

Article 41.

Personal Education Student Accounts for Children with Disabilities.

**§ 115C-590. North Carolina Personal Education Student Accounts for Children with Disabilities Program established.**

There is established the North Carolina Personal Education Student Accounts for Children with Disabilities Program to provide the option for a parent to better meet the individual educational needs of the parent's child. (2017-57, s. 10A.4(a); 2021-180, s. 8A.3(l).)

**§ 115C-591. Definitions.**

The following definitions apply in this Article:

- (1) Authority. – Defined in G.S. 116-201.
- (2) Division. – The Division of Nonpublic Education, Department of Administration.
- (2a) Educational technology. – As defined annually by the Authority, an item, piece of equipment, material, product, or system which may be purchased commercially off the shelf, modified, or customized and that is used primarily for educational purposes for a child with a disability.
- (3) Eligible student. – A student residing in North Carolina who has not yet received a high school diploma and who meets all of the following requirements:
  - a. Is eligible to attend a North Carolina public school pursuant to Article 25 of this Chapter. A child who is the age of four on or before April 16 is eligible to attend the following school year if the principal, or equivalent, of the school in which the child seeks to enroll finds that the student meets the requirements established by the Authority pursuant to G.S. 115C-562.2(d) and those findings are submitted to the Authority with the child's application.
  - b. Has not been enrolled in a postsecondary institution as a full-time student taking at least 12 hours of academic credit.
  - c. Is a child with a disability, as defined in G.S. 115C-106.3(1).
  - d. Has not been placed in a nonpublic school or facility by a public agency at public expense.
- (3a) G.S. 115C-562.5 compliant school. – A Part 1 or 2 nonpublic school that consents to comply with the requirements of G.S. 115C-562.5.
- (4) Nonpublic school. – A school that meets the requirements of Part 1, 2, or 3 of Article 39 of this Chapter, as identified by the Division.
- (5) Parent. – A parent, legal guardian, or legal custodian of an eligible student.
- (5a) Part 1 or 2 nonpublic school. – A nonpublic school that meets the requirements of Part 1 or Part 2 of Article 39 of this Chapter, as identified by and deemed eligible by the Division.
- (5b) Part-time student. – A child enrolled part time in a public school and part time in a nonpublic school.
- (6) Personal Education Student Account or PESA. – An electronic account provided to a parent for the purpose of holding scholarship funds awarded by the Authority for an eligible student to be used for qualifying education

expenses under G.S. 115C-595. (2017-57, s. 10A.4(a); 2018-2, s. 6(a), (b); 2021-180, s. 8A.3(l); 2022-74, s. 8A.4(c).)

**§ 115C-592. Award of scholarship funds for a personal education student account.**

(a) Application Selection. – The Authority shall make available no later than February 1 of each year applications to eligible students for the award of scholarship funds for a personal education student account to be used for qualifying education expenses to attend a nonpublic school. Information about scholarship funds and the application process shall be made available on the Authority's website. Applications shall be submitted electronically. The Authority shall award scholarships according to the following criteria for applications received by March 1 of each year:

- (1) First priority shall be given to eligible students who were awarded scholarship funds for a PESA during the previous school year.
- (2) After funds have been awarded to prior recipients as provided in subdivision (1) of this subsection, any remaining funds shall be used to award scholarship funds for a PESA for all other eligible students.

(b) Scholarship Awards. – Except as provided in subsection (b1) of this section, scholarships shall be awarded each year for an amount not to exceed (i) nine thousand dollars (\$9,000) per eligible student for the school year for which the application is received or (ii) for eligible part-time students, four thousand five hundred dollars (\$4,500) per eligible student for the school year for which the application is received. Any funds remaining in an electronic account provided under subsection (b2) of this section at the end of a school year for eligible students who qualify only under this subsection shall be returned to the Authority.

(b1) Scholarship Awards for Students with Certain Disabilities. – A student who has one or more of the following disabilities listed as a primary or secondary disability on the student's eligibility determination form submitted as required by subsection (e) of this section at the time of application for scholarship funds may be awarded scholarship funds for each school year in an amount of up to (i) seventeen thousand dollars (\$17,000) for an eligible student or (ii) eight thousand five hundred dollars (\$8,500) for an eligible part-time student:

- (1) Autism.
- (2) Hearing impairment.
- (3) Moderate or severe intellectual disability.
- (4) Orthopedic impairment.
- (5) Visual impairment.

