An eligible nonprofit organization shall report to a public school district by June 1 the number of applications of eligible students the eligible nonprofit organization approved from that public school district.

(ii) The eligible nonprofit organization is not required under subdivision (b)(4)(B)(i) of this section to report to a public school district if the eligible nonprofit organization did not approve any applications of eligible students from that public school district.

(5) An eligible nonprofit organization that approved an application for an eligible student who is a dependent of a member of the United States Armed Forces or National Guard shall not make available education savings account funds for the eligible student unless the eligible student becomes a resident of the State of Arkansas.

(6) If funds are insufficient to approve all applications at any priority level under subdivision (b)(2) of this section, a random, anonymous selection method shall be used at that priority level.

(7) The eligible nonprofit organization shall only approve an application if funds are available.

(8) All applications from students who apply for an education savings account but are not approved shall remain confidential and shall not be disclosed by the eligible nonprofit organization.

(c) As part of the application process, a parent shall:

(1) Enter into an agreement with the eligible nonprofit organization:

(A) To use the funds in the education savings account only for the expenses under § 6-15-2907;

(B)(i) Not to enroll the eligible student in a public

school.

(ii) A parent who uses an education savings account for contracted services from a public school under § 6-15-2907(a)(7) is not in violation of subdivision (c)(1)(B)(i) of this section;

(C) Not to accept a Succeed Scholarship under § 6-41-801 et seq. or any other state funds under a program intended to provide funding for tuition in a nonpublic school; and

(D) To provide to the eligible student an organized, appropriate educational program with measurable annual goals; and

(2)(A) Sign a waiver on a form developed by the Department of Education that releases:

(i) The State of Arkansas from any legal obligation to provide services or education to the eligible student, except as may be required by federal law; and

(ii) The student's resident school district from any legal obligation to provide services or education to the eligible student while the student is not enrolled in the student's resident school district, except as may be required by federal law.

(B) The waiver under subdivision (c)(2)(A) of this section shall have the same effect as a parental placement under 20 U.S.C. § 1412(10)(a) of the Individuals with Disabilities Education Act, as it existed on January 1, 2017.

(d) Upon application by the parent, the eligible nonprofit organization shall annually renew an eligible student's education savings account if funds are available.

6-15-2907. Education savings account uses – Testing – Reporting.

(a) A parent shall use the funds in the education savings account established on behalf of an eligible student only for the following expenses of the eligible student:

(1) Tuition or fees for a:

(A) Nonpublic school in this state; or

(B) Nonpublic online learning program or course;

(2) Textbooks required by a nonpublic school;

(3) Tutoring services provided by a:

(A) Teacher licensed by the State Board of Education;

(B) Person qualified under § 6-15-1004 and rules of the state board as a substitute teacher in this state;

(C) Person who has experience teaching at an institution of higher education; or

(D) Person or entity accredited as a tutor or a tutoring entity by a state, regional, or national accrediting organization;

(4) Curriculum or other instructional materials;

(5) Fees for:

(A) Nationally standardized assessments, including without limitation the state-mandated assessments required by the state board;

(B) Advanced Placement examinations;

(C) College placement examinations, including without limitation the ACT or the SAT;

(D) Industry certification examinations; and

(E) Other assessments necessary to complete an eligible student's course of study;

(6) Fees for specialized after-school or summer education programs whose primary purpose is to provide academic instruction;

(7)(A) Contracted services provided by a public school, including without limitation individual classes and extracurricular programs.

(B) A public school that contracts under subdivision (a)(7)(A) of this section to allow an eligible student to enroll in an academic course shall charge no more than an amount equal to one-sixth (1/6) of the state foundation funding amount for each academic course in which an eligible student is enrolled;

(8) Tuition and fees at an institution of higher education for academic courses in which concurrent credit is awarded by a public or nonpublic school under subdivision (a)(1) or subdivision (a)(7) of this section;

(9) Textbooks and other materials related to concurrent credit courses under subdivision (a)(8) of this section;

(10) Specialized services necessary to facilitate an eligible student's education, including without limitation:

(A) Applied behavior analysis services as defined under § 23-99-418;

(B) Speech-language pathology services as defined under §

17-100-103;

(C) Occupational therapy services as defined under § 17-

88-102;

(D) Physical therapy services as defined under § 17-93-

102;

(E) Audiology services as defined under § 17-100-103; and

(F) Other related services determined by the Department of

Education;

(11)(A) Transportation required for travel to and from a provider of educational services not to exceed ten percent (10%) per academic year of the education savings account funds made available for an eligible student for that academic year.

