

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H2/23/21 H3/10/21

A Bill

HOUSE BILL 1371

By: Representatives Bragg, Evans, Vaught, Barker, Beaty Jr., Bentley, Breaux, Brooks, Brown, C. Cooper, C. Fite, Haak, Lowery, Lundstrum, J. Mayberry, McCollum, S. Meeks, Miller, Penzo, Pilkington, Ray, Richmond, Rye, B. Smith, Underwood, Wing, Womack, *Dotson, Furman*
By: Senators J. Dismang, B. Ballinger, Bledsoe, A. Clark, T. Garner, Hester, Hill, Irvin, B. Johnson, Rapert, D. Sullivan, *Beckham, Gilmore, M. Johnson*

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS CHILD ACADEMIC OPPORTUNITY SCHOLARSHIP AND GRANT ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS CHILD ACADEMIC OPPORTUNITY SCHOLARSHIP AND GRANT ACT.

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

SECTION 1. Arkansas Code Title 6, Chapter 18, is amended to add an additional subchapter to read as follows:

Subchapter 22 – Arkansas Child Academic Opportunity Scholarship and Grant Act

6-18-2201. Title.

This subchapter shall be known and may be cited as the "Arkansas Child Academic Opportunity Scholarship and Grant Act".

6-18-2202. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Each child in this state should have an opportunity to receive an appropriate education that fits his or her needs regardless of his or her family income or the area in which he or she lives;



(2) A parent, legal guardian, or person standing in loco parentis should be able to make educational decisions for his or her child;

(3) An appropriate educational setting that fits a child's individual needs is important to the civic and economic condition of the state; and

(4) Providing each child in this state with the opportunity to receive an appropriate education is one of the greatest concerns of the General Assembly.

(b) It is the intent of the General Assembly to ensure that resources are available to give families the means and opportunity to provide each child with an appropriate education.

6-18-2203. Definitions.

As used in this subchapter:

(1) "Educational services provider" means a provider of eligible educational services under § 6-18-2204;

(2) "Eligible contribution" means a monetary contribution from an eligible taxpayer, as defined in § 26-51-515, to an eligible student support organization subject to the restrictions under this subchapter;

(3)(A) "Eligible private school payment" means a payment that is:

(i) Funded by eligible contributions under this subchapter; and

(ii) Made to a public school, open-enrollment public charter school, or nonpublic school for an eligible student who is enrolled in a private school and intends to attend a class or participate in a program offered by the public school, open-enrollment public charter school, or nonpublic school.

(B) "Eligible private school payment" does not include an eligible public school payment;

(4)(A) "Eligible public school payment" means a grant that is:

(i) Funded by eligible contributions under this subchapter; and

(ii) Paid to an eligible public school or an open-enrollment public charter school for eligible educational services.

(B) "Eligible public school payment" does not include an

eligible private school payment;

(5)(A) "Eligible public school" means a public school in which at least fifty-five percent (55%) of the previous school year's enrolled students are eligible to receive a free or reduced-price meal under the National School Lunch Act, 42 U.S.C. § 1751 et seq.

(B) "Eligible public school" includes an open-enrollment public charter school;

(6)(A) "Eligible student" means a resident of this state who:

(i) Is receiving a scholarship under this subchapter for the first time;

(ii) Is transferring from a public school in this state at which the student has been enrolled for at least one (1) semester immediately preceding the first semester for which the student receives a student scholarship under this subchapter to attend a nonpublic school that is eligible to participate in the Arkansas Child Academic Opportunity Scholarship and Grant Act program under § 6-18-2211;

(iii) Was not continuously enrolled in a nonpublic school in this state during the school year immediately preceding the first semester for which the student receives a student scholarship under this subchapter to attend a nonpublic school that is eligible to participate in the Arkansas Child Academic Opportunity Scholarship and Grant Act program under § 6-18-2211; and

(iv) Has a household or family income that is less than or equal to two hundred percent (200%) of the federal poverty guidelines.

(B) "Eligible student" may include a student who:

(i) Has an individualized education program or an individualized service plan in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as it existed on January 1, 2021;

(ii) Is eligible to participate in the Succeed Scholarship Program under § 6-41-901 et seq.;

(iii) Has a parent who is a member of the National Guard or a parent who is a member of the United States Armed Forces and is on active duty or was killed in the line of duty; or

(iv) Is in foster care or has been in the foster

care system and achieved permanency through adoption, reunification, or permanent guardianship;

(C) "Eligible student" does not include a student who attends a home school;

(7) "Eligible student support organization" means a charitable organization that:

(A) Is exempt from federal income tax under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code, as it existed on January 1, 2021;

(B) Is an Arkansas entity that is formed under the Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.;

(C) Is certified by the Division of Elementary and Secondary Education under § 6-18-2205;

(D) Complies with the operational requirements under § 6-18-2206; and

(E) Receives eligible contributions to fund and administer student scholarships and grants to eligible public schools according to the rules prescribed by this subchapter;

(8) "Institution of higher education" means a public or private institution that provides postsecondary education;

(9) "Operator" means:

