

Nos. M2022-01786-COA-R3-CV and M2022-01790-COA-R3-CV

**IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE**

**THE METROPOLITAN GOVERNMENT OF NASHVILLE &
DAVIDSON COUNTY, SHELBY COUNTY GOVERNMENT,
Plaintiffs,**

**ROXANNE McEWEN, et al.,
Plaintiffs-Appellants,**

v.

**TENNESSEE DEPARTMENT OF EDUCATION,
Defendant,**

**BILL LEE,
in his official capacity as Governor of Tennessee, et al.,
Defendants-Appellees,**

**NATU BAH, et al.,
Intervenor Defendants-Appellees.**

**ON APPEAL FROM THE JUDGMENT OF
OF THE DAVIDSON COUNTY CHANCERY COURT**

**RESPONSE BRIEF OF INTERVENOR-DEFENDANTS /
APPELLEES BAH, DIALLO, AND BRUMFIELD**

**BEACON CENTER OF
TENNESSEE**

Justin Owen (BPR No. 027450)
BEACON CENTER OF TENNESSEE
1200 Clinton Street, #205
Nashville, TN 37203
Tel: (615) 383-6431
Email: justin@beacontn.org

INSTITUTE FOR JUSTICE

*Arif Panju (TX Bar No. 24070380)
INSTITUTE FOR JUSTICE
816 Congress Avenue, Suite 960
Austin, TX 78701
Tel: (512) 480-5936
Email: apanju@ij.org

*David Hodges
(D.C. Bar No. 1025319)
*Keith Neely
(D.C. Bar No. 888273735)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Email: dhodges@ij.org
Email: kneely@ij.org

*Admitted *pro hac vice*

*Attorneys for Intervenor-
Defendants / Appellees Natu Bah,
Builguissa Diallo, and Star
Brumfield*

TABLE OF CONTENTS

TABLE OF AUTHORITIES	5
QUESTIONS PRESENTED FOR REVIEW	11
STATEMENT OF THE CASE	11
STATEMENT OF FACTS	13
SUMMARY OF ARGUMENT	15
STANDARD OF REVIEW.....	17
ARGUMENT.....	17
I. Plaintiffs Have Failed to State a Claim for Violations of the Education and Equal Protection Clauses.	17
II. Plaintiffs Have Failed to State a Claim Under the Education Clause.	23
A. The Education Clause Does Not Bar the Program.....	24
B. The ESA Program Does Not Transform Private Schools Into Public Schools.....	31
III. Plaintiffs Have Failed to State a Claim Under Tennessee’s Appropriations Provisions—Article II, § 24 and Tenn. Code Ann. § 9-4-601.....	33
A. Article II, § 24 Is a Procedural Balanced-Budget Provision—the General Assembly Complied With It.....	34
B. The Department of Education Complied with the Appropriations Provisions.....	37
CONCLUSION	39
CERTIFICATE OF COMPLIANCE	41

CERTIFICATE OF SERVICE.....	42
ADDENDUM	44

TABLE OF AUTHORITIES

Cases

<i>Andrews v. State</i> , 50 Tenn. 165 (Tenn. 1871)	31
<i>Athena of S.C., LLC v. Macri</i> , No. E2016-00224-COA-R3-CV, 2016 WL 5956984 (Tenn. Ct. App. Oct. 14, 2016)	30, 36, 38
<i>Bush v. Holmes</i> , 919 So. 2d 392 (Fla. 2006)	29, 30
<i>Clover Bottom Hosp. & Sch. v. Townsend</i> , 513 S.W.2d 505 (Tenn. 1974)	35
<i>Colonial Pipeline Co. v. Morgan</i> , 263 S.W.3d 827 (Tenn. 2008)	17
<i>Cont'l Cas. Co. v. Smith</i> , 720 S.W.2d 48 (Tenn. 1986)	15
<i>Davis v. Grover</i> , 480 N.W.2d 460 (Wis. 1992)	28, 29, 32
<i>First Am. Tr. Co. v. Franklin-Murray Dev. Co., L.P.</i> , 59 S.W.3d 135 (Tenn. Ct. App. 2001)	15
<i>Greenberg v. Life Ins. Co. of Va.</i> , 177 F.3d 507, 514 (6th Cir. 1999)	36
<i>Hart v. State</i> , 774 S.E.2d 281 (N.C. 2015)	28
<i>Hayes v. Gibson Cnty.</i> , 288 S.W.3d 334 (Tenn. 2009)	17