(B) Transportation expenses under subdivision (a)(11)(A) of this section shall be for mileage reimbursement at the reimbursement rate prescribed by the Department of Finance and Administration for state employees for that year; and

(12)(A) Uniforms purchased for a nonpublic school and costs of computer hardware and software and other technological devices necessary for the education of the eligible student.

(B) Funds used to purchase the items in subdivision (a)(12)(A) of this section shall not exceed ten percent (10%) per academic year of the education savings account funds made available for an eligible student for that academic year.

(b)(1) A provider of educational services receiving payments under this section shall not share with, refund to, or rebate to a parent or eligible student any moneys from an education savings account.

(2) Any refund or rebate for services under this section shall be credited directly to the eligible student's education savings account.

(c)(1) Up to fifty percent (50%) of the funds in an education savings account that were received for an academic year but not used in the academic year may be carried over to the next academic year.

(2)(A) The aggregate amount of funds that may be carried over to the next academic year under subdivision (c)(1) of this section shall not exceed the amount of new funds the eligible student received in the previous academic year.

(B) Any unused funds not carried over to the next academic

year under subdivision (c)(1) of this section shall be returned to the eligible nonprofit organization that contributed funds to the education savings account.

(d)(1) A parent of an eligible student shall ensure that:

(A)(i) Each academic year the eligible student takes either the state-mandated assessments or nationally recognized norm-referenced tests that measure learning gains in math and language arts.

(ii) Eligible students with a disability who were exempt from taking state-mandated assessments in their prior public school are exempt from the requirement under subdivision (d)(1)(A)(i) of this section;

(B) The results of assessments or tests taken by the eligible student under subdivision (d)(1)(A) of this section are reported to the eligible nonprofit organization;

(C) The eligible student's information is reported in a way that would allow the eligible nonprofit organization to report data by grade level, gender, and race; and

(D) The eligible nonprofit organization is informed of the eligible student's graduation from high school.

(2) The eligible nonprofit organization shall:

(A) Ensure compliance with all student privacy laws;

(B) Collect results of the assessments;

(C)(i) Provide to the public via the eligible nonprofit organization's website after the third year of assessment and graduation related data collection:

(a) The results of the assessments;

(b) Any associated learning gains; and

(c) Graduation rates.

(ii) The information shall be reported by each eligible student's:

(a) Grade level;

(b) Gender;

(c) Number of years receiving an education savings account under this subchapter; and

(d) Race; and

(D) Administer an annual parental satisfaction survey that

asks parents of eligible students receiving education savings accounts to express:

(i) Their satisfaction with the education savings accounts; and

(ii) Their opinions on other topics, items, or issues that the eligible nonprofit organization finds would assist in determining the effectiveness of education savings accounts and the number of years their eligible student has received an education savings account.

(e) A nonpublic school or a provider of educational services receiving payments under this subchapter shall comply with the antidiscrimination provisions of 42 U.S.C. § 1981.

6-15-2908. Duration of the program – Return of funds.

(a) An eligible nonprofit organization shall close an education savings account and cease making funds available for an eligible student on the earlier of the date that:

(1) The parent does not apply under § 6-15-2906(d) to renew the education savings account;

(2) The eligible nonprofit organization determines that the student is no longer an eligible student;

(3) The parent of the eligible student fails to comply with the agreement under § 6-15-2906(c);

(4)(A) The eligible student enrolls in a public school.

(B)(i) A parent shall immediately notify the eligible nonprofit organization if the eligible student enrolls in a public school.

(ii) If an eligible student enrolls in a public school, the eligible nonprofit organization shall cease making new education savings account funds available for the eligible student.

(iii) An eligible student who enrolls in a public school under subdivision (a)(4)(A) of this section may continue to use any accumulated funds in the education savings account for expenses under § 6-15-2907 until the eligible student reaches twenty-two (22) years of age, at which time the education savings account shall be closed as provided under subsection (c) of this section.

(iv) If the parent notifies the eligible nonprofit organization that the student is no longer enrolled in a public school and

the student continues to meet the eligibility requirements under this subchapter at the end of the academic year in which the student enrolls in a public school, the eligible nonprofit organization shall resume making new education savings account funds available under § 6-15-2905 for that student.

