

**WEST VIRGINIA LEGISLATURE**  
**2019 FIRST EXTRAORDINARY SESSION**

**Engrossed**

**Senate Bill 1040**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

RUCKER

[Introduced June 1, 2019]

1 A BILL to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended; to amend  
2 said code by adding thereto a new section, designated §18-9A-10a; and to amend said  
3 code by adding thereto a new article, designated §18-31-1, §18-31-2, §18-31-3, §18-31-  
4 4, §18-31-5, §18-31-6, §18-31-7, §18-31-8, and §18-31-9, all relating to the Education  
5 Savings Account Act; creating compulsory school attendance exemption for Education  
6 Savings Account (ESA) students; requiring the Department of Education to annually make  
7 a projection of the amount required to fund ESAs and make a request for an appropriation  
8 in that amount; requiring the Legislature to appropriate the amount requested; requiring  
9 the Department of Education to pay to the West Virginia State Treasurer's Office the  
10 amount appropriated; requiring the total amount of funds annually deposited in an ESA to  
11 be 90 percent of the prior year's statewide average net state aid allotted per pupil based  
12 on net enrollment adjusted for state aid purposes; limiting use of ESA funds to certain  
13 qualifying expenses; allowing a parent to apply to the Treasurer to establish an ESA for  
14 an eligible student; establishing household income limit as a condition of qualifying for the  
15 ESA program; setting forth conditions under which the Treasurer is required to approve  
16 applications; requiring Treasurer to annually renew a student's ESA after making certain  
17 verifications; setting forth certain duties, obligations, and authority of the Treasurer;  
18 creating a Parent Review Committee to assist the Treasurer in determining whether  
19 questionable expenditures meet the requirements to be considered qualifying expenses,  
20 to provide recommendations to the Treasurer about how to implement, administer, and  
21 improve the ESA Program, and for other purposes; setting forth eligibility requirements for  
22 service providers; requiring provision to an education service provider that has enrolled  
23 an ESA student with a complete copy of the student's school records, while complying  
24 with the Family Educational Rights and Privacy Act of 1974; and addressing legal  
25 proceedings.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.****§18-8-1. Compulsory school attendance; exemptions.**

1 (a) Exemption from the requirements of compulsory public school attendance established  
2 in §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth  
3 in this section. Each cause or condition set forth in this section is subject to confirmation by the  
4 attendance authority of the county. A child who is exempt from compulsory school attendance  
5 under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a  
6 status offender as defined by §49-1-202 of this code.

7 (b) A child is exempt from the compulsory school attendance requirement set forth in §18-  
8 8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial  
9 or other approved school, are met. The instruction shall be in a school approved by the county  
10 board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all private,  
11 parochial or other schools approved pursuant to this subsection, it is the duty of the principal or  
12 other person in control, upon the request of the county superintendent, to furnish to the county  
13 board such information and records as may be required with respect to attendance, instruction  
14 and progress of students enrolled.

15 (c) A child is exempt from the compulsory school attendance requirement set forth in §18-  
16 8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection,  
17 both relating to home instruction, are met.

18 (1) The instruction shall be in the home of the child or children or at some other place  
19 approved by the county board and for a time equal to the instructional term set forth in §18-5-45  
20 of this code. If the request for home instruction is denied by the county board, good and  
21 reasonable justification for the denial shall be furnished in writing to the applicant by the county  
22 board. The instruction shall be conducted by a person or persons who, in the judgment of the  
23 county superintendent and county board, are qualified to give instruction in subjects required to  
24 be taught in public elementary schools in the state. The person or persons providing the

25 instruction, upon request of the county superintendent, shall furnish to the county board  
26 information and records as may be required periodically with respect to attendance, instruction  
27 and progress of students receiving the instruction. The state board shall develop guidelines for  
28 the home schooling of special education students including alternative assessment measures to  
29 assure that satisfactory academic progress is achieved.

30 (2) The child meets the requirements set forth in this subdivision: *Provided*, That the  
31 county superintendent may, after a showing of probable cause, seek from the circuit court of the  
32 county an order denying home instruction of the child. The order may be granted upon a showing  
33 of clear and convincing evidence that the child will suffer neglect in his or her education or that  
34 there are other compelling reasons to deny home instruction.