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

(B) An owner or other person with equivalent decision-making authority over an educational services provider that receives payment from a student scholarship under § 6-18-2204;

(10) "Parent" means an individual who is a parent, a legal guardian, or standing in loco parentis of an eligible student;

(11) "Private school student support organization" means an eligible student support organization that makes payments to a public school, open-enrollment charter school, or nonpublic school for an eligible student who is enrolled in a private school and intends to attend a class or participate in a program offered by the public school, open-enrollment charter school, or nonpublic school;

(12) "Public school student support organization" means an eligible student support organization that makes payments to an eligible

public school; and

(13) "Student scholarship" means a scholarship established for an eligible student under this subchapter that provides funds that are disbursed by an eligible student support organization and that a parent may use to pay for tuition and other approved educational services on behalf of the eligible student.

6-18-2204. Arkansas Child Academic Opportunity Scholarship and Grant Act – Creation – Eligible contributions.

(a) The Arkansas Child Academic Opportunity Scholarship and Grant Act is established under this subchapter.

(b) An eligible student support organization may:

(1)(A) Finance an:

(i) Eligible private school payment for an eligible student if the eligible student support organization is a private school student support organization; or

(ii) Eligible public school payment for an eligible public school if the eligible student support organization is a public school student support organization.

(B) An eligible student support organization shall not be required to finance both eligible private school payments and eligible public school payments; and

(2)(A) Receive eligible contributions under this subchapter.

(B) Eligible contributions received by a private school student support organization shall be used to fund student scholarships awarded to eligible students under this subchapter.

(C) Eligible contributions received by a public school student support organization shall be used to fund grants awarded to eligible public schools under this subchapter.

(c) Funds received by a nonpublic school or an educational services provider from a private school student support organization on behalf of an eligible student shall be used for only the following expenses of the eligible student:

(1) Tuition, fees, and the cost of required uniforms for a nonpublic:

(A) School in this state that meets the eligibility

requirements under § 6-18-2211; or

(B) Online learning program or course;

(2) Textbooks required by a nonpublic school or online learning program or course;

(3) Tutoring services provided by a:

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

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

(C) Person who has at least one (1) semester of teaching experience at an institution of higher education; or

(D) Tutoring facility with a license to operate in this state;

(4) Specific course materials, including without limitation any required supplemental materials;

(5) Fees for:

(A) Nationally standardized assessments, including without limitation assessments required by the state board of all public students and nationally recognized norm-referenced examinations;

(B) Advanced Placement exams;

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

(D) Industry certification examinations; or

(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) Services that are provided by a public school district or an open-enrollment public charter school, including without limitation academic courses, nonacademic programs, and extracurricular programs.

(B) A public school district or an open-enrollment public charter school that provides services to a student who is the recipient of a student scholarship under this subchapter is entitled to receive, from the student's private school student support organization, an amount that is not more than one-sixth (1/6) of the state foundation funding amount that would be received by the public school district or open-enrollment public charter

school under § 6-20-2305(a)(2) for each academic course in which the student is enrolled as described in § 6-18-232;

(8) Tuition and fees at an in-state or out-of-state institution of higher education if the eligible student is enrolled both in high school and an academic course at an in-state or out-of-state institution of higher education;

(9) Textbooks and materials related to coursework at an institution of higher education if an eligible student is enrolled in an academic course at an in-state or out-of-state institution of higher education;

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

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

(B) Audiology as defined in § 17-100-103;

(C) Dyslexia support;

(D) Occupational therapy as defined in § 17-88-102;

(E) Physical therapy as defined in § 17-93-102;

(F) Speech-language pathology as defined in § 17-100-103;

and

(G) Other services approved by the Division of Elementary and Secondary Education;

(11)(A) Transportation required for travel to and from an educational services provider.

(B) Student scholarship funds used for expenses related to transportation under subdivision (c)(11)(A) of this section shall not exceed ten percent (10%) of the student scholarship funds provided under § 6-18-2207 for that academic year; and

(12) Any other legitimate educational expense approved by the private school student support organization.

(d) A nonpublic school or educational services provider that receives payments under this section shall not share the payments with, refund the payments to, or rebate the payments under this section to a parent or eligible student other than to credit a refund directly to the account that contains the eligible student's student scholarship funds.

(e) Funds received by an eligible public school from an eligible student support organization shall be used only for the following expenses:

(1) Public school technology enhancements, including without limitation:

(A) Wireless access points;

(B) Installation of cabling;

(C) Wireless internet hot spots that are available for check out;

(D) Laptop computers; and

(E) Tablet computers;

(2) Building upgrades for:

(A) Heating, ventilation, and air conditioning repairs;

and

(B) Roof repairs;

(3) Resources for Response to Intervention;

(4) Remote learning intervention platform technology;

(5) Social and emotional well-being programming for public school students and parents of public school students;

(6) Parent support centers for parents of public school students who are economically disadvantaged;

(7) Parent support centers for parents of public school students with intellectual or developmental disabilities;

(8) Professional development training for public school staff specific to diverse public school student populations;

(9) Professional development training for public school staff specific to economically disadvantaged public school student populations;

(10) Sensory rooms and equipment for indoor and outdoor special education services manipulatives that public school students use for hands-on problem-solving;

(11) Funding for economically disadvantaged public school student populations, including without limitation funding for:

(A) Personal care items;

(B) Clothing; and

(C) Food;

(12) After-hours training resources for parents of public school students, including without limitation resources for training in:

(A) Basic technology and computer literacy; and

(B) Math and reading literacy; and

(13) Resources, materials, and equipment for workforce and skills training courses.