For eligible students who qualify for scholarship funds under this subsection, no more than four thousand five hundred dollars (\$4,500) of funds remaining in an electronic account at the end of a school year shall be carried forward until expended for each school year upon renewal of the account under subsection (b2) of this section. In no event shall the total amount of funds carried forward for an eligible student in a personal education student account exceed thirty thousand dollars (\$30,000). Any funds remaining in the electronic account if an agreement is not renewed under G.S. 115C-595 shall be returned to the Authority.

(b2) Disbursement and Deposit of Awards. – Scholarship funds shall be used only for tuition and qualifying education expenses as provided in G.S. 115C-595. Recipients shall receive the scholarship funds in two equal amounts, one-half in each semester of the school year. The first deposit of funds to a PESA shall be subject to the execution of the parental agreement required by G.S. 115C-595. The parent shall then receive an electronic account with the prepaid funds loaded in the electronic account at the beginning of the school year. Requests for qualifying educational

expenses are subject to a preapproval process established by the Authority prior to the disbursement of funds from the electronic account. An expense report shall not be required for any expenses that have been preapproved by the Authority. The electronic account shall be renewed upon the receipt of the parental agreement under G.S. 115C-595 for recipients awarded scholarship funds in subsequent school years.

(c) Eligibility for Other Scholarship Programs. – An eligible student under this Article may receive, in addition to a PESA, a scholarship under Part 2A of Article 39 of this Chapter.

(d) Applications Not Public Records. – Applications for scholarship funds and personally identifiable information related to eligible students receiving funds shall not be a public record under Chapter 132 of the General Statutes. For the purposes of this section, personally identifiable information means any information directly related to a student or members of a student's household, including the name, birthdate, address, Social Security number, telephone number, e-mail address, or any other information or identification number that would provide information about a specific student or members of a specific student's household.

(e) Establishment of Initial Eligibility. – An applicant shall demonstrate for initial eligibility that the applicant is a child with a disability, as required by G.S. 115C-591(3)c., by having the child assessed by a local education agency and the local education agency determining the child to be a child with a disability with that outcome verified by the local education agency on an eligibility determination form provided to the Authority. (2017-57, s. 10A.4(a); 2018-2, s. 6(c); 2018-5, s. 10A.1(f); 2021-180, s. 8A.3(l); 2022-6, s. 2.14(a); 2022-74, s. 8A.6(a); 2023-134, s. 8A.11(a).)

#### **§ 115C-593. Student continuing eligibility.**

After the initial disbursement of funds, the Authority shall ensure that the student's continuing eligibility is assessed at least every three years by one of the following:

- (1) The local education agency. – The local education agency shall assess if the student continues to be a child with a disability and verify the outcome on a form to be provided to the Authority.
- (2) A licensed psychologist with a school psychology focus or a psychiatrist. – Except for eligible students whose primary disability is developmental delay, the psychologist or psychiatrist shall assess, after review of appropriate medical and educational records, if the education and related services received by the student in the nonpublic school setting have improved the child's educational performance and if the student would continue to benefit from placement in the nonpublic school setting. The psychologist or psychiatrist shall verify the outcome of the assessment on a form to be provided to the Authority. (2017-57, s. 10A.4(a); 2022-74, s. 8A.6(b).)

#### **§ 115C-594. Verification of eligibility; information from other State agencies.**

(a) Verification of Information. – The Authority may seek verification of information on any application for the award of scholarship funds for a personal education student account. The Authority shall establish rules for the verification process. If a household fails to cooperate with verification efforts, the Authority shall revoke the award of scholarship funds for a PESA for the eligible student.

(b) Access to Information. – Applicants for the award of scholarship funds for a PESA shall authorize the Authority to access information needed for verification efforts held by other

State agencies, including the Department of Health and Human Services and the Department of Public Instruction. (2017-57, s. 10A.4(a); 2021-180, s. 8A.3(l).)