35 (A) Upon commencing home instruction under this section the parent of a child receiving  
36 home instruction shall present to the county superintendent or county board a notice of intent to  
37 provide home instruction that includes the name, address, and age of any child of compulsory  
38 school age to be instructed and assurance that the child shall receive instruction in reading,  
39 language, mathematics, science and social studies and that the child shall be assessed annually  
40 in accordance with this subdivision. The person providing home instruction shall notify the county  
41 superintendent upon termination of home instruction for a child who is of compulsory attendance  
42 age. Upon establishing residence in a new county, the person providing home instruction shall  
43 notify the previous county superintendent and submit a new notice of intent to the superintendent  
44 of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of  
45 intent to provide home instruction shall be given on or before the date home instruction is to begin.

46 (B) The person or persons providing home instruction shall submit satisfactory evidence  
47 of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally  
48 accredited institution or from an institution of higher education that has been authorized to confer  
49 a post-secondary degree or certificate in West Virginia by the West Virginia Council for  
50 Community and Technical College Education or by the West Virginia Higher Education Policy

51 Commission.

52 (C) Annually, the person or persons providing home instruction shall obtain an academic  
53 assessment of the child for the previous school year in one of the following ways:

54 (i) The child receiving home instruction takes a nationally normed standardized  
55 achievement test published or normed not more than 10 years from the date of administration  
56 and administered under the conditions as set forth by the published instructions of the selected  
57 test and by a person qualified in accordance with the test's published guidelines in the subjects  
58 of reading, language, mathematics, science and social studies. The child is considered to have  
59 made acceptable progress when the mean of the child's test results in the required subject areas  
60 for any single year is within or above the fourth stanine or, if below the fourth stanine, shows  
61 improvement from the previous year's results;

62 (ii) The child participates in the testing program currently in use in the state's public  
63 schools. The test shall be administered to the child at a public school in the county of residence.  
64 Determination of acceptable progress shall be based on current guidelines of the state testing  
65 program;

66 (iii) A portfolio of samples of the child's work is reviewed by a certified teacher who  
67 determines whether the child's academic progress for the year is in accordance with the child's  
68 abilities. The teacher shall provide a written narrative about the child's progress in the areas of  
69 reading, language, mathematics, science and social studies and shall note any areas which, in  
70 the professional opinion of the reviewer, show need for improvement or remediation. If the  
71 narrative indicates that the child's academic progress for the year is in accordance with the child's  
72 abilities, the child is considered to have made acceptable progress; or

73 (iv) The child completes an alternative academic assessment of proficiency that is  
74 mutually agreed upon by the parent or legal guardian and the county superintendent.

75 (D) A parent or legal guardian shall maintain copies of each student's Academic  
76 Assessment for three years. When the annual assessment fails to show acceptable progress, the

77 person or persons providing home instruction shall initiate a remedial program to foster  
78 acceptable progress. The county board upon request shall notify the parents or legal guardian of  
79 the child, in writing, of the services available to assist in the assessment of the child's eligibility  
80 for special education services. Identification of a disability does not preclude the continuation of  
81 home schooling. In the event that the child does not achieve acceptable progress for a second  
82 consecutive year, the person or persons providing instruction shall submit to the county  
83 superintendent additional evidence that appropriate instruction is being provided.

84 (E) The parent or legal guardian shall submit to the county superintendent the results of  
85 the academic assessment of the child at grade levels three, five, eight and 11, as applicable, by  
86 June 30 of the year in which the assessment was administered.

87 (3) This subdivision applies to both home instruction exemptions set forth in subdivisions  
88 (1) and (2) of this subsection. The county superintendent or a designee shall offer such  
89 assistance, including textbooks, other teaching materials and available resources, all subject to  
90 availability, as may assist the person or persons providing home instruction. Any child receiving  
91 home instruction may upon approval of the county board exercise the option to attend any class  
92 offered by the county board as the person or persons providing home instruction may consider  
93 appropriate subject to normal registration and attendance requirements.

