



State of Tennessee

PUBLIC CHAPTER NO. 431

SENATE BILL NO. 27

By Gresham, Ketron, Haile, Kelsey, Stevens, Bowling

Substituted for: House Bill No. 138

By Moody, Kane, Holt, Weaver, Timothy Hill, Todd, Keisling, Daniel, Goins, Powers, Durham, Wilburn, Littleton, Lynn

AN ACT to amend Tennessee Code Annotated, Title 49, to enact the "Individualized Education Act."

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

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 10, is amended by adding Sections 2-7 as a new part.

SECTION 2. This part shall be known and may be cited as the "Individualized Education Act."

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Department" means the department of education;

(2) "Eligible postsecondary institution" means a community college or university of the University of Tennessee system or the board of regents system or an accredited private postsecondary institution;

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

(A) Is a child with any of the following disabilities:

- (i) Autism;
- (ii) Deaf-blindness;
- (iii) Hearing impairments;
- (iv) Intellectual disability;
- (v) Orthopedic impairments;
- (vi) Traumatic brain injury; or
- (vii) Visual impairments;

(B) Has an individualized education program (IEP) in effect at the time the department receives the request for participation in the program; and

(C) Meets at least one (1) of the following requirements:

(i) Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an individualized education account (IEA);

(ii) Is attending a Tennessee public school for the first time; or

(iii) Received an individualized education account (IEA) in the previous school year;

(4) "IEA" means an individualized education account;

(5) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child;

(6) "Participating school" means a nonpublic school that meets the requirements established in this part and seeks to enroll eligible students;

(7) "Participating student" means an eligible student whose parent is participating in the individualized education account (IEA) program; and

(8) "Program" means the individualized education account (IEA) program created in this part.

SECTION 4. (a) A parent of an eligible student shall qualify to participate in the program if the parent signs an agreement promising:

(1) To provide an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science; and

(2) Not to enroll the parent's eligible student in a public school and to release the LEA in which the student resides and is zoned to attend from all obligations to educate the student. Participation in the program shall have the same effect as a parental refusal to consent to the receipt of services under 20 U.S.C. § 1414 of the Individuals with Disabilities Education Act (IDEA).

(b) Parents shall agree to use the funds deposited in a participating student's IEA for any, or any combination, of the following expenses of the participating student:

(1) Tuition or fees at a participating school;

(2) Textbooks required by a participating school;

(3) Tutoring services provided by a tutor accredited by a state, regional, or national accrediting organization;

(4) Payment for purchase of curriculum, including any supplemental materials required by the curriculum;

(5) Fees for transportation paid to a fee-for-service transportation provider;

(6) Tuition or fees for a nonpublic online learning program or course;

(7) Fees for nationally standardized norm-referenced achievement tests, Advanced Placement examinations, or any examinations related to college or university admission;

(8) Contributions to a Coverdell education savings account established under 26 U.S.C. § 530 for the benefit of the participating student, except that funds used for elementary or secondary education expenses shall be for expenses otherwise allowed under this section;

(9) Educational therapies or services for participating students from a licensed or accredited practitioner or provider, including licensed or accredited paraprofessionals or educational aides;

(10) Services provided under a contract with a public school, including individual classes and extracurricular programs;

(11) Tuition or fees at an eligible postsecondary institution;

(12) Textbooks required for courses at an eligible postsecondary institution;

(13) Fees for the management of the IEA by private financial management firms; or

(14) Computer hardware or other technological devices approved by the department or a physician, if the computer hardware or other technological device is used for the student's educational needs.

(c) Parents may make payments for the costs of educational programs and services not covered by the funds in their IEA.

(d) Parents are encouraged, when selecting appropriate educational placements for their students, to consider participating schools with inclusive educational settings that educate students with disabilities and students without disabilities together. A participating school shall notify the department whether the school provides inclusive educational settings. The department shall indicate those schools that provide inclusive educational settings in its posting of participating schools on its web site under subdivision (a)(7) of Section 6.

(e) For participating students in grades three through eight (3-8), a parent shall ensure that the student is annually administered either a nationally norm-referenced test identified by the department or the Tennessee comprehensive assessment program (TCAP) tests or any future replacements of the TCAP tests. The tests should, at a minimum, measure learning in mathematics and English language arts. Results of the testing shall be reported to the parent. Students with disabilities for whom standardized testing is not appropriate, as determined on the student's IEP, are exempt from this requirement.

(f) For purposes of continuity of educational attainment, a student who enrolls in the program shall remain eligible until the participating student returns to a public school, graduates from high school, or reaches twenty-two (22) years of age by August 15 for the next school year, whichever occurs first.

(g) Notwithstanding subdivision (a)(2) that requires a parent to agree not to enroll the parent's eligible student in a public school, a participating student may return to the student's LEA at any time after enrolling in the program in compliance with rules promulgated by the state board of education. The state board of education shall promulgate rules providing the least disruptive process for the return of a participating student to the student's LEA. Upon a participating student's return to the student's LEA, the student's IEA shall be closed, and any remaining funds shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(h) Any funds remaining in a student's IEA upon graduation from high school may be used to attend or take courses from an eligible postsecondary institution, with qualifying expenses subject to the applicable conditions of subsection (b).