6-18-2205. Application to become eligible student support organization.

(a)(1) An organization that seeks to become or continue to be an eligible student support organization under this subchapter shall apply to the Division of Elementary and Secondary Education for initial certification or renewal of certification as an eligible student support organization by May 1 immediately preceding the school year for which the organization intends to fund student scholarships or grants to eligible public schools.

(2)(A) An organization shall specify in an application it submits under this section whether the organization intends to:

(i) Operate as a private school student support organization;

(ii) Operate as a public school student support organization; or

(iii) Operate both as a private school student support organization and a public school student support organization.

(B) An organization shall not be required to operate as both a private school student support organization and a public school student support organization.

(b)(1) An application for initial certification as an eligible student support organization 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 certifying the organization is a nonprofit organization under 26 U.S.C. § 501(c)(3);

(C) A description of the organization's financial plan that demonstrates the organization has sufficient funds to operate throughout the upcoming academic year;

(D) A copy of the organizational chart of the organization; and

(E) If the organization applies to operate as a private school student support organization, a description of the:

(i) Methodology the organization will use to verify

whether a student is eligible to receive a student scholarship;

(ii) Application process for student scholarships the organization will use;

(iii) Methodology the organization will use to establish and fund student scholarships; and

(iv) Plans for compliance with the requirements of § 6-18-2206.

(2) In addition to the information required under subdivision (b)(1) of this section, an application for renewal of certification shall include:

(A) The eligible student support organization's completed Internal Revenue Service Form 990, which shall be submitted to the division no later than December 31 of the year before the academic year in which the eligible student support organization intends to operate;

(B) A copy of the audit required under § 6-18-2210;

(C) If the eligible student support organization has operated as a private school student support organization, an annual report that includes the total number of:

(i) Applications received from students in the preceding academic year, sorted by county, school district, and grade;

(ii) Applications received from eligible students that were received and approved;

(iii) Approved applications received from students who met the income requirements under § 6-18-2203(6); and

(iv) Student scholarships established on behalf of eligible students;

(D) The amount of funds:

(i) Received as eligible contributions for the purposes of this subchapter;

(ii) Distributed as eligible private school payments under this subchapter if the eligible student support organization has operated as a private school student support organization; and

(iii) Distributed as eligible public school payments under this subchapter if the eligible student support organization has operated as a public school student support organization;

(E) An accounting of any remaining funds after the payment

of administrative expenses and the distribution of:

(i) Eligible private school payments if the eligible student support organization has operated as a private school student support organization; or

(ii) Eligible public school payments if the eligible student support organization has operated as a public school student support organization; and

(F) A description of how the eligible student support organization complied with the operational requirements under § 6-18-2206.

(c) Within sixty (60) days after receipt of an application under this section, the division shall certify or recertify an organization as an eligible student support organization if the organization meets the applicable application requirements under subsection (b) of this section.

(d) The division shall maintain a public registry of currently certified eligible student support organizations on the website of the division.

6-18-2206. Operation of eligible student support organization.

(a) An eligible student support organization:

(1) Shall:

(A)(i) Expend no more than ten percent (10%) of eligible contributions received for administrative expenses.

(ii) An eligible student support organization shall expend or reserve for eligible private school payments and eligible public school payments at least seventy-five percent (75%) of eligible contributions received during the fiscal year or school year in which the eligible contributions are collected.

(iii) No more than twenty-five percent (25%) of eligible contributions received shall be carried forward to the following fiscal year; and

(B) Comply with the antidiscrimination provisions of the Civil Rights Act of 1964, 42 U.S.C. § 1981 et seq., as it existed on January 1, 2021;

(2) Shall not:

(A) Have an operator or employee who owns, operates, or is employed by an educational services provider that receives a payment for

providing eligible educational services from student scholarships under § 6-18-2204;

(B) Provide a student scholarship under this subchapter for the child of an operator, owner, or full-time employee of an eligible student support organization;

(C) Allow an eligible taxpayer, as defined in § 26-51-515, to designate an eligible contribution to a specific eligible student or school or for a specific expense under § 6-18-2204(c) as a condition of making an eligible contribution to the eligible student support organization;

(D) Restrict the parent of an eligible student from selecting any nonpublic school that is eligible to participate in the Arkansas Child Academic Opportunity Scholarship and Grant Act under § 6-18-2211; or

(E) Charge an application fee in excess of the actual cost of processing an application;

(3)(A) May transfer eligible contributions to another eligible student support organization if the Division of Elementary and Secondary Education approves the transfer.