(v) If the parent does not notify the eligible nonprofit organization under subdivision (a)(4)(B)(iv) of this section that the student is no longer enrolled in a public school at the end of the academic year in which the student enrolled in a public school, the student must apply for an education savings account as a new applicant and be approved by the eligible nonprofit organization in order to resume receiving funds for the student's education savings account;

(5) The student graduates from high school; or

(6) The Commissioner of Education suspends or revokes the use of an education savings account upon a finding of fraud or abuse, including without limitation accepting a refund or rebate in violation of § 6-15-2907(b).

(b) If an education savings account is closed, any remaining funds shall be returned to the eligible nonprofit organization that contributed funds to the education savings account.

6-15-2909. Audit.

(a) By October 1 of each year, an eligible nonprofit organization shall have an annual financial audit of its accounts and records conducted in accordance with generally accepted auditing standards by an independent certified public accountant licensed in this state.

(b) An eligible nonprofit organization shall provide to the Department of Finance and Administration a copy of the audit required under subsection (a) of this section within thirty (30) days of receiving the audit.

(c) An audit under this section does not preclude an audit by the department under § 26-18-401.

6-15-2910. Autonomy of nonpublic schools and providers of educational services.

(a) A nonpublic school or provider of educational services that receives payment from an education savings account under this subchapter is not considered an agent or instrumentality of the State of Arkansas or a

public school district.

(b) The curriculum and education plan for a student attending a nonpublic school or receiving educational services from a provider of educational services under this subchapter is not subject to the regulatory authority of the State Board of Education.

(c) As a condition of continued receipt of funds from an education savings account, the state board may require a nonpublic school or provider of educational services that receives payment from an education savings account under this subchapter to certify on a semiannual basis that an eligible student:

(1) Is and has been enrolled and attending the nonpublic school except for excused absences; or

(2) Has been receiving educational services from the provider.

(d) Any personally identifiable information collected under this section concerning an eligible student is an education record under § 25-19-105(b)(2) and is exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

6-15-2911. Rules.

The Department of Education and the Department of Finance and Administration shall promulgate rules to implement this subchapter.

SECTION 2. Arkansas Code Title 26, Chapter 51, Subchapter 5, is amended to add an additional section to read as follows:

26-51-515. Tax credit for contributions for education savings accounts.

(a) A state income tax credit is allowed against the taxes imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for sixty-five percent (65%) of an eligible contribution approved by the Department of Finance and Administration under subsection (b) of this section made by the taxpayer for a tax year to an eligible nonprofit organization that is certified under the Parental Choice Scholarship Program, § 6-15-2901 et seq., at the time of the contribution.

(b)(1)(A) Before making the contribution to an eligible nonprofit organization under subsection (a) of this section, a taxpayer shall notify the eligible nonprofit organization of the total amount of contributions that

the taxpayer intends to make to the eligible nonprofit organization.

(B) Beginning March 1 and ending April 15, before accepting the contribution, the eligible nonprofit organization shall request certification of the contribution from the Department of Finance and Administration for the taxpayer's intended contribution amount.

(C) The Department of Finance and Administration shall certify or deny the requested amount within twenty (20) days after receiving the request from the eligible nonprofit organization.

(D) If the Department of Finance and Administration certifies the request, the nonprofit organization shall immediately notify the taxpayer that the requested amount was certified.

(E) In order to receive a tax credit under this section, the taxpayer shall make the contribution in the certified amount within the required twenty (20) days after receiving notice from the eligible nonprofit organization that the requested contribution amount was certified.

(F)(i) If the eligible nonprofit organization receives the certified contribution from the taxpayer within the required twenty (20) days, the eligible nonprofit organization shall immediately notify the Department of Finance and Administration so the Department of Finance and Administration may record the tax credit on the taxpayer's account as of July 1.

(ii) If the eligible nonprofit organization does not receive the certified contribution from the taxpayer within the required twenty (20) days, the eligible nonprofit organization shall immediately notify the Department of Finance and Administration.

(G) After the Department of Finance and Administration receives notice that the eligible nonprofit organization did not receive the certified contribution:

(i) The certification becomes void; and

(ii) The Department of Finance and Administration shall no longer include that certified contribution amount when calculating the state income tax credit limit under subsection (d) of this section for the purpose of certified contributions.

(2)(A) Except as provided in subdivision (b)(3) of this section, the Department of Finance and Administration shall certify contributions on a first come, first served basis.

(B)(i) The Department of Finance and Administration shall maintain a list of contributions that were denied because the state income tax credit limit under subsection (d) of this section had been met.