**§ 115C-595. Parental agreement; use of funds.**

(a) Parental Agreement. – The Authority shall provide the parent of a scholarship recipient with a written agreement, applicable for each year the eligible student receives scholarship funds under this Article, to be signed and returned to the Authority prior to receiving the scholarship funds. The agreement shall be submitted to the Authority electronically. The parent shall not designate any entity or individual to execute the agreement on the parent's behalf. A parent or eligible student's failure to comply with this section shall result in a forfeit of scholarship funds and those funds may be awarded to another eligible student. The parent shall agree to the following conditions in order to receive scholarship funds under this Article:

- (1) Use at least a portion of the scholarship funds to provide an education, for no less than 70 days of each semester, to the eligible student in, at a minimum, the subjects of English language arts, mathematics, social studies, and science.
- (2) Unless the student is a part-time eligible student, release a local education agency in which the student is eligible to attend under G.S. 115C-366 of all obligations to educate the eligible student while the eligible student is receiving scholarship funds under this Article. A parent of a student, other than a part-time eligible student, who decides to enroll the student into the local education agency or other North Carolina public school during the term of the agreement shall notify the Authority to request a release from the agreement and shall return any unexpended funds to the Authority.
- (3) Use the scholarship funds deposited into a personal education student account only for the following qualifying education expenses of the eligible student:
  - a. Tuition and fees for a G.S. 115C-562.5 compliant school, disbursed as provided in subdivision (1) of subsection (a1) of this section.
  - b. Textbooks required by a nonpublic school.
  - c. Tutoring and teaching services provided by an individual or facility accredited by a State, regional, or national accrediting organization.
  - d. Curricula.
  - e. Fees for nationally standardized norm-referenced achievement tests, advanced placement tests, or nationally recognized college entrance exams.
  - f. Fees charged to the account holder for the management of the PESA.
  - g. Fees for services provided by a public school, including individual classes and extracurricular programs.
  - h. Premiums charged to the account holder for any insurance or surety bonds required by the Authority.
  - i. Educational therapies from a licensed or accredited practitioner or provider.
  - j. Educational technology defined by the Authority as approved for use pursuant to G.S. 115C-591(2a).
  - k. Student transportation, pursuant to a contract with an entity that regularly provides student transportation, to and from (i) a provider of education or related services or (ii) an education activity.

- l. Transaction or merchant fees charged to the account holder, not to exceed two and one-half percent (2.5%) of the cost of the item or service.
- (3a) Use of scholarship funds for reimbursement of tuition. – Notwithstanding sub-subdivision a. of subdivision (3) of this subsection, a parent of an eligible student may pay tuition to Part 1 or 2 nonpublic schools that are not G.S. 115C-562.5 compliant schools with funds other than funds available in the personal education student account and then request reimbursement from the Authority from scholarship funds if the parent complies with the provisions of subdivision (2) of subsection (a1) of this section.
- (4) Not use scholarship funds for any of the following purposes:
  - a. Computer hardware or other technological devices not defined by the Authority as educational technology approved for use pursuant to G.S. 115C-591(2a).
  - b. Consumable educational supplies, including paper, pen, or markers.
  - c. Tuition and fees at an institution of higher education, as defined in G.S. 116-143.1, or a private postsecondary institution.
  - d. Tuition and fees for a nonpublic school that meets the requirements of Part 3 of Article 39 of this Chapter.

(a1) Disbursement of Funds for Tuition. – The method by which the Authority shall disburse scholarship funds awarded to eligible students for tuition at a nonpublic school shall be based upon whether the nonpublic school is a G.S. 115C-562.5 compliant school. Scholarship funds for tuition shall be disbursed as follows:

- (1) Scholarship endorsement for tuition. – The Authority shall remit, at least two times each school year, scholarship funds from the personal education student account for eligible students who attend G.S. 115C-562.5 compliant schools. The funds shall be remitted to the G.S. 115C-562.5 compliant school for endorsement by at least one of the student's parents. The parent shall restrictively endorse the scholarship funds awarded to the eligible student for deposit into the account of the G.S. 115C-562.5 compliant school to the credit of the eligible student. The parent shall not designate any entity or individual associated with the school as the parent's attorney-in-fact to endorse the scholarship funds. A parent's failure to comply with this subdivision shall result in forfeiture of the scholarship funds for tuition. Scholarship funds forfeited for failure to comply with this subdivision shall be returned to the Authority to be awarded to another student.
- (2) Reimbursement for tuition. – The parent of an eligible student who enrolls in a school that is (i) a North Carolina public school other than the public school to which that student would have been assigned as provided in G.S. 115C-366 or (ii) a Part 1 or 2 nonpublic school that is not a G.S. 115C-562.5 compliant school may pay tuition directly to the school with funds other than scholarship funds and request reimbursement with funds available in the personal education student account under subdivision (3a) of subsection (a) of this section. However, the Authority shall not reimburse the parent prior to the midpoint of each semester. A parent may only receive reimbursement for tuition if the

parent provides documentation to the Authority that the student is enrolled in the school.