94 (d) A child is exempt from the compulsory school attendance requirement set forth in §18-  
95 8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity,  
96 are met. Physical or mental incapacity consists of incapacity for school attendance and the  
97 performance of school work. In all cases of prolonged absence from school due to incapacity of  
98 the child to attend, the written statement of a licensed physician or authorized school nurse is  
99 required. Incapacity shall be narrowly defined and in any case the provisions of this article may  
100 not allow for the exclusion of the mentally, physically, emotionally or behaviorally handicapped  
101 child otherwise entitled to a free appropriate education.

102 (e) A child is exempt from the compulsory school attendance requirement set forth in §18-

103 8-1a of this code if conditions rendering school attendance impossible or hazardous to the life,  
104 health or safety of the child exist.

105 (f) A child is exempt from the compulsory school attendance requirement set forth in §18-  
106 8-1a of this code upon regular graduation from a standard senior high school or alternate  
107 secondary program completion as determined by the state board.

108 (g) A child is exempt from the compulsory school attendance requirement set forth in §18-  
109 8-1a of this code if the child is granted a work permit pursuant to the subsection. After due  
110 investigation the county superintendent may grant work permits to youths under the termination  
111 age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations.  
112 A work permit may not be granted on behalf of any youth who has not completed the eighth grade  
113 of school.

114 (h) A child is exempt from the compulsory school attendance requirement set forth in §18-  
115 8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It  
116 is expected that the county attendance director will ascertain the facts in all cases of such  
117 absences about which information is inadequate and report the facts to the county superintendent.

118 (i) A child is exempt from the compulsory school attendance requirement set forth in §18-  
119 8-1a of this code if the requirements of this subsection, relating to destitution in the home, are  
120 met. Exemption based on a condition of extreme destitution in the home may be granted only  
121 upon the written recommendation of the county attendance director to the county superintendent  
122 following careful investigation of the case. A copy of the report confirming the condition and school  
123 exemption shall be placed with the county director of public assistance. This enactment  
124 contemplates every reasonable effort that may properly be taken on the part of both school and  
125 public assistance authorities for the relief of home conditions officially recognized as being so  
126 destitute as to deprive children of the privilege of school attendance. Exemption for this cause is  
127 not allowed when the destitution is relieved through public or private means.

128 (j) A child is exempt from the compulsory school attendance requirement set forth in §18-

129 8-1a of this code if the requirements of this subsection, relating to church ordinances and  
130 observances of regular church ordinances, are met. The county board may approve exemption  
131 for religious instruction upon written request of the person having legal or actual charge of a child  
132 or children. This exemption is subject to the rules prescribed by the county superintendent and  
133 approved by the county board.

134 (k) A child is exempt from the compulsory school attendance requirement set forth in §18-  
135 8-1a of this code if the requirements of this subsection, relating to alternative private, parochial,  
136 church or religious school instruction, are met. Exemption shall be made for any child attending  
137 any private school, parochial school, church school, school operated by a religious order or other  
138 nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

139 (l) Completion of the eighth grade does not exempt any child under the termination age  
140 designated in §18-8-1a of this code from the compulsory attendance provision of this article.

141 (m) A child is exempt from the compulsory school attendance requirements set forth in  
142 §18-8-1a of this code if the parent, as defined in §18-31-2 of this code, of the child has applied to  
143 the Treasurer to establish an education savings account pursuant to §18-31-1 *et seq.* of this code,  
144 the Treasurer has approved the application, the education savings account remains open, and  
145 payments continue to be made into the education savings account.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

### **§18-9A-10a. Allowance for education savings accounts.**

1 (a) The Department of Education annually shall make a projection of the amount required  
2 to fund education savings accounts pursuant to §18-31-1 *et seq.* of this code, and shall request  
3 an appropriation for that amount. The Legislature shall appropriate the amount requested by the  
4 Department of Education pursuant to this subsection, and the Department of Education shall pay  
5 to the West Virginia State Treasurer's Office the amount appropriated pursuant to this subsection.

6 (b) The state board may, by rule, determine how the fund transfer to the Treasurer shall  
7 be accomplished.



**ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.****§18-31-1. Short title.**

1        This article shall be known as the “Education Savings Account Act” or “ESA Act.” The  
2 program created by the ESA Act shall be known as the “Education Savings Account Program” or  
3 “ESA Program.”

**§18-31-2. Definitions.**

1        The following words have the meanings ascribed to them unless the context clearly  
2 indicates a different meaning:

3        (1) “Account” or “ESA” means an education savings account, awarded pursuant to this  
4 article, to which funds are allocated by the Treasurer to the parent or parents of an ESA student  
5 in order to pay qualifying education expenses to educate the student pursuant to the requirements  
6 and conditions of this article;

7        (2) “Curriculum” means a complete course of study for a particular content area or grade  
8 level, including any supplemental materials required by the curriculum;

9        (3) “Education service provider” means a person or organization that receives payments  
10 from education savings accounts to provide educational goods and services to ESA students;

11        (4) “Eligible student” means an elementary or secondary student who has attended a West  
12 Virginia public school in the prior school year and is not attending a public school outside of West  
13 Virginia;

14        (5) “ESA student” means a student who receives an account pursuant to this article;

15        (6) “Parent” means a biological parent, legal guardian, custodian, or other person with  
16 legal authority to act on behalf of an eligible student or ESA student;

17        (7) “Participating school” means any private school that provides education to elementary  
18 and/or secondary students and has notified the Treasurer of its intention to participate in the  
19 program and comply with the program’s requirements;

20        (8) “Resident school district” means the county school district in which the student resides;

21 and

22 (9) "Treasurer" means the West Virginia State Treasurer's Office or an organization that  
23 the Treasurer has contracted with to carry out any or all portions of this article.

**§18-31-3. Basic elements of the Education Savings Account Program.**

1 (a) The total amount of funds annually deposited in an account pursuant to this article shall  
2 be an amount equivalent to 90 percent of the prior year's statewide average net state aid allotted  
3 per pupil based on net enrollment adjusted for state aid purposes, subject to the following:

4 (1) The Treasurer may deduct an amount from education savings accounts to cover  
5 administrative costs pursuant to §18-31-5(5) of this code;

6 (2) Subject to §18-31-5(8) of this code, one-half of the total annually required deposit shall  
7 be made during the first half of the fiscal year, and one-half of the total annually required deposit  
8 shall be made during the second half of the fiscal year;

9 (3) Funds in the account may not accumulate from one year to the next;

10 (4) The funds deposited shall be derived from the amount paid by the Department of  
11 Education to the Treasurer pursuant to §18-9A-10a of this code; and

12 (5) If insufficient funding is available, priority shall be given to making deposits into the  
13 accounts of ESA students whose approved applications were submitted first.

14 (b) Parents of an ESA student shall agree to use the funds deposited in their student's  
15 ESA only for the following qualifying expenses to educate the ESA student:

16 (1) Tuition and/or fees at a private school;

17 (2) Public school fees in instances where a student exempt from compulsory school  
18 attendance elects to take a course or obtain a service from the public schools and a fee is  
19 charged;

20 (2) Tutoring services provided by an individual or a tutoring facility;

21 (3) Fees for nationally standardized assessments, advanced placement examinations,  
22 any examinations related to college or university admission, and tuition and/or fees for preparatory

23 courses for the aforementioned exams; and

24 (4) Tuition and/or fees for nonpublic online learning programs;

25 (5) Tutoring services provided by an individual or a tutoring facility;

26 (6) Services contracted for, and provided by, a public district, charter, or magnet school,

27 including without limitation, individual classes and extracurricular activities and programs;

28 (7) Educational software and applications;

29 (8) Educational services and therapies, including, but not limited to, occupational,

30 behavioral, physical speech-language, and audiology therapies; and

31 (9) Fees for transportation paid to a fee-for-service transportation provider for the student

32 to travel to and from an education service provider.

33 (c) The funds in an ESA may only be used for educational purposes in accordance with

34 subsection (b) of this section.