<i>Hodges v. Craig</i> , 382 S.W.3d 325 (Tenn. 2012)	31
<i>In re Knott</i> , 197 S.W. 1097 (Tenn. 1917)	25
<i>Jackson v. Benson</i> , 578 N.W.2d 602 (Wis. 1998).....	28, 29, 32
<i>Joyner v. Priest</i> , 117 S.W.2d 9 (Tenn. 1938)	35
<i>Kotterman v. Killian</i> , 972 P.2d 606 (Ariz. 1999)	33
<i>Meredith v. Pence</i> , 984 N.E.2d 1213 (Ind. 2013)	28, 29, 32, 33
<i>Metro. Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.</i> , 645 S.W.3d 141 (Tenn. 2022)	12, 13, 21
<i>Pierce v. Soc’y of Sisters</i> , 268 U.S. 510 (1925)	25
<i>Rodriguez v. Providence Cmty. Corr., Inc.</i> , 191 F. Supp. 3d 758, 762–63 (M.D. Tenn. 2016).....	38
<i>Schwartz v. Lopez</i> , 382 P.3d 886 (Nev. 2016).....	28, 29
<i>Seals v. H & F, Inc.</i> , 301 S.W.3d 237 (Tenn. 2010)	17
<i>Simmons-Harris v. Goff</i> , 711 N.E.2d 203 (Ohio 1999)	28, 29
<i>State ex rel. Noonan v. King</i> , 67 S.W. 812 (Tenn. 1902)	35

<i>State v. Beaver</i> , 887 S.E.2d 610 (W.Va. 2022).....	28, 29
<i>State v. Roberge</i> , 642 S.W.2d 716 (Tenn. 1982)	16
<i>Tenn. Small Sch. Sys. v. McWherter</i> , 851 S.W.2d 139 (Tenn. 1993) (“ <i>Small Schools I</i> ”).....	19, 22, 26
<i>Tenn. Small Sch. Sys. v. McWherter</i> , 894 S.W.2d 734 (Tenn. 1995) (“ <i>Small Schools II</i> ”).....	26
<i>Tenn. Sch. Sys. v. McWherter</i> , 91 S.W.3d 232 (Tenn. 2002) (“ <i>Small Schools III</i> ”)	18, 26
<i>Waldron v. Delffs</i> , 988 S.W.2d 182 (Tenn. Ct. App.—Jackson, 1998)	16

Statutes

Tenn. Code Ann. § 9-4-601	11, 17, 33, 39
Tenn. Code Ann. § 9-4-601(a)(1)	31, 33, 34, 37
Tenn. Ann. Code § 49-2-2605(a).....	14
Tenn. Code Ann. § 49-3-103(a).....	20
Tenn. Ann. Code § 49-3-103(a)(3)	20
Tenn. Ann. Code § 49-3-104 (22).....	20
Tenn. Ann. Code § 49-3-105	20
Tenn. Ann. Code § 49-3-106	20
Tenn. Ann. Code § 49-3-109	20

Tenn. Code Ann. §§ 49-6-2601–2612	11
Tenn. Ann. Code § 49-6-2602(3)(C).....	19
Tenn. Ann. Code § 49-6-2603(a)(4)(A)–(L).....	14
Tenn. Ann. Code § 49-6-2604(c)	14
Tenn. Code. Ann. § 49-6-2605(a).....	8, 14, 20
Tenn. Code. Ann. § 49-6-2611(a)(1)	14
Tenn. Code Ann. § 49-10-1401	22

Rules

Tenn. R. Civ. P. 12.03.....	12, 16
Tenn. R. Civ. P. 15.01	12, 13

Constitutional Provisions

Tenn. Const. art. I, § 8.....	11, 16, 17
Tenn. Const. art. V	25
Tenn. Const. art. II, § 24	11, 17, 33
Tenn. Const. art. XI, § 4	26
Tenn. Const. art. XI, § 5	26
Tenn. Const. art. XI, § 8	11, 16, 17, 18
Tenn. Const. art. XI, § 9	25
Tenn. Const. art. XI, § 12	<i>passim</i>

Fla. Const. art. IX, § 1(a).....	29
----------------------------------	----

Other Authorities

2013 Tenn. Pub. Acts, ch. 214, § 1	31, 38
--	--------

2019 Tenn. Pub. Acts ch. 405.....	36, 38
-----------------------------------	--------

2023 Tenn. Pub. Acts, c. 328, § 1, eff. May 5, 2023.....	19
--	----

Andrew Coulson, Opinion, <i>War Against Vouchers</i> , Wall St. J., Jan. 9, 2006, at A13	30
--	----

Clark Neily, <i>The Florida Supreme Court vs. School Choice: A “Uniformly” Horrid Decision</i> , 10 Tex. Rev. L. & Pol. 401, 412 (2006).....	30
--	----

Clint Bolick, <i>Constitutional Parameters of School Choice</i> , 2008 B.Y.U. L. Rev. 335, 346	27
--	----

Editorial, <i>Why judges matter; School choice</i> , The Economist, Jan. 14, 2006 (N. Am. edition)	30
--	----