(ii) If a certified contribution is not received and becomes void under subdivision (b)(1)(G) of this section, the Department of Finance and Administration shall certify a contribution that was denied under subdivision (b)(2)(B)(i) of this section on a first come, first served basis.

(C) An eligible nonprofit organization shall report to the Department of Finance and Administration by November 1 the amount of the certified contributions under subdivision (b)(1) of this section received by the eligible nonprofit organization being used to fund education savings accounts for that academic year.

(3)(A) For tax credits issued in fiscal year 2019 only, the Department of Finance and Administration shall certify contributions on a priority basis to taxpayers identified by the eligible nonprofit organization under subdivision (b)(3)(C) of this section as taxpayers:

(i) That contributed to the eligible nonprofit organization during fiscal year 2018; and

(ii) Whose contributions were used to fund education savings accounts.

(B) The Department of Finance and Administration shall certify contributions on a priority basis under subdivision (b)(3)(A) of this section up to the amount of the contribution made by a taxpayer that meets the requirements under subdivisions (b)(3)(A)(i) and (ii) of this section.

(C) An eligible nonprofit organization shall notify the Department of Finance and Administration of the taxpayers who meet the requirements under subdivisions (b)(3)(A)(i) and (ii) of this section before the Department of Finance and Administration begins certifying contributions for fiscal year 2019.

(c) A state income tax credit under this section may not exceed fifty percent (50%) of the tax due under this chapter for the taxable year, after the application of any other allowable state income tax credits by the eligible taxpayer.

(d) In fiscal years 2019, 2020, and 2021, the total amount of state income tax credits made under this section shall equal the amount approved by the Department of Finance and Administration under subdivision (b)(1) of this

section, not to exceed three million dollars (\$3,000,000).

(e) An eligible taxpayer who files an Arkansas consolidated return as a member of an affiliated group under § 26-51-805 may be allowed the state income tax credit under this section on a consolidated return basis subject to the limitation established under subsections (c) and (d) of this section.

(f) Spouses who file separate returns for a tax year in which they could have filed a joint return may each claim only one-half (1/2) of the state income tax credit that would have been allowed for a joint return.

(g)(1) Any unused state income tax credit under this section may be carried forward for five (5) consecutive tax years following the tax year in which the state income tax credit was earned.

(2) An eligible taxpayer that seeks to carry forward an unused amount of the state income tax credit under this section shall submit an application for allocation of tax credits or carryforward credits in the year that the eligible taxpayer intends to use the carryforward credits.

(3) An eligible taxpayer may not convey, assign, or transfer the state income tax credit under this section to another entity unless all of the assets of the eligible taxpayer are conveyed, assigned, or transferred in the same transaction.

(h) The state income tax credit allowed by this section is in lieu of any deduction for a contribution made to the eligible nonprofit organization under 26 U.S.C. § 170 taken for state tax purposes.

(i) For the purposes of this section, a contribution for which a state income tax credit is claimed that is made on or before the fifteenth day of the fourth month following the close of the tax year may be applied to either the current or preceding tax year and is considered to have been made on the last day of that tax year.

(j)(1) An eligible taxpayer may rescind all or part of the eligible taxpayer's allocated state income tax credit under this section.

(2) The amount rescinded shall become available for purposes of the cap for the state fiscal year under this section to an eligible taxpayer as approved by the Department of Finance and Administration if the eligible taxpayer receives notice from the Department of Finance and Administration that the rescission has been accepted by the Department of Finance and Administration and the eligible taxpayer has not previously rescinded any or all of the eligible taxpayer's allocated state income tax credit under this

section more than one (1) time in the previous three (3) tax years.

(3) Any amount rescinded under this subsection shall become available to an eligible taxpayer on a first-come, first-served basis based on state income tax credit applications received after the date the rescission is accepted by the Department of Finance and Administration.

(k)(1) An application for a state income tax credit under this section shall be submitted to the Department of Finance and Administration on forms established by rule of the Department of Finance and Administration.

(2) The Department of Finance and Administration and the Department of Education shall develop a cooperative agreement to assist in the administration of this section.

(1) The Department of Finance and Administration shall adopt rules necessary to administer this section, including without limitation rules governing the allocation of state tax credits and carryforward credits under this section on a first-come, first-served basis.

SECTION 3. DO NOT CODIFY. This act shall be implemented as a four-year pilot program beginning with the 2018-2019 school year.

/s/B. Johnson