(B) All transferred funds received by an eligible student support organization under subdivision (a)(3)(A) of this section shall be:

(i) Deposited by the receiving eligible student support organization into the receiving eligible student support organization's accounts as funds for eligible private school payments or eligible public school payments of expenses permitted under § 6-18-2204; and

(ii) Separately disclosed in the receiving eligible student support organization's annual financial audit under § 6-18-2210;

(4) Shall:

(A) Maintain separate accounts for:

(i) Eligible private school payment funds;

(ii) Administrative and operating funds;

(iii) Eligible public school payment funds; and

(iv) Each eligible student who receives funds for the payment of expenses permitted under § 6-18-2204;

(B)(i) Prepare quarterly reports to submit to the division and to post on the website of the eligible student support organization.

(ii) The quarterly report shall include without

limitation the following information:

(a) How funds received under this subchapter were distributed; and

(b)(1) Which nonpublic schools and eligible public schools received eligible private school payments or eligible public school payments under this subchapter.

(2) The division shall maintain a list of eligible public schools that may receive eligible public school payments and make the list available on the division's website;

(C) Submit in a timely manner any information requested by the division pertaining to a student scholarship that is awarded by the eligible student support organization under this subchapter, including without limitation information that is requested in support of any evaluation of the program;

(D) Report to the division all educational expenses approved and paid by the eligible student support organization under § 6-18-2204 in the manner prescribed by the division;

(E)(i) Establish a process by which an individual may notify the eligible student support organization and file a written complaint concerning a violation of this subchapter by a parent, educational services provider, or public school district.

(ii) The eligible student support organization shall:

(a) Conduct an inquiry of a written complaint under subdivision (a)(4)(E)(i) of this section; or

(b) Make a referral to the appropriate agency, as determined by the division, for an investigation into a complaint under subdivision (a)(4)(E)(i) of this section; and

(F) Allocate all interest accrued from eligible contributions to the funding of eligible private school payments and eligible public school payments.

(b)(1) The division shall send written notice to an eligible student support organization if the division determines that the eligible student support organization has violated this subchapter.

(2)(A) An eligible student support organization that receives a notice under subdivision (b)(1) of this section has sixty (60) days to

correct a violation identified in the notice by the division.

(B)(i) If an eligible student support organization fails or refuses to correct a violation identified under subdivision (b)(1) of this section, then the division may revoke the certification of the eligible student support organization.

(ii)(a) An eligible student support organization may request an administrative hearing under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., upon the revocation of the certification.

(b) A final decision issued following a hearing under subdivision (b)(2)(B)(ii)(a) is subject to judicial review.

(3)(A) An eligible student support organization whose certification has been revoked under subdivision (b)(2)(B)(i) of this section shall not accept any further eligible contributions made to the eligible student support organization for the purpose of funding eligible private school payments or eligible public school payments under this subchapter.

(B) If an eligible student support organization receives any eligible contributions made for the purpose of funding eligible private school payments or eligible public school payments under this subchapter after the date of the notice of the revocation of the eligible student support organization's certification under subdivision (b)(2)(B)(i) of this section, then the eligible student support organization shall refund the eligible contributions.

(c)(1) If an eligible student support organization determines that it cannot continue to operate, then the eligible student support organization shall transfer its eligible private school payment or eligible public school payment funds to another eligible student support organization upon approval by the division.

(2) If funds are available, an eligible student support organization that receives a transfer of funds for eligible private school payments or eligible public school payments under subdivision (c)(1) of this section shall oversee the eligible private school payments and eligible public school payments established by the eligible student support organization that transferred the funds for the eligible private school payments or eligible public school payments.

6-18-2207. Establishment of student scholarships – Payments.

(a) An eligible student support organization may contract with an entity that is qualified to manage student scholarships.

(b) An eligible student support organization shall:

(1) Not be required to disburse both eligible public school payments and eligible private school payments;

(2) Establish student scholarships under this subchapter for eligible students in an amount not to exceed the foundation funding amount under § 6-20-2305(a)(2) for each academic year in which the eligible student participates in the Arkansas Child Academic Opportunity Scholarship and Grant Act;

(3) Disburse student scholarships established under subdivision (b)(2) of this section in quarterly installments throughout the school year to the nonpublic schools attended by eligible students under this subchapter;

(4) Disburse eligible public school payments allocated for eligible public schools under this subchapter to eligible public schools; and

(5) Establish a system for a parent to direct student scholarship funds to nonpublic schools and educational services providers by:

(A) Electronic funds transfer, including an automated clearinghouse transfer; or

(B) Another system that the eligible student support organization determines is commercially viable, cost-effective, and convenient for parents to use.

(c) Funds received under this subchapter are not taxable income of a parent or an eligible student.

6-18-2208. Application for student scholarship.

(a) A parent may apply to a private school student support organization to establish a student scholarship for an eligible student.

(b) A private school student support organization shall approve an application for a student scholarship upon:

(1) Verifying the eligibility of the student; and

(2) Entering into an agreement with the parent under subdivision

(d)(1) of this section.

(c) The private school student support organization:

(1) Shall approve applications in order of receipt;

(2) Shall approve an application only if student scholarship

funds are available; and

(3) May approve applications throughout the calendar year.