General Assembly Joint Government Operations Committee Hearing (Jan. 27, 2020), available at http://tnga.granicus.com/MediaPlayer.php?view_id=424&clip_id=21304	38
--	----

George F. Will, Opinion, <i>Students disrupted by political struggles</i> , Miami Herald, Mar. 28, 2006, at A19.....	30
--	----

Jamie S. Dycus, <i>Lost Opportunity: Bush v. Holmes and the Application of State Constitutional Uniformity Clauses to School Voucher Schemes</i> , 35 J.L. & Educ. 415 (2006).....	30
--	----

John Tierney, Opinion, <i>Black Students Lose Again</i> , N.Y. Times, Jan. 7, 2006	30
--	----

<i>Journal and Debates of the 1977 Limited Constitutional Convention,</i> 1112–13 (Report on the Limitations on State Spending Committee, remarks by Mr. Burson)	35
Lila Haughey, Case Comment, <i>Florida Constitutional Law: Closing the Door to Opportunity: The Florida Supreme Court’s Analysis of Uniformity in the Context of Article IX, Section 1</i> , 58 Fla. L. Rev. 945, 953 (2006).....	30
<i>Recent Developments</i> , 33 Fla. St. U. L. Rev. 1227, 1234–39 (2006)	30
Tenn. Op. Att’y Gen. No. 04-142, 2004 WL 2326699 (Sept. 1, 2004)	28, 34
State of Tennessee, The Budget Document FY2019-20, Available online at https://www.tn.gov/content/dam/tn/finance/budget/ documents/2020BudgetDocumentVol1.pdf	36

QUESTIONS PRESENTED FOR REVIEW

Intervenor-Defendants / Appellees Natu Bah, Builguissa Diallo, and Star Brumfield (“Parents” or “Parent-Intervenors”), all of whom have children eligible to participate in the Tennessee Education Savings Account Pilot Program, Tenn. Code Ann. §§ 49-6-2601–12 (“ESA Program” or “Program”), jointly present three questions for review:

- I. Whether Plaintiffs failed to state a claim that the ESA Program violates the Education and Equal Protection Clauses under Article I, § 8 and Article XI, §§ 8, 12.
- II. Whether Plaintiffs failed to state a claim that the ESA Program violates the Education Clause in Article XI, § 12.
- III. Whether Plaintiffs failed to state a claim that the ESA Program violates Article II, § 24 of the Tennessee Constitution and Tenn. Code Ann. § 9-4-601 (“Appropriations Provisions”).

STATEMENT OF THE CASE

Plaintiffs’ statement of the case is incomplete. Parents explain why, below, but otherwise incorporate by reference the complete statement of the case contained in State Defendants’ response brief.

Absent from Plaintiffs’ statement of the case is any mention of the order by a unanimous three-judge chancery court declaring that Plaintiffs are unlikely to prevail on the merits of their claims. (XIV, 2084, Mem. and Order Denying Temporary Injunction.) Plaintiffs omit that the chancery court, upon remand from the Tennessee Supreme Court,

rejected their second attempt¹ at securing a preliminary injunction to block Tennessee parents and children from using the ESA Program. *Id.*

A few months earlier, the Tennessee Supreme Court had held that the ESA Program fully complies with the Tennessee Constitution’s Home Rule Amendment. *See Metro. Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, 645 S.W.3d 141, 154 (Tenn. 2022) (the “*Metro*” litigation) (holding “the Home Rule Amendment is not implicated by the ESA Act”). The high court agreed with the textual argument advanced by Parents. *Id.* at 151–52 (“The Natu Bah Intervenors, and now the State as well, argue that the lower courts and Plaintiffs conflate two distinct requirements of the Home Rule Amendment We agree.”). On remand, the chancery court vacated the permanent injunction (in place for over two years) based on the Home Rule Amendment claim in the *Metro* litigation. (II, 199–201.) Next, after the chancery court denied Plaintiffs’ attempt at securing a preliminary injunction, as noted above, all Defendants filed renewed Rule 12 motions (pursuant to the chancery court’s order).² Following oral argument on the Rule 12 motions the

¹ Plaintiffs’ first attempt at a preliminary injunction took place in 2020, but that motion was denied as moot after the chancery court enjoined the Program in a separate case filed by counties (pre-consolidation) by granting summary judgment on the counties’ Home Rule Amendment claim. *See* Appellants’ Br. 11.

² Parents, Intervenor-Defendants below, renewed their motion for judgment on the pleadings under Tennessee Rule of Civil Procedure 12.03 to challenge each claim raised in Plaintiffs’ amended complaint. (XX, 2986–XXI, 3022, Mot. and Supp. Mem.) Rule 15.01 governs amended pleadings—it requires a response to an amended complaint

chancery court panel dismissed all of Plaintiffs’ claims (and the remaining claims in the *Metro* litigation) on standing and ripeness grounds. (XXV, 3620–45.)