35 (d) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in

36 any manner. Any refund or rebate for goods or services purchased with ESA funds shall be

37 credited directly to the student's ESA.

38 (e) Parents are allowed to make payments for the costs of educational goods and services

39 not covered by the funds in their student's ESA. However, personal deposits into an ESA are not

40 permitted.

41 (f) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA

42 student.

43 (g) An ESA shall remain in force until the parent withdraws the ESA student from the ESA

44 Program, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA

45 student turns 21 years of age or completes secondary education, the ESA shall be closed and

46 any unused funds revert to the Treasurer and be allocated to fund other ESAs.

47 (h) Nothing in this article requires that an ESA student must be enrolled, full or part-time,

48 in either a private school or nonpublic online school.

**§18-31-4. Application for an Education Savings Account.**

1        (a) A parent may apply to the Treasurer to establish an ESA for an eligible student at any  
2 point on or after July 1, 2020. The household income of an eligible student shall be less than  
3 \$150,000 per year to qualify for the education savings account program. For purposes of this  
4 article, the household income shall be the adjusted gross income claimed for federal income tax  
5 purposes by the biological parent or parents, legal guardian or guardians, custodian or  
6 custodians, or person or persons with legal authority to act on behalf of an eligible student plus  
7 any income of the eligible student. The Treasurer shall develop a process for verifying the income  
8 of any applicant for the ESA.

9        (b) The Treasurer shall accept and approve applications year-round and shall establish  
10 procedures for approving applications in an expeditious manner.

11        (c) The Treasurer shall create a standard form that parents can submit to establish their  
12 student's eligibility for the ESA Program and shall ensure that the application is readily available  
13 and may be submitted through various sources, including the Internet.

14        (d) The Treasurer shall approve an application for an ESA if:

15        (1) The parent submits an application for an ESA in accordance with any application  
16 procedures established by the Treasurer;

17        (2) The student on whose behalf the parent is applying is an eligible student;

18        (3) Funds are available for the ESA: *Provided*, That if insufficient funding is available,  
19 priority shall be given to approving applications meeting the requirements of this subsection that  
20 were submitted first; and

21        (4) The parent signs an agreement with the Treasurer, promising:

22        (A) To provide an education for the eligible student in at least the subjects of reading,  
23 language, mathematics, science, and social studies;

24        (B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education  
25 School, the West Virginia Virtual School, or a West Virginia Schools for the Deaf and Blind;

26 (C) To use the funds in the ESA only for qualifying expenses to educate the eligible student  
27 as established by the ESA Program;

28 (D) To comply with the rules and requirements of the ESA Program; and

29 (E) To afford the ESA student opportunities for educational enrichment such as organized  
30 athletics, art, music, or literature.

31 (e) The Treasurer shall verify with the Department of Education within 30 days of  
32 approving an application that the student has withdrawn from public school under §18-8-1(m) of  
33 this code.

34 (f) The Treasurer shall annually renew a student's ESA after verifying with the Department  
35 of Education that:

36 (1) For an ESA student who chooses to attend a private school, the school board  
37 communicates his or her continued attendance at a nonpublic school that complies with all  
38 requirements that other nonpublic school students must comply with; or

39 (2) For an ESA student who chooses an individualized instructional program, he or she  
40 has annually taken a nationally normed standardized test of academic achievement and received  
41 a score within or above the fourth stanine or if below the fourth stanine, shown improvement from  
42 the previous year's results; or a certified teacher conducts a review of the student's academic  
43 work and determines that the student is making academic progress commensurate with his or her  
44 age and ability and reports the results to the county board in which the student resides no later  
45 than July 30.

46 (g) Upon notice to the Treasurer, an ESA student may choose to stop receiving ESA  
47 funding and enroll full-time in a public school.

48 (h) Enrolling as a full-time student in a public school shall result in the immediate  
49 suspension of payment of additional funds into and closure of the student's ESA.

50 (i) If an eligible student decides to return to the ESA Program, they must reapply.