(b) No Refunds to an Account Holder. – A nonpublic school or a provider of services purchased under subsection (a) of this section shall not refund or rebate any scholarship funds to a parent or eligible student in any manner. The parent shall notify the Authority if such a refund is required.

(c) Repealed by Session Laws 2018-5, s. 38.10(m), effective for taxable years beginning on or after January 1, 2018. (2017-57, s. 10A.4(a); 2018-2, s. 6(d); 2018-5, s. 38.10(m); 2021-180, s. 8A.3(l); 2023-134, s. 8A.11(b).)

#### **§ 115C-596. Identification of nonpublic schools and distribution of personal education student account information.**

(a) List of Nonpublic Schools. – The Division shall provide annually by December 31 to the Authority a list of all nonpublic schools operating in the State that meet the requirements of Part 1, 2, or 3 of Article 39 of this Chapter. The list shall include whether a Part 1 or 2 nonpublic school has met the requirements of G.S. 115C-562.5(a)(8).

(b) Information on PESAs to the Division. – The Authority shall provide information about personal education student accounts to the Division. The Division shall provide information about PESAs to all qualified nonpublic schools on an annual basis.

(c) Unique Identifier. – The Division shall create, in collaboration with the Authority, a unique identifier for each nonpublic school and provide the unique identifiers to the Authority for all nonpublic schools that are registered with the Division. (2017-57, s. 10A.4(a); 2021-180, s. 8A.3(l); 2023-134, s. 8A.16(c); 2024-1, s. 2.15(c).)

#### **§ 115C-597. Administration.**

(a) Rules and Regulations. – The Authority shall establish rules and regulations for the administration of the program, including the following:

- (1) The administration and awarding of scholarship funds, including a lottery process for the selection of recipients within the criteria established by G.S. 115C-592(a), if necessary.
- (2) Requiring a surety bond or insurance to be held by account holders.
- (3) Use of the funds and the reporting of expenditures.
- (4) Monitoring and control of spending scholarship funds deposited in a PESA.

The Authority shall provide recipients of scholarship funds with the annual list of defined educational technology for which scholarship funds may be used.

(b) Contract for Management of PESAs. – The Authority may contract with a private financial management firm or institution to manage PESAs in accordance with this Article.

(c) Annual Audits. – The Authority shall conduct annual audits of PESAs and may audit a random sampling of PESAs as needed to ensure compliance with the requirements of this Article. The Authority may contract with an independent entity to conduct these audits. The Authority may remove a parent or eligible student from the program and close a personal education student account for failure to comply with the terms of the parental agreement, for failure to comply with applicable laws, or because the student is no longer an eligible student.

(d) Administration Costs. – Of the funds allocated to the Authority to award scholarship funds under this Article, the Authority may retain the lesser of four percent (4%) of the funds appropriated or three million dollars (\$3,000,000) each fiscal year for administrative costs

associated with the program, including contracting with non-State entities for administration of certain components of the program. If the actual costs of administering the program exceed the funds authorized for administering the program pursuant to this subsection, the Authority may allocate unused funds set aside for administration costs from the Opportunity Scholarship Grant Fund Reserve pursuant to G.S. 115C-562.8(c) for the additional administrative costs of the Personal Education Student Accounts for Children with Disabilities Program. (2017-57, s. 10A.4(a); 2021-180, s. 8A.3(l); 2023-134, s. 8A.13(c); 2024-40, s. 4(b).)

#### **§ 115C-598. Reporting requirements.**

(a) The Authority shall report annually, no later than October 15, to the Joint Legislative Education Oversight Committee on the following information from the prior school year:

- (1) Total number, grade level, race, ethnicity, and sex of eligible students receiving scholarship funds.
- (2) Total amount of scholarship funding awarded.
- (3) Number of students previously enrolled in public schools in the prior semester by the previously attended local education agency.
- (4) Nonpublic schools in which scholarship recipients are enrolled, including numbers of scholarship recipients at each nonpublic school.
- (5) The number of substantiated cases of fraud by recipients and the number of parents or students removed from the program for noncompliance with the provisions of this Article.