(i) Upon a participating student's graduation from a postsecondary institution or after any period of four (4) consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary institution, the participating student's IEA shall be closed, and any remaining funds shall be returned to the state treasurer to be placed in the basic education program (BEP) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

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

SECTION 5. (a) A school, private tutor, eligible postsecondary institution, or other educational provider that serves a participating student shall not refund, rebate, or share funds from an IEA with a parent or participating student in any manner. The funds in an IEA may be used only for educational purposes. Participating schools, postsecondary institutions, and education providers that enroll participating students shall provide parents with a receipt for all qualifying expenses at the school or institution.

(b) To ensure that students are treated fairly and kept safe, all participating schools shall:

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

(2) Certify that they shall not discriminate against students or applicants on the basis of race, color, or national origin; and

(3) Conduct criminal background checks on employees. The participating school then shall:

(A) Exclude from employment any person not permitted by state law to work in a nonpublic school; and

(B) Exclude from employment any person who might reasonably pose a threat to the safety of students.

(c) The department may suspend or terminate a school from participating in the program, if the department determines the school has failed to comply with the requirements of this section. If the department suspends or terminates a school's participation, the department shall notify affected participating students and their parents of the decision. If a participating school is suspended or if a participating school withdraws from the program, affected participating students remain eligible to participate in the program.

SECTION 6. (a) In administering the IEA program, the department shall:

(1) Remit funds to a participating student's IEA account on a quarterly basis. Any funds awarded under this part shall be the entitlement of only the eligible student under the supervision of the student's parent. The maximum annual amount to which an eligible student is entitled under this part shall be equal to the amount representing the per pupil state and local funds generated and required through the basic education program (BEP) for the LEA in which the student resides and is zoned to attend plus the special education funds from the BEP that the participating student would otherwise be entitled to under the student's particular IEP. For the purpose of funding calculations, each eligible student who participates in the program shall be counted in the enrollment figures for the LEA in which the student resides and is zoned to attend. The IEA funds shall be subtracted from the state funds otherwise payable to the LEA;

(2)(A) Create a standard form that a parent of a student may submit to establish the student's eligibility for an IEA. The department shall make the supplication application readily available to interested families through various sources, including the Internet; and

(B) In accordance with state board of education rules promulgated in consultation with the department of education and the department of health, create an application and approval process for nonpublic schools and providers to become participating schools and participating providers;

(3) Establish application and participation timelines that shall maximize student and school participation;

(4) Provide parents of participating students with a written explanation of the allowable uses of IEAs, the responsibilities of parents, and the duties of the department;

(5) Ensure that lower-income families are made aware of the program and their children's potential eligibility;

(6) Adopt policies necessary for the administration of the IEA program, including:

(A) Policies for conducting or contracting for random, quarterly, and annual reviews of accounts;

(B) Policies for establishing or contracting for the establishment of an online anonymous fraud reporting service; and

(C) Policies for establishing an anonymous telephone hotline for reporting fraud; and

(7) Post on its web site a list of participating schools for each school year, the grades taught in the school, and other information that the department determines shall assist parents in selecting participating schools for their children.

(b) The department may deduct an amount up to four percent (4%) from appropriations used to fund IEAs to cover the costs of overseeing the funds and administering the program.

(c) In compliance with all state and federal student privacy laws, an LEA shall provide a participating school that has admitted an eligible student under this part with a complete copy of the student's school records in the possession of the LEA.

SECTION 7. (a) A participating school is autonomous and not an agent of the state or federal government.

(b) Neither the department nor any other state agency may regulate in any way the educational program of a participating nonpublic school or education provider that accepts funds from the parent of a participating student.

(c) The creation of the individualized education account (IEA) program does not expand the regulatory authority of the state, its officers, or any LEA to impose any additional regulation of nonpublic schools or education providers beyond those necessary to enforce the requirements of the program.

(d) Participating nonpublic schools and education providers shall be given the maximum freedom to provide for the educational needs of their students without governmental control. Neither a participating nonpublic school nor an education provider shall be required to alter its creed, practices, admissions policies, or curriculum in order to accept participating students.

(e) In any legal proceeding challenging the application of this part to a participating school, the state bears the burden of establishing that the law is necessary and does not impose any undue burden on participating schools.

SECTION 8. The state board is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to effectuate the purposes of this part; provided, that the state board shall not promulgate any emergency rule, pursuant to § 4-5-208, for the implementation of this part prior to August 1, 2016.

SECTION 9. If any provision of this act or its application to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 10. This act shall take effect upon becoming a law for purposes of promulgating rules and procedures, the public welfare requiring it. For all other purposes, including development by the department of education of administrative procedures to effectuate the first award of individualized education accounts during the 2016–2017 school year, this act shall take effect January 1, 2016, the public welfare requiring it.

SENATE BILL NO. 27

PASSED: April 22, 2015



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of MAY 2015



BILL HASLAM, GOVERNOR