51 (j) The Treasurer may adopt rules and policies to provide the least disruptive process for

52 ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

**§18-31-5. Responsibilities of the Treasurer.**

1 In addition to the Treasurer's duties, obligations, and authority stated in other parts of this  
2 article, the Treasurer has the following duties, obligations, and authority:

3 (1) The Treasurer shall maintain an updated list of participating schools and shall ensure  
4 that the list is publicly available through various sources, including the Internet.

5 (2) The Treasurer shall provide parents with a written explanation of the allowable uses of  
6 ESA funds, the responsibilities of parents, the duties of the Treasurer and the role of any private  
7 financial management firms or other private organizations that the Treasurer may contract with to  
8 administer the ESA Program or any aspect of the ESA Program.

9 (3) The Treasurer shall ensure that parents of students with a disability receive notice that  
10 participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the  
11 Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that  
12 parentally placed students possess under (IDEA) and any applicable state laws and regulations.

13 (4) The Treasurer shall contract with private organizations to administer the ESA Program.  
14 This includes, but is not limited to, private financial management firms to manage ESAs.

15 (5) The Treasurer may deduct an amount from education savings accounts to cover the  
16 costs of administering the ESA Program, up to a maximum of three percent annually.

17 (6) The Treasurer shall implement or contract with a private organization to implement a  
18 commercially viable, cost effective, and parent-friendly system for payment for services from  
19 ESAs to education service providers by electronic or online funds transfer and by debit card. The  
20 Treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed  
21 for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating  
22 direct payments to education service providers as well as requests for preapproval of and  
23 reimbursements for qualifying expenses.

24 (7) The Treasurer shall also seek to implement a commercially viable, cost-effective, and

25 parent-friendly system for publicly rating, reviewing, and sharing information about education  
26 service providers, ideally as part of the same system that facilitates the electronic or online funds  
27 transfers so as to create a one-stop-shop for parents and ESA students.

28 (8) If an education service provider requires partial payment of tuition or fees prior to the  
29 start of the academic year to reserve space for an ESA student admitted to the education service  
30 provider, such partial payment may be paid by the Treasurer prior to the start of the school year  
31 in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA  
32 deposits to ensure adequate funds remain available throughout the school year; but if an ESA  
33 student decides not to use the education service provider, the partial reservation payment must  
34 be returned to the Treasurer by such education service provider and credited to the student's  
35 ESA.

36 (9) The Treasurer shall continue making deposits into a student's ESA until:

37 (A) The Treasurer determines that the ESA student is no longer an eligible student;

38 (B) The Treasurer determines that there was substantial misuse of the funds in the ESA;

39 (C) The parent or ESA student withdraws from the ESA Program;

40 (D) The ESA student enrolls full-time in a public school; or

41 (E) The ESA student completes a secondary education program.

42 (10) The Treasurer shall have the authority to conduct or contract for the auditing of  
43 individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

44 (11) The Treasurer shall have the authority to make any parent or ESA student ineligible  
45 for the ESA Program in the event of intentional and substantial misuse of ESA funds.

46 (A) The Treasurer shall create procedures to ensure that a fair process exists to determine  
47 whether an intentional and substantial misuse of ESA funds has occurred.

48 (B) The Treasurer shall have the authority to refer suspected cases of intentional and  
49 substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent  
50 use of ESA funds is obtained.

51 (C) A parent or ESA student may appeal the Treasurer's decision to make a parent or  
52 ESA student ineligible for the ESA Program.

53 (12) The Treasurer may bar an education service provider from accepting payments from  
54 ESAs if the Treasurer determines that the education service provider has:

55 (A) Intentionally and substantially misrepresented information or failed to refund any  
56 overpayments in a timely manner; or

57 (B) Routinely failed to provide students with promised educational goods or services.

58 (13) The Treasurer shall create procedures to ensure that a fair process exists to  
59 determine whether an education service provider may be barred from receiving payment from  
60 ESAs.

61 (A) If the Treasurer bars an education service provider from receiving payments from  
62 ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

63 (B) Education service providers may appeal the Treasurer's decision to bar them from  
64 receiving payments from ESAs.

65 (14) The Treasurer may accept gifts and grants from any source to cover administrative  
66 costs, to inform the public about the ESA Program, or to fund additional ESAs.