(d) As part of the application process under this section, a parent shall:

(1) Enter into an agreement with a private school student support organization to:

(A) Use student scholarship funds only for the expenses permitted under § 6-18-2204;

(B)(i) Not enroll the eligible student as a full-time student in a public school.

(ii) A parent who uses student scholarship funds to pay for services provided by a public school district or an open-enrollment public charter school under § 6-18-2204(c)(7) is not in violation of the agreement under this subdivision (d)(1);

(C) Not accept a Succeed Scholarship under § 6-41-901 et seq. in addition to a student scholarship provided under this subchapter; and

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

(2) Sign a form verifying that the parent has reviewed information developed by the Division of Elementary and Secondary Education that explains without limitation:

(A) The allowable uses of student scholarship funds;

(B) The responsibilities of:

(i) Parents;

(ii) Private school student support organizations;

and

(iii) The division;

(C) That a parent may choose to enroll his or her child in a public school at any time subject to the provisions of § 6-18-2209(a)(4);

and

(D) The student's waiver of his or her entitlement to an appropriate education environment under the Individuals with Disabilities Education Act, 20 U.S.C. § 1412(a)(10)(A), as it existed on January 1, 2021, for students with disabilities as described in § 6-18-2203(6)(B)(i).

(e)(1) A private school student support organization shall annually renew an eligible student's student scholarship if:

(A) Student scholarship funds are available; and

(B) The parent of the eligible student applies for re-enrollment in the Arkansas Child Academic Opportunity Scholarship and Grant Act for the academic year in which the eligible student expects to receive a student scholarship under this subchapter.

(2) As part of the re-enrollment process under subdivision (e)(1)(B) of this section, the private school student support organization or an organization chosen by the private school student support organization shall conduct a parental survey that asks the parent of the eligible student to detail the:

(A) Satisfaction of the parent with the program;

(B) Opinion of the parent regarding other topics and issues that concern the effectiveness of the program; and

(C) Number of years his or her child has participated in the program.

6-18-2209. Duration of participation in the Arkansas Child Academic Opportunity Scholarship and Grant Act program – Return of student scholarship funds.

(a) If funds are available, a private school student support organization shall continue to provide student scholarship funds to an eligible student under § 6-18-2207 until:

(1) The parent does not apply to re-enroll in the Arkansas Child Academic Opportunity Scholarship and Grant Act program under § 6-18-2208;

(2) The private school student support organization determines that the student no longer qualifies as an eligible student;

(3) The parent fails to comply with the agreement made under § 6-18-2208(d)(1);

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

(B)(i) A parent shall immediately notify the private school student support organization if the eligible student enrolls full-time in a course of study at a public school.

(ii) If an eligible student enrolls full-time in a public school, the private school student support organization shall place the student scholarship on inactive status for a maximum period of one (1)

academic year, during which time the student scholarship funds shall be frozen.

(iii) After one (1) academic year of inactive status under subdivision (a)(4)(B)(ii) of this section, the private school student support organization shall:

(a) Return the student scholarship funds to active status if the:

(1) Parent notifies the private school student support organization that the student is no longer enrolled full-time in a public school; and

(2) Student continues to meet the eligibility requirements under this subchapter; or

(b) Close the student scholarship account and utilize any remaining funds from the closed student scholarship account for other student scholarships if the:

(1) Parent does not notify the private school student support organization that the student is no longer enrolled full-time in a public school; or

(2) Student ceases to meet the eligibility requirements under this subchapter;

(5) The eligible student graduates from high school; or

(6)(A) The Division of Elementary and Secondary Education:

(i) Suspends or revokes the student scholarship; or

(ii) Deems the eligible student to be no longer eligible upon a finding of fraud or intentional or substantial misuse of student scholarship funds by the eligible student's parent, including without limitation the accepting of a refund or rebate in violation of § 6-18-2204(d).

(B) The division may refer suspected cases of fraud or intentional or substantial misuse of student scholarship funds to the Attorney General for investigation if evidence of the fraud or intentional or substantial misuse is obtained.

(C)(i) A parent may appeal the decision of the division to suspend or revoke a student scholarship or deem an eligible student no longer eligible under subdivision (a)(6)(A)(i) or subdivision (a)(6)(A)(ii) of this section for the program.

(ii) An appeal under subdivision (a)(6)(C)(i) of this section shall be conducted through internal procedures established by the division.

(b) Following a determination that a student is no longer eligible under subdivision (a)(4)(B)(iii)(b)(2) or subdivision (a)(6)(A)(ii) of this section, any remaining student scholarship funds shall be returned to the private school student support organization that contributed the student scholarship funds to the eligible student's account.

6-18-2210. Audit.

(a) By October 1 of each year, each eligible student support organization shall contract with an independent certified public accountant licensed in this state to conduct an annual financial audit of accounts and records from the previous fiscal year according to generally accepted auditing standards.

(b) Each eligible student support organization shall provide to the Division of Elementary and Secondary Education a copy of the report of the audit required under subsection (a) of this section within thirty (30) days of receiving the report of the audit.