This appeal followed and proceeded as a consolidated appeal alongside the appeal filed in the *Metro* litigation. But the county plaintiffs in *Metro*, in the wake of the defeat of their Home Rule Amendment claim at the Tennessee Supreme Court, and the rejection of their own preliminary injunction motion on remand, chose to dismiss their appeal rather than file an opening brief in this Court. The *Metro* litigation is now over. But the McEwen Plaintiffs keep pressing their claims.

STATEMENT OF FACTS

The ESA Program offers a lifeline to families, like those of Parent-Intervenors,³ who would like to leave public schools that do not meet their children’s needs, but who lack the financial resources to do so. The Program makes education savings accounts (“ESAs”) available for low- and middle-income children being educated in school districts that have “consistently had the lowest performing schools on a historical basis[.]”

“unless the court otherwise orders.” Tenn. R. Civ. P. 15.01. The chancery court ordered otherwise on July 20, 2022, setting deadlines to resolve “all pending matters” in this case, and ordering all Defendants to file new Rule 12 motions or supplement their existing motions. (App. 0001–02, Scheduling Order.)

³ The chancery court also permitted another set of parties to intervene in the case and defend the ESA Program: Greater Praise Christian Academy, Sensational Enlightenment Academy Independent School, Ciera Calhoun, Alexandria Medlin, and David Wilson, Sr. (“Greater Praise Intervenor-Defendants”). *See Metro*, 645 S.W.3d at 146.

Tenn. Code. Ann. § 49-6-2611(a)(1). That includes children in the state’s Achievement School District (ASD) and those assigned to school districts with five or more schools that have been identified as “priority schools” by Tennessee’s accountability system (in 2015, 2018, and 2021) and ranked “[a]mong the bottom ten percent (10%) of schools, as identified by the department [of education]” in 2017. *See id.* § 49-6-2602(3)(C). Under the ESA Program, eligible students receive an ESA with funds that can offset costs for a wide array of eligible expenses, including tuition, textbooks, and tutoring services.⁴ *Id.* § 49-6-2603(a)(4)(A)–(L). The ESA Program can aid 5,000 students in its first year, and up to 15,000 students by its fifth year. *Id.* § 49-6-2604(c).

Parent-Intervenors have children eligible to participate in the ESA Program. They intervened here to defend an educational option that allows them to pick a school that meets their child’s needs. Tennessee families with children assigned to underperforming school districts are the intended beneficiaries of the ESA Program. And Parents here are precisely the kind of beneficiaries that the General Assembly had in mind when it enacted the Program. Natu Bah saw her two sons *not* progressing academically at their assigned public school in Shelby County—an environment that had utterly “deteriorated.” (VI, 879.) Her older son was “repeatedly verbally and emotionally abused” at school. (VI, 879–80.)

⁴ The ESA Program provides ESAs for each eligible student with his or her “per pupil state and local funds generated and required through the TISA [Tennessee investment in student achievement formula] for the LEA in which the participating student resides[.]” Tenn. Code. Ann. § 49-6-2605(a).

Parent Builguissa Diallo saw her daughter’s reading ability regress after enrolling her in a Shelby County elementary school for the first time. (VI, 885.) For Parent Star Brumfield, her son’s assigned public school in Davidson County was an “unstable and crowded environment” where he “regularly encounters violence.” (VI, 883–84.) The children of Parent-Intervenors, and thousands like them, need the educational lifeline that the ESA Program provides.

SUMMARY OF ARGUMENT

Parents, consistent with the agreed order governing their status as intervenors,⁵ offer an alternative basis for affirmance: If this Court disagrees with the chancery court’s conclusion that Plaintiffs lack standing and their claims are unripe, it should nevertheless affirm the chancery court’s judgment on the ground that Plaintiffs have failed to state claims upon which relief can be granted. *See Cont’l Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986) (“[T]his Court will affirm a decree correct in result, but rendered upon different, incomplete, or erroneous grounds.”); *First Am. Tr. Co. v. Franklin-Murray Dev. Co., L.P.*, 59 S.W.3d 135, 142 n.10 (Tenn. Ct. App. 2001) (“The Court of Appeals may affirm a judgment on different grounds than those relied on by the trial

⁵ In this litigation the intervenor-defendants must “avoid duplicative briefing to the extent possible” pursuant to the agreed order allowing Parent-Intervenors full party status. (App. 0004–06, Agreed Order.) The State Defendants address standing and ripeness in their response brief. Though Parents raise alternative grounds for affirmance, they do not concede that Plaintiffs have standing or that their claims are ripe.

court when the trial court reached the correct result.”).⁶ Tennessee children are entitled to know that the ESA Program is constitutional and that they can continue to rely on the desperately needed opportunity it provides.⁷