(b) For any fiscal year in which the Authority uses funds as provided under G.S. 115C-600(b), the Authority shall report to the Joint Legislative Education Oversight Committee and the Fiscal Research Division of the General Assembly by April 1 of that fiscal year on at least the following:

- (1) The methodology used by the Authority for determining the awards for the school year, including the number of eligible students and the amount of scholarship funds that were awarded under G.S. 115C-592.
- (2) The actual number of eligible students and the amount of scholarship funds received by eligible students for that school year.
- (3) The amount of funds used pursuant to G.S. 115C-600(b) to fully fund the awards.
- (4) Any legislative recommendations, including funding amounts, for the Program for the next fiscal year. (2017-57, s. 10A.4(a); 2018-5, s. 10A.1(g); 2023-134, s. 8A.13(b).)

#### **§ 115C-599. Duties of State agencies.**

(a) The State Board, as part of its duty to monitor all local education agencies to determine compliance with this Article and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., (2004), as amended, and federal regulations adopted under that act, as provided in G.S. 115C-107.4, shall ensure that local education agencies do the following:

- (1) Conduct evaluations requested by a child's parent of suspected children with disabilities, as defined in G.S. 115C-107.3, in a timely manner as required by IDEA.

- (2) Provide assessments for continuing eligibility to identified children with disabilities receiving scholarship funds at the request of the parent to ensure compliance with G.S. 115C-593.

(b) The Authority shall analyze, in conjunction with the Department of Public Instruction, past trends in scholarship data on an annual basis to ensure that the amount of funds transferred each fiscal year by the Authority to the Department for reevaluations by local school administrative units of eligible students under G.S. 115C-593 are sufficient and based on actual annual cost requirements. (2021-180, s. 8A.3(l).)

**§ 115C-600. Funds for Personal Education Student Accounts.**

(a) The General Assembly finds that due to the continued growth and ongoing need in this State to provide opportunity for school choice for children with disabilities, it is imperative that the State provide an increase in funds of at least one million dollars (\$1,000,000) each fiscal year for 10 years for the Personal Education Student Accounts for Children with Disabilities Program. To that end, there is appropriated from the General Fund to the Board of Governors of The University of North Carolina the following amounts each fiscal year to be allocated to the Authority for the Program in accordance with this Article:

| <b>Fiscal Year</b>                                   | <b>Appropriation</b> |
|--|----------------------|
| 2023-2024  | \$48,943,166         |
| 2024-2025  | \$49,943,166         |
| 2025-2026  | \$75,643,166         |
| 2026-2027  | \$76,643,166         |
| 2027-2028  | \$77,643,166         |
| 2028-2029  | \$78,643,166         |
| 2029-2030  | \$79,643,166         |
| 2030-2031  | \$80,643,166         |
| 2031-2032  | \$81,643,166         |
| 2032-2033 and each subsequent fiscal year thereafter | \$82,643,166         |

When developing the base budget, as defined by G.S. 143C-1-1, for each fiscal year specified in this section, the Director of the Budget shall include the appropriated amount specified in this section for that fiscal year.

(b) The Authority shall make reasonable efforts to ensure the amount of scholarship funds awarded for a school year do not exceed the funds that are available for awards to eligible students in each fiscal year. However, to ensure that as many eligible students receive scholarship funds in a timely manner as possible, at the end of each fiscal year, the Authority shall place any unexpended funds appropriated for the Program into an institutional trust fund established in accordance with the provisions of G.S. 116-36.1 to accrue a cash balance in the institutional trust fund of up to ten million dollars (\$10,000,000). The Authority shall use these funds to award scholarship funds in any fiscal year that the funds required to award scholarships to eligible students for a school year exceed the funds available for the distribution of those awards. All interest earned on these funds shall also be placed in the institutional trust fund established pursuant to this subsection. For any fiscal year in which funds are expended from the institutional trust fund, the Authority shall submit a report as required by G.S. 115C-598(b). In any fiscal year in which the cash balance of the institutional trust fund is greater than ten million dollars (\$10,000,000), any funds above ten million dollars (\$10,000,000) remaining at the end of the fiscal year from the funds appropriated



for the Program shall revert to the General Fund. (2021-180, s. 8A.3(l); 2022-74, s. 8A.1(c); 2023-134, s. 8A.13(a); 2024-55, s. 6.5(b).)