6-18-2211. Nonpublic school eligibility.

(a) A nonpublic school shall notify the Division of Elementary and Secondary Education of the intent of the nonpublic school to participate in the Arkansas Child Academic Opportunity Scholarship and Grant Act program using a process established by the division.

(b) The division shall approve a nonpublic school as eligible to participate in the program if the nonpublic school:

(1) Either:

(A) Meets the accreditation requirements established by the State Board of Education, the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association that is recognized by the state board; or

(B)(i) Is an associate member of or has applied for accreditation by the Arkansas Nonpublic School Accrediting Association, Inc., or its successor, or another accrediting association that is recognized by the state board.

(ii) A nonpublic school is ineligible to participate in the program if:

(a) The nonpublic school has applied for accreditation as described in subdivision (b)(1)(B)(i) of this section and has not received accreditation within two (2) years of becoming eligible to participate in the program under this section;

(b) It becomes impossible for the nonpublic school to obtain accreditation within four (4) years; or

(c) The accrediting association determines that the nonpublic school is ineligible or unable to continue the accreditation process.

(iii) A nonpublic school that becomes ineligible to participate in the program under subdivision (b)(1)(B)(ii) of this section shall regain eligibility if the nonpublic school receives accreditation under subdivision (b)(1)(A) of this section;

(2) Demonstrates fiscal soundness by:

(A) Having been in operation for one (1) school year; or

(B)(i) Providing the division with a statement by an independent certified public accountant confirming that the nonpublic school is insured and has sufficient capital or credit to operate during the upcoming school year.

(ii) In lieu of a statement under subdivision (b)(2)(B)(i) of this section, a surety bond or letter of credit for the amount equal to the aggregate amount of eligible contributions expected to be received during the school year may be filed with the division;

(3) Complies with the antidiscrimination provisions of the Civil Rights Act of 1964, 42 U.S.C. § 1981 et seq., as it existed on January 1, 2022;

(4) Meets state and local health and safety requirements;

(5) Employs or contracts with teachers who hold baccalaureate or higher degrees; and

(6) Complies with all state laws and rules that govern nonpublic schools.

(c) The division shall maintain a list of nonpublic schools that are eligible to participate in the program and make the list available on the division's website.

(d)(1) An eligible nonpublic school under this section shall administer annually or make provision for a participating eligible student to take a nationally recognized norm-referenced test as established by the state board.

(2) An eligible student with a disability under the Individuals with Disabilities Act, 20 U.S.C. § 1400 et seq., who is determined by a private school to need an exemption to standardized testing due to the nature of the eligible student's disability is not required to take a test administered under subdivision (d)(1) of this section.

(3) An eligible private school shall annually:

(A) Make provision for an eligible student to take an alternate assessment approved by the state board; or

(B) If an eligible student is exempt from standardized testing as described under subdivision (d)(2) of this section, prepare a portfolio that provides information regarding the eligible student's progress and provide the portfolio to the eligible student's parent or legal guardian.

6-18-2212. Annual report.

(a)(1) The Division of Elementary and Secondary Education or an organization selected by the division shall produce, in compliance with student privacy laws, an annual report that is accessible on the website of the division.

(2) Annual report findings shall be aggregated according to a student's grade level, gender, family income level, race, and number of years of participation in the Arkansas Child Academic Opportunity Scholarship and Grant Act program.

(b) The annual report required under subsection (a) of this section shall:

(1) Measure:

(A) Student performance on state achievement tests or nationally recognized norm-referenced tests, including without limitation learning gains;

(B) High school graduation rates;

(C) Parental satisfaction according to the survey conducted under § 6-18-2208(e)(2); and

(D) The percentage of student scholarship funds used for

each expense type identified in § 6-18-2204(c);

(2) Include data and information on educational expenses approved and paid by each eligible student support organization under § 6-18-2204;

(3) Apply appropriate methodologies to ensure public confidence in the annual report required under subsection (a) of this section; and

(4) Protect the identity of participating eligible students and schools using methods that include without limitation the preservation of student anonymity in disaggregated data.

6-18-2213. Autonomy of nonpublic schools and educational services providers.

(a) A nonpublic school or educational services provider that receives payment from student scholarship funds under this subchapter is not an agent or an instrumentality of the state or of a public school district.

(b) The curriculum and educational plan for an eligible student who attends a nonpublic school or who receives educational services from an educational services provider under this subchapter are not subject to the regulatory authority of the State Board of Education.

(c) As a condition of continued receipt of student scholarship funds, the state board may require a nonpublic school or educational services provider to certify on a semiannual basis under oath that a participating eligible student has been:

(1) Except for excused absences, enrolled in and attending the nonpublic school; or

(2) Receiving educational services from the educational services provider.

6-18-2214. Rules.

The Division of Elementary and Secondary Education shall promulgate rules necessary to implement this subchapter.

SECTION 2. Arkansas Code § 6-13-1603, concerning administrative reorganization under the Public Education Reorganization Act, is amended to add an additional subsection to read as follows:

(1) A student who is a recipient of a student scholarship under the

Arkansas Child Academic Opportunity Scholarship and Grant Act, § 6-18-2201 et seq.:

(1) May be counted for the purposes of a consolidation determination made under this subchapter; and

(2) Shall not be counted for the purposes of a funding determination made under this subchapter.