In Part I, Parents show this Court that Plaintiffs have failed to state a claim for relief under Article I, § 8 and Article XI, §§ 8, 12 of the Tennessee Constitution. In Part II, Parents explain why Plaintiffs have

⁶ In the chancery court, Parents argued that they were entitled to judgment on the pleadings under Rule 12.03 because Plaintiffs had failed to state a claim for relief in their amended complaint. (XX, 2986–XXI, 3022, Mot. and Supp. Mem.) “When a motion for judgment on the pleadings is made by the defendant, it is in effect a motion to dismiss for failure to state a claim upon which relief can be granted.” *Waldron v. Delffs*, 988 S.W.2d 182, 184 (Tenn. Ct. App. 1998).

⁷ A ruling on the merits would have the benefit of eliminating any doubt as to the Program's constitutionality. In fact, even if this Court *agrees* with the chancery court's reasoning and affirms on standing and ripeness grounds, it should hold—as the Tennessee Supreme Court has previously done, that an additional, alternative basis for affirmance exists—that Plaintiffs have failed to state a claim for which relief can be granted. *Cf. State v. Roberge*, 642 S.W.2d 716, 720 (Tenn. 1982) (holding, after concluding that appellant “has no standing to complain of an alleged illegal search or seizure,” that “the conduct of the officers . . . would not have violated any constitutional rights of appellant even if he had shown sufficient standing”). After all, this litigation (just as with the now dismissed *Metro* litigation) has already deprived thousands of Tennessee families from using the Program during two critical years (2020–22). The ESA Program began serving Tennessee children in the 2022–23 academic year only after Defendants prevailed in the Tennessee Supreme Court. And it is in the public interest for families to know they can continue relying on the ESA Program for their children's education into the future.

failed to state a claim under the Education Clause of the Tennessee Constitution. Finally, in Part III, Parents show why Plaintiffs have failed to state a claim under the appropriations provisions in Article II, § 24 of the Tennessee Constitution and Tenn. Code Ann. § 9-4-601.

STANDARD OF REVIEW

The issues raised in this appeal are questions of law, which are subject to de novo review. *Seals v. H & F, Inc.*, 301 S.W.3d 237, 241 (Tenn. 2010) (“Our scope of review for questions of law is de novo.”). This standard applies to both statutory and constitutional interpretation. “Issues of statutory construction are reviewed de novo with no presumption of correctness attaching to the rulings of the court below.” *Hayes v. Gibson County*, 288 S.W.3d 334, 337 (Tenn. 2009). “Issues of constitutional interpretation are questions of law, which [the appellate courts] review de novo without any presumption of correctness given to the legal conclusions of the courts below.” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008).

ARGUMENT

I. **Plaintiffs Have Failed to State a Claim for Violations of the Education and Equal Protection Clauses.**

Plaintiffs’ first claim alleges that the ESA Program violates Article I, § 8 together with Article XI, §§ 8, 12 of the Tennessee Constitution⁸

⁸ Article I, § 8: “That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.”

because it purportedly diverts resources from the public schools their children attend. Appellants’ Br. 21–23; *see also* (XIV, 2062–64, Pls’ Am. Compl. ¶¶ 112–18.) According to Plaintiffs, the ESA Program violates equal protection guarantees because it applies only to their chronically underperforming school districts, but not others, and thus deprives their children “of adequate and substantially equal educational opportunities by diverting” education funding.⁹ Appellants’ Br. 22. What’s more,

Article XI, § 8: “The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie [immunities], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed, and no such alteration or repeal shall interfere with or divest rights which have become vested.”

Article XI, § 12: “The state of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such post-secondary educational institutions, including public institutions of higher learning, as it determines.”

⁹ This is a far cry from the equal protection violation found in the *Small Schools* cases. *See Tenn. Small Sch. Sys. v. McWherter*, 91 S.W.3d 232, 235 (Tenn. 2002) (“*Small Schools III*”) (describing “decaying physical plants, inadequate heating, showers that did not work, buckling floors, leaking roofs, inadequate science laboratories, and outdated textbooks and libraries” caused by a funding formula composed of “token” state funds and “discretionary funding by local governments”).

Plaintiffs allege that public schools in Metro Nashville and Shelby County “are underfunded by the State and thus already lack necessary educational resources.”¹⁰ *Id.* At the outset, Plaintiffs are conflating what are properly conceptualized as two separate claims. *See Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 152 (Tenn. 1993) (“*Small Schools I*”) (analyzing them separately).

