

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 808

An Act to amend and reenact §§ 58.1-439.25 and 58.1-439.28 of the Code of Virginia, relating to Education Improvement Scholarships tax credits; benefits and eligibility requirements; eligible student with a disability.

[S 1365]

Approved March 26, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.25 and 58.1-439.28 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.25. Definitions.

As used in this article, unless the context requires a different meaning:

"Eligible student with a disability" means a ~~student~~ (i) *child who is a resident of Virginia* for whom an ~~individualized educational program~~ *Individualized Education Plan (IEP)* has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (ii) ~~whose family's annual household income is not in excess of 400 percent of the current poverty guidelines; and (iii) who otherwise is a student as defined in this section.~~ *For purposes of this article, an eligible student with a disability need not qualify as a student as defined in this section.*

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work.

"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by the Department of Education in accordance with the provisions of § 58.1-439.27; and (iii) established to provide financial aid for the education of students *or eligible students with a disability* residing in the Commonwealth.

"Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or first grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for more than one-half of the school year.

§ 58.1-439.28. Guidelines for scholarship foundations.

A. As a condition for qualification by the Department of Education, a scholarship foundation, as defined in § 58.1-439.25 and included on the list published annually by the Department of Education pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the donations it receives (for which tax credits were issued under this article) during each 12-month period ending on June 30 by the immediately following June 30 for qualified educational expenses through scholarships to ~~eligible~~ *students or eligible students with a disability*. Tax-credit-derived funds not used for such scholarships may only be used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails to meet such disbursement requirement shall, for the first offense, be required to pay a civil penalty equal to 200 percent of the difference between 90 percent of the value of the tax-credit-derived donations it received in the applicable 12-month period and the amount that was actually disbursed. Such civil penalty shall be remitted by the scholarship foundation to the Department of Education within 30 days after the end of the one-year period and deposited to the general fund. For a second offense within a five-year period, the scholarship foundation shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds for two years. After two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual list after such reapplication, the scholarship foundation shall not be considered to have any previous offenses for purposes of this subsection. The required disbursement under this section shall begin with donations received for the period January 1, 2013, through June 30, 2014.

B. By September 30 of each year beginning in 2016, the scholarship foundation shall provide the

following information to the Department of Education: (i) the total number and value of donations received by the foundation during the 12-month period ending on June 30 of the prior calendar year for which tax credits were issued by the Superintendent of Public Instruction, (ii) the dates when such donations were received, and (iii) the total number and dollar amount of qualified educational expenses scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation during the 24-month period ending on June 30 of the current calendar year. Any scholarship foundation that fails to provide this report by September 30 shall, for the first offense, be required to pay a \$1,000 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the Department of Education by November 1 of the same year and deposited to the general fund. For a second offense within a five-year period, the scholarship foundation shall be removed from the annual list published pursuant to this section and shall not be entitled to request preauthorization for additional tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds. After two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to the annual list after such reapplication, the scholarship foundation shall not be considered to have any previous offenses for purposes of this subsection.

C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i) provide scholarships for qualified educational expenses only to students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or eligible students with a disability *whose family's annual household income is not in excess of 400 percent of the current poverty guidelines*, (ii) not limit scholarships to students *or eligible students with a disability* of one school, and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended. Payment of scholarships from tax-credit-derived funds by the eligible scholarship foundation shall be by individual warrant or check made payable to and mailed to the eligible school that the ~~student's~~ parent or legal guardian *of the student or eligible student with a disability* indicates. In mailing such scholarship payments, the eligible scholarship foundation shall include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same pursuant to this article.

D. Scholarship foundations shall ensure that schools selected by students *or eligible students with a disability* to which tax-credit-derived funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic school accreditation requirements as set forth in § 22.1-19 and administered by the Virginia Council for Private Education or nonpublic schools that maintain an assessment system that annually measures ~~scholarship students' the progress of scholarship students or eligible students with a disability~~ in reading and math using a national norm-referenced achievement test, including but not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills.

Eligible schools shall compile the results of any national norm-referenced achievement test for each of its students *or eligible students with a disability* receiving tax-credit-derived scholarships and shall provide the respective parents or legal guardians of such students *or eligible students with a disability* with a copy of the results on an annual basis, beginning with the first year of testing of the student *or eligible student with a disability*. Such schools also shall annually provide to the Department of Education for each such student *or eligible student with a disability* the achievement test results, beginning with the first year of testing of the student *or eligible student with a disability*, and ~~student~~ information that would allow the Department to aggregate the achievement test results by grade level, gender, family income level, number of years of participation in the scholarship program, and race. Beginning with the third year of testing ~~of each such student~~ and test-related data collection, the Department of Education shall ensure that the achievement test results and associated learning gains are published on the Department of Education's website in accordance with such classifications and in an aggregate form as to prevent the identification of any student *or eligible student with a disability*. Eligible schools shall annually provide to the Superintendent of Public Instruction graduation rates of its students *or eligible students with a disability* participating in the scholarship program in a manner consistent with nationally recognized standards. In publishing and disseminating achievement test results and other information, the Superintendent of Public Instruction and the Department of Education shall ensure compliance with all student privacy laws.

E. 1. The aggregate amount of scholarships provided to each student *or eligible student with a disability who does not meet the requirements of subdivision 2* for any single school year by all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to the local school division (in which the student resides) as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.

2. a. *Except as provided in subdivision 1, the aggregate amount of scholarships provided to each eligible student with a disability for any single school year by all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the*

student or (ii) 300 percent of the per pupil amount distributed to the local school division (in which the eligible student with a disability resides) as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.

b. Except as provided in subdivision 1, scholarships may only be provided to an eligible student with a disability who is attending a school for students with disabilities, as defined in § 22.1-319, that (i) is licensed by the Department of Education to serve students with disabilities, (ii) complies with the nonpublic school accreditation requirements of the Virginia Association of Independent Schools, (iii) is exempt from taxation under § 501(c)(3) of the Internal Revenue Code, and (iv) does not receive public funds to supplement the cost of the education of the eligible student with a disability that is receiving the scholarship pursuant to this section.

F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly or semester payments throughout the school year to ensure scholarships are portable.

G. Scholarship foundations that receive donations of marketable securities for which tax credits were issued under this article shall be required to sell such securities and convert the donation into cash immediately, but in no case more than 21 days after receipt of the donation.

H. Each scholarship foundation with total revenues (including the value of all donations) (i) in excess of \$100,000 for the foundation's most recent fiscal year ended shall have an audit or review performed by an independent certified public accountant of the foundation's donations received in such year for which tax credits were issued under this article or (ii) of \$100,000 or less for the foundation's most recent fiscal year ended shall have a compilation performed by an independent certified public accountant of the foundation's donations received in such year for which tax credits were issued under this article. A summary report of the audit, review, or compilation shall be made available to the public and the Department of Education upon request.

I. The Department of Education shall publish annually on its website a list of each scholarship foundation qualified under this article. Once a foundation has been qualified by the Department of Education, it shall remain qualified until the Department removes the foundation from its annual list. The Department of Education shall remove a foundation from the annual list if it no longer meets the requirements of this article. The Department of Education may periodically require a qualified foundation to submit updated or additional information for purposes of determining whether or not the foundation continues to meet the requirements of this article.

J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the Superintendent of Public Instruction or the Department of Education shall be final and not subject to review or appeal.

2. That the provisions of this act shall apply to taxable years beginning on and after January 1, 2019, but before January 1, 2024.