SECTION 3. Arkansas Code § 6-18-232 is amended to read as follows:

6-18-232. Enrollment of private school, ~~or~~ home school, or Arkansas Child Academic Opportunity Scholarship and Grant Act students.

(a) As used in this section, "student" means a person who:

(1) Attends a private school;

(2) Attends a home school; or

(3) Is a recipient of a student scholarship under the Arkansas Child Academic Opportunity Scholarship and Grant Act, § 6-18-2201 et seq.

~~(a)(b)~~ Except as provided under ~~subsection (d)~~ subsection (e) of this section, a public school district or an open-enrollment public charter school shall adopt a policy that allows a student ~~who attends a private school or a home school~~ to enroll in an academic course at a public school or an open-enrollment public charter school if the student resides in the public school district where the public school or open-enrollment public charter school is located.

~~(b)(c)~~ A policy adopted by a public school district or open-enrollment public charter school under ~~subsection (a)~~ subsection (b) of this section may:

(1)(A) Include provisions that apply to a ~~private school or home schooled~~ student who is enrolled in an academic course at a public school or open-enrollment public charter school, including without limitation provisions regarding:

(i) Academic or grade-level prerequisites;

(ii) Attendance;

(iii) Testing;

(iv) Coursework;

(v) Grades; and

(vi) Conduct.

(B) The provisions included under ~~subdivision (b)(1)(A)~~

subdivision (c)(1)(A) of this section shall be consistent with provisions included in the public school district's or open-enrollment public charter school's policies that apply to public school students;

(2) Allow a student ~~who attends a private school or a home school~~ to enroll in one (1) or more academic courses in a semester; and

(3) Limit enrollment if the enrollment of a ~~private school or home schooled~~ student would:

(A) Create a financial loss for the public school district or open-enrollment public charter school; or

(B) Violate any state or federal law or any rule established by the Division of Elementary and Secondary Education.

~~(e)(1)~~(d)(1)(A) A public school district or an open-enrollment public charter school that enrolls a student who attends a private school or a home school in an academic course is entitled to an amount equal to one-sixth (1/6) of the state foundation funding amount for each academic course in which a student who attends a private school or a home school is enrolled.

(B) A public school district or an open-enrollment public charter school that enrolls a student who is a recipient of a student scholarship under the Arkansas Child Academic Opportunity Scholarship and Grant Act, § 6-18-2201 et seq., in an academic course is entitled to receive from the student's private school student support organization, for each academic course in which the student is enrolled, an amount that is equal to the state foundation funding amount that would be received by the public school district or open-enrollment public charter school under subdivision (d)(1)(A) of this section.

(2)(A) A public school district or an open-enrollment public charter school is not entitled to more than the equivalent of the state foundation funding amount for one (1) average daily membership per student regardless of the number of academic courses in which the student who attends a private school or a home school is enrolled.

(B) A public school district or an open-enrollment public charter school is not entitled to receive from a private school student support organization, for each student who is a recipient of a student scholarship under the Arkansas Child Academic Opportunity Scholarship and Grant Act, § 6-18-2201 et seq., more than the equivalent of the state foundation funding amount that would be received by the public school

district or open-enrollment public charter school under subdivision (d)(2)(A) of this section.

~~(d)~~(e) A public school district or an open-enrollment public charter school may seek a waiver from the division from the requirements under this section.

~~(e)~~(f) If a student ~~who attends a private school or a home school~~ enrolls in an endorsed concurrent enrollment course as defined by § 6-16-1202(2), the student shall not be charged for the endorsed concurrent enrollment course unless the public school district also charges public school students or open-enrollment public charter school students for the endorsed concurrent enrollment course.

~~(f)~~(g) A public school district or open-enrollment public charter school under this section:

(1) May provide transportation for a ~~private school or home-schooled~~ student to or from the location of the academic course; and

(2) Shall provide a final grade and transcript to each ~~private school or home-schooled~~ student who completes an academic course in which the student is enrolled at a public school or open-enrollment public charter school.

~~(g)~~(1)(h)(1) A ~~private school or home-schooled~~ student is not considered truant from a public school or open-enrollment public charter school under this section due to unexcused absences from the academic course in which the ~~private school or home-schooled~~ student is enrolled.

(2) However, a public school or open-enrollment public charter school may drop a ~~private school or home-schooled~~ student from an academic course in the event of excessive unexcused absences or any other violation of policies regarding the academic course in which the ~~private school or home-schooled~~ student is enrolled.

~~(h)~~(i) This section does not apply to a statewide open-enrollment public charter school that operates primarily as a virtual school.

(j) A recipient of a student scholarship under the Arkansas Child Academic Opportunity Scholarship and Grant Act, § 6-18-2201 et seq., may pay for an academic course in which he or she is enrolled under this section using the student scholarship funds disbursed under the Arkansas Child Academic Opportunity Scholarship and Grant Act, § 6-18-2201 et seq.