First, if Plaintiffs want to allege that the Tennessee Investment in Student Achievement Act (“TISA”) does not provide for a constitutionally *adequate* system of public schools, their only valid path to a remedy is to bring a legal challenge to TISA itself and, if they prevail, obtain an order striking down TISA and sending the General Assembly back to the drawing board to craft a constitutional funding formula. *Cf. id.* at 156 (invalidating prior funding formula under equal protection and holding that “the appropriate remedy should be fashioned by the General Assembly”). In other words, to the extent Plaintiffs allege that the General Assembly’s funding formula fails to meet the constitutional baseline of providing for an adequate system of public schools, those allegations have no bearing on the legality of other, additional educational options that the General Assembly may choose to provide (e.g., the ESA Program). Plaintiffs’ allegation that their schools are

¹⁰ Plaintiffs also argue in their opening brief that the ESA Program “*only* applies to and affects Metro Nashville Public Schools and Shelby County Schools.” Appellants’ Br. 22 (emphasis added). This is wrong. Plaintiffs not only ignore that the General Assembly expanded the ESA Program in 2023, but also that students assigned to the Achievement School District are eligible for ESAs. *See* Tenn. Code Ann. § 49-6-2602(3)(C); *see also* 2023 Tenn. Pub. Acts, ch. 328, § 1 (effective May 5, 2023).

underfunded does not entitle Plaintiffs to the relief they seek here: an order striking down the ESA Program.

Second, Plaintiffs’ unequal treatment theory fares no better because it ignores that the state’s education funding formula is student-centric and that the ESA Program treats students equally. Under TISA, funding is “student-based” and follows the child. *See* Tenn. Code Ann. § 49-3-103(a); *see also id.* § 49-3-103(a)(3) (goal of TISA formula is to “[p]rovid[e] each student with the resources needed to succeed, regardless of the student’s individual circumstances”). Under TISA, if Plaintiffs choose a public school for their children, that choice will trigger the *total* TISA “student-generated funding allocations pursuant to §§ 49-3-105 and 49-3-106[.]” *See id.* § 49-3-104 (22) (defining TISA formula). And under the ESA Program, if Plaintiffs choose an ESA they will receive their *total* TISA allotment to help afford an educational environment that meets their needs.¹¹ There is no unequal treatment.

Rather than accept this statutory reality, Plaintiffs attempt the same sleight of hand rejected by the Tennessee Supreme Court in the *Metro* litigation. In their opening brief, Plaintiffs invoke *only* the *state* education funding under TISA to complain of unequal treatment, *see* Appellants’ Br. 22, and ignore that the *total* per-pupil allocation under TISA consists of state *and local* funding. *See* Tenn. Code Ann. § 49-3-109

¹¹ *See id.* § 49-2-2605(a) (“The maximum annual amount to which a participating student is entitled under the [ESA] program must be equal to the amount representing the per pupil state and local funds generated and required through the TISA for the LEA in which the participating student resides[.]”).

(TISA “[s]tate and local contributions”). And as explained above, students receive the same *total* TISA per-pupil funding allocation whether they opt for an ESA or choose to attend a public school—there is no unequal treatment.

The flaw in Plaintiffs’ argument, of course, is that the alleged disadvantage they point to—focusing on *state* funds only and ignoring that TISA’s per-pupil allocation includes state and *local* funding—improperly casts the ESA Program as regulating the local counties that help fund school districts.¹² The Tennessee Supreme Court flat out rejected this when the counties attempted it in the *Metro* litigation. As the high court made clear, the ESA Program regulates school districts *only*, not the local entities that must partially fund those districts. *See Metro*, 645 S.W.3d at 152 (“[W]e conclude that the ESA Act regulates and governs only the conduct of the LEAs, not of the [county] Plaintiffs.”); *see also id.* at 153 (holding Tennessee law “establishes beyond refute that the LEAs are distinct from the county or municipal governments”). Ignoring binding precedent about the ESA Program does not make it go away. From the school district’s perspective, all students assigned to Plaintiffs’ school districts are entitled to the same *total* per-pupil funding allocation under TISA. And families assigned to those districts, like Plaintiffs, get their full per-pupil TISA allocation whether they enroll a child in public school or instead opt for the ESA Program.

¹² For example, Plaintiffs repeatedly refer to counties and school districts interchangeably in their Amended Complaint. *See* (XIV, 2044, ¶ 43; 2050–51, ¶¶ 71–72.)

There is no unequal treatment. True, families eligible for the ESA Program may make decisions that impact enrollment and thus the commensurate aggregate funding. But shifts in funding caused by fluctuating enrollment figures are a part of the public-school funding process, and that was the case long before the ESA Program ever came into existence. Whenever parents decide to leave their assigned public school—whether because they move, want to try homeschooling, or because they want to participate in the ESA Program—their assigned public school receives less funding *because it is educating one less student*. After all, the public school keeps receiving its per-pupil funding for all the enrolled students they educate.