67 (15) The Treasurer may adopt rules and policies that are not inconsistent with this article  
68 and that are necessary for the administration of this article, including:

69 (A) Establishing or contracting for the establishment of an online anonymous fraud  
70 reporting service;

71 (B) Establishing an anonymous telephone hotline for fraud reporting;

72 (C) Policies that require a surety bond for education service providers receiving more than  
73 \$100,000 in ESA funds;

74 (D) Procedures for refunding payments from education service providers back to ESAs;  
75 and

76 (E) Procedures for entering into reciprocal agreements with other state ESA agencies or



77 entities, whether public or private, to recognize and allow education service providers approved  
78 in other states to receive payments from ESAs under this article.

79 (16) Any rules or policies adopted by the Treasurer should avoid excessive bureaucracy  
80 and overly prescriptive mandates and instead focus on easing parental involvement and  
81 encouraging education service providers to provide parents and ESA students with a broad array  
82 of educational options.

**§18-31-6. Parent Review Committee.**

1 (a) There is created the Parent Review Committee to assist the Treasurer in determining  
2 whether questionable expenditures meet the requirements to be considered qualifying expenses  
3 to educate the ESA student pursuant to §18-31-3(b) of this code, and to provide recommendations  
4 to the Treasurer about how to implement, administer, and improve the ESA Program.

5 (b) (1) The Parent Review Committee:

6 (A) Consists of seven members who are parents of ESA students and represent no fewer  
7 than four counties in the state; and

8 (B) Shall include four members appointed by the Governor and three members appointed  
9 by the Treasurer all of whom shall serve for one calendar year and may be reappointed; and

10 (2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the  
11 committee.

12 (c) The Treasurer may request the committee to meet, in person or virtually, to determine  
13 whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student  
14 pursuant to §18-31-3(b) of this code. The committee may deny or approve questionable  
15 expenditures by a majority vote.

16 (d) The Treasurer may also request the committee to meet, in person or virtually, to review  
17 appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a  
18 recommendation to the Treasurer as to whether an education service provider should be allowed  
19 to receive, or continue receiving, payments from ESAs.

**§18-31-7. Requirements for and rights of education service providers.**

1 (a) To be eligible to accept payments from an ESA, an education service provider shall:

2 (1) Submit notice to the Treasurer that they wish to participate in the ESA Program;

3 (2) Provide parents with a receipt for all qualifying educational expenses;

4 (3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any  
5 manner, except that funds may be remitted or refunded to an ESA in accordance with procedures  
6 established by the Treasurer;

7 (4) Certify that it will not discriminate on any basis prohibited by any federal law for any  
8 purpose; and

9 (5) Agree to submit any employee who will have contact with ESA students to a criminal  
10 background check.

11 (b) This article does not limit the independence or autonomy of an education service  
12 provider or makes the actions of an education service provider the actions of the state  
13 government.

14 (c) Education service providers shall be given maximum freedom to provide for the  
15 educational needs of ESA students without governmental control.

16 (d) This article does not expand the regulatory authority of the state, its officers, or any  
17 school district to impose any additional regulation of education service providers beyond those  
18 necessary to enforce the requirements of the program.

**§18-31-8. Responsibilities of resident school districts.**

1 The resident school district or school district in which the student was last enrolled, as  
2 applicable, shall provide an education service provider that has enrolled an ESA student with a  
3 complete copy of the student's school records, while complying with the Family Educational  
4 Rights and Privacy Act of 1974 (20 USC Section 1232 g).

**§18-31-9. Legal proceedings.**

1 (a) In any legal proceeding challenging the application of this article to a participating

2 entity, the state bears the burden of establishing that the challenged action, rule, or requirement  
3 is necessary and does not impose any undue burden on education service providers.

4 (b) No liability arises on the part of the Treasurer or the state or of any county school  
5 district based on the award or use of an ESA awarded pursuant to this article.

6 (c) If any part of this article is challenged in a state court as violating either the state or  
7 federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the  
8 lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of  
9 judicial administration, a court may limit the number of parents permitted to intervene or require  
10 that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of  
11 any named state defendant.