SECTION 4. 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 contribution to student scholarship funds and eligible payments to eligible public schools.

(a) As used in this section:

(1) "Eligible student support organization" means the same as defined in § 6-18-2203; and

(2)(A) "Eligible taxpayer" means an individual or business, including without limitation a:

(i) Corporation;

(ii) Partnership;

(iii) Limited liability company; or

(iv) Sole proprietorship.

(B) "Eligible taxpayer" does not include an individual or business that has a direct financial relationship with any of the following that receive funds under the Arkansas Child Academic Opportunity Scholarship and Grant Act, § 6-18-2201 et seq.:

(i) A public school;

(ii) A nonpublic school; or

(iii) An eligible student support organization.

(b) A state income tax credit is allowed against the taxes imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for one hundred percent (100%) of an eligible contribution made by an eligible taxpayer in a tax year to an eligible student support organization for student scholarships or eligible payments to eligible public schools at the time of the eligible contribution.

(c)(1)(A) The amount of the state income tax credit under this section that may be claimed by an eligible taxpayer in a tax year shall not exceed the amount of state income tax due by the eligible taxpayer.

(B) Unused income tax credit under this section may be carried forward for a maximum of five (5) consecutive tax years for credit against the state income tax.

(2)(A) Beginning with tax year 2022, the total amount of state income tax credits under this section shall not exceed a tax credit cap of ten million dollars (\$10,000,000).

(B) Of the ten million dollars (\$10,000,000) in state

income tax credits allowed under subdivision (c)(2)(A) of this section, six million dollars (\$6,000,000) shall be allotted for eligible contributions made for the purpose of funding eligible public school payments and four million dollars (\$4,000,000) shall be allotted for eligible contributions made for the purpose of funding eligible private school payments.

(C)(i) In any fiscal year in which the tax credit amount claimed for eligible contributions made for the purpose of funding eligible public school payments is equal to or greater than ninety percent (90%) of the tax credit cap allotted for eligible contributions made for the purpose of funding eligible public school payments, the tax credit cap allotted for eligible contributions made for the purpose of funding eligible public school payments shall be increased by twenty-five percent (25%) for the following fiscal year.

(ii) The twenty-five-percent increase to the tax credit cap under subdivision (c)(2)(C)(i) of this section shall be allotted for eligible contributions made for the purpose of funding eligible public school payments.

(D)(i) In any fiscal year in which the tax credit amount claimed for eligible contributions made for the purpose of funding eligible private school payments is equal to or greater than ninety percent (90%) of the tax credit cap allotted for eligible contributions made for the purpose of funding eligible private school payments, the tax credit allotted for eligible contributions made for the purpose of funding eligible private school payments shall be increased by twenty-five percent (25%) for the following fiscal year.

(ii) The twenty-five-percent increase to the tax credit cap under subdivision (c)(2)(D)(i) of this section shall be allotted for eligible contributions made for the purpose of funding eligible private school payments.

(E) The Division of Elementary and Secondary Education and the Department of Finance and Administration shall publish on their respective websites information identifying the amount of the tax credit cap when it is increased under subdivision (c)(2)(C) or subdivision (c)(2)(D) of this section.

(d) An eligible taxpayer who files a consolidated corporate income tax 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 limitations established under subsection (c) of this section.

(e) Spouses who file separately on the same income tax form 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 under this section.

(f)(1) An eligible taxpayer who seeks to carry forward an unused amount of the state income tax credit under this section shall:

(A) Submit an application for allocation of tax credits;

or

(B)(i) Carry forward credits in the year that the eligible taxpayer intends to use the carry-forward credits.

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

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

(g) For purposes of this section, an eligible 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:

(1) Applies to either the current or preceding tax year; and

(2) Is considered to have been made on the last day of the tax year.

(h) An application for a state income tax credit under this section shall be submitted to the department, in coordination with the division, if necessary, on forms established by rule of the division.

(i) The division shall develop a cooperative agreement, in coordination with the department, if necessary, to assist in the administration of this section.

(j) The department shall, in coordination with the division, if necessary, adopt rules necessary to administer this section, including without limitation rules governing the allocation of state tax credits and carry-forward credits under this section on a first-come, first-served basis.

SECTION 5. DO NOT CODIFY. TEMPORARY LANGUAGE.

For the 2022-2023 school year, an organization that seeks to become an eligible student support organization under the Arkansas Child Academic Opportunity Scholarship and Grant Act, § 6-18-2201 et seq., shall, by December 31, 2021:

- (1) Apply to the Division of Elementary and Secondary Education for initial certification as an eligible student support organization; and
- (2) Submit to the division the organization's completed Internal Revenue Service Form 990 from the previous tax year.

SECTION 6. DO NOT CODIFY. TEMPORARY LANGUAGE.

(a) When the Division of Elementary and Secondary Education adopts initial rules to implement this act, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

- (1) On or before January 1, 2022; or
- (2) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(b) The division shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.

SECTION 7. EFFECTIVE DATE.

This act is effective for tax years beginning on or after January 1, 2022.

/s/Bragg