In *Small Schools I*, the Tennessee Supreme Court itself recognized the importance of innovation in education: “Given the very nature of education, an adequate system, by all reasonable standards, would include innovative and progressive features and programs.” 851 S.W.2d at 156. After all, Tennessee children have different opportunities, costing different amounts of money, than their peers in various educational settings—charter schools, magnet schools, reading/math programs. There are educational options for children with special needs. *See, e.g.*, Tennessee’s Individualized Education Act, Tenn. Code Ann. §§ 49-10-1401 *et seq.* And educational options like the ESA Program for students of modest means trapped in chronically underperforming school districts.

If Plaintiffs choose public schools for *their* children, the Tennessee Constitution does not entitle them to force *other parents’* children to also attend public schools. Children in Tennessee are not mere funding

conduits for school districts. As Parents explain next, in Part II, *infra*, the Education Clause of Article XI, Section 12 does not require the General Assembly to *exclusively* support a system of public schools and nothing more—rather, it may use its plenary power (which is not restricted by the Education Clause) to provide Tennessee children with educational options *in addition to* satisfying its mandate of supporting a system of free public schools. The ESA Program is such an educational option. And nobody, including Plaintiffs, are deprived from an equal educational opportunity under the Program. For all these reasons, the Court should affirm on the alternative ground that Plaintiffs have failed to state a claim under the Education and Equal Protection Clauses.

II. Plaintiffs Have Failed to State a Claim Under the Education Clause.

Plaintiffs’ next claim is that the ESA Program violates Article XI, § 12 of the Tennessee Constitution. Their claim is based on a radical and atextual reading of the Education Clause that seeks to convert its mandate that the General Assembly create a public-school system into a prohibition on the legislature doing anything else. *See* Appellants’ Br. 36–37. This claim is not only divorced from the text of the Clause, but it is badly out of step with nearly every state supreme court that has addressed similar claims.

Plaintiffs’ Education Clause claim fails for two independent reasons. First, the text of the Education Clause nowhere restricts the General Assembly from creating educational options *in addition to* the public-school system. Second, the Clause encourages the legislative branch to support education with innovative options like ESAs.

A. The Education Clause Does Not Bar the Program.

Plaintiffs cast the Education Clause as prohibiting the General Assembly from establishing anything other than a “single system of public education.” Appellants’ Br. 55. This misreading of the Education Clause is wrong for many reasons. To start, the text of Article XI, Section 12 says no such thing. Rather, the text states three things: (1) Tennessee “recognizes the inherent value of education and encourages its support”; (2) the General Assembly “shall provide for the maintenance, support and eligibility standards of a system of free public schools”; and (3) the legislature “may establish and support . . . post-secondary educational institutions.” Tenn. Const. art. XI, § 12. Nothing in the text of the Education Clause *restricts* legislative power.

Rather, the second sentence of the Clause imposes a mandate to provide a public school system (“shall provide for”)—which sets a floor, but contains no restrictive language that imposes a ceiling on the General Assembly’s power to support Tennesseans’ education. Nowhere do the words of the Clause prohibit, as Plaintiffs argue, the legislature from creating *additional* educational options.

Parents’ reading of the text is further reinforced by the first sentence of the Education Clause. The provision not only lacks restrictive language that constrains the General Assembly’s power, as explained above, but the Education Clause celebrates innovation right from its opening sentence: “The state of Tennessee recognizes the inherent value of education and encourages its support.” Tenn. Const. art. XI, § 12. One way the General Assembly “encourages” education is by establishing innovative educational options in addition to the traditional public-school

system, such as charter schools, the ESA Program, and the Tennessee Individualized Education Account Program for special-needs children. These alternatives help parents exercise their constitutional right to direct the upbringing of their children. *See In re Knott*, 197 S.W. 1097, 1098 (Tenn. 1917) (the interest of a parent “to its [child’s] tutorage” is “sacred”); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925) (striking down law requiring every child to attend a public school as “unreasonably interfer[ing] with the liberty of parents and guardians to direct the upbringing and education of children under their control”).

Tennessee’s Education Clause requires the legislature to maintain and support the public-school system. Thus, the General Assembly must fulfill that duty, but that duty does not restrict the plenary power of the General Assembly. It does not bar the legislative branch from creating *additional* educational options. Were it otherwise, the framers of the Clause would have said so. They would have used prohibitive language, employed elsewhere in the Constitution, to say that maintaining the public-school system is the “sole” or “exclusive” way that the legislature can support education. *See, e.g.*, Tenn. Const. art. 5 (“The House of Representatives shall have the *sole* power of impeachment”) and art. 11, § 9 (“The General Assembly shall by general law provide the *exclusive* methods by which municipalities may be created”) (emphases added). But the framers did not use prohibitive language in the Education Clause. If the framers wanted to restrict legislative “power” they knew

how to do it.¹³ The text of the Education Clause provides for a minimum for what the legislature must do (it sets a floor), not a maximum for what it must not exceed (it imposes no ceiling on the General Assembly).

Perhaps recognizing that the Clause imposes no bar on creating educational options for Tennesseans, Plaintiffs enlist the *Small Schools* line of cases to try to erect one. *See, e.g.*, (XIV, 2040–41, ¶¶ 26, 29–30.) But their bar is built on sand. For example, in *Small Schools I*, the Tennessee Supreme Court did *not* prohibit creating educational options (in addition to a system of free public schools), and it expressly declined to set out “the precise level of education mandated by” the Clause. 851 S.W.2d at 152. Likewise, in *Tennessee Small School Systems v. McWherter*, 894 S.W.2d 734 (Tenn. 1995) (“*Small Schools II*”), the Court simply cited the Clause for the proposition that the state must “maintain and support a system of free public schools”—language nearly identical to the Clause itself. *Id.* at 738. And in *Tennessee Small School Systems v. McWherter*, 91 S.W.3d 232 (Tenn. 2002) (“*Small Schools III*”), the Court held that the lack of teacher salary equalization violated the *Equal Protection* Clause—not the *Education* Clause—of the state constitution. *Id.* at 235.

¹³ For example, there are provisions within Article XI that use restrictive language: (1) Section 4 states that “[t]he Legislature shall have no power to grant divorces; but may authorize the Courts of Justice to grant them”; and (2) Section 5 commands that “[t]he Legislature shall have no power to authorize lotteries for any purpose . . . , except [laying out exception].” Unlike these provisions, however, the Education Clause in Article XI, Section 12 contains no text restricting legislative power.

None of these cases support Plaintiffs’ atextual argument that the Clause “does not permit” the General Assembly to create a system of public schools *and* provide additional options to Tennessee children. *See* Appellants’ Br. 36–37; *see also* (XIV, 2064, ¶ 120.) At best, these cases stand for what Parents readily acknowledge—that the Clause imposes a duty on the state to maintain and support a public-school system. Thus, the only remaining question is whether the creation of the ESA Program violates the state’s duty to maintain a public-school system.

The answer is no: Both before and after the ESA Program’s creation, the public-school system remains firmly in place and fully available to parents who wish to send their children to public schools.¹⁴ Since Tennessee students remain free to attend a public school if they desire—and Plaintiffs have not alleged otherwise—the General Assembly is not violating its duty to maintain a system of free public schools. In short, the ESA Program complies with the Education Clause.

It is therefore no surprise that state high courts across the United States interpret similar education clauses¹⁵ in their respective state constitutions as establishing a floor for state education policy, not a

¹⁴ The General Assembly, through its statutes and budgets, continues to authorize, maintain, and support Tennessee’s public schools. *See* Tenn. Code Ann. tit. 49, ch. 2 (creating local school districts) and ch. 6 (governing elementary and secondary education generally).

¹⁵ *See, e.g.,* Clint Bolick, *Constitutional Parameters of School Choice*, 2008 B.Y.U. L. Rev. 335, 346 (“Many state constitutions contain provisions decreeing that the state provide public education, often employing terms like ‘uniform,’ ‘thorough and efficient,’ or ‘high quality’ to describe the type of education to be provided.”).

ceiling. *See, e.g., State v. Beaver*, 887 S.E.2d 610, 627 (W. Va. 2022) (“[W]e find that the ‘free schools’ clause operates as a floor, not a ceiling. That is, it contains a requirement of what the Legislature must do; it does not prohibit the Legislature from enacting additional educational options”); *Schwartz v. Lopez*, 382 P.3d 886, 897 (Nev. 2016) (rejecting the view that “the public school system is the *only* means by which the Legislature could encourage education in Nevada” (emphasis in original)); *Hart v. State*, 774 S.E.2d 281, 289 (N.C. 2015) (“Article IX, Section 6 does not, however, prohibit the General Assembly from appropriating general revenue to support other educational initiatives.”); *Meredith v. Pence*, 984 N.E.2d 1213, 1223 (Ind. 2013) (“The school voucher program does not replace the public school system, which remains in place and available to all Indiana schoolchildren in accordance with the dictates of the Education Clause.”); *Jackson v. Benson*, 578 N.W.2d 602, 628 (Wis. 1998) (“[A]rt. X, § 3 provides not a ceiling but a floor upon which the legislature can build additional opportunities for school children in Wisconsin”); *Simmons-Harris v. Goff*, 711 N.E.2d 203, 212 & n.2 (Ohio 1999) (rejecting claim that the “thorough and efficient system of common schools” provision of Ohio’s constitution prohibited private school voucher program absent a showing that the program actually “undermine[d]” or “damage[d]” public education); *Davis v. Grover*, 480 N.W.2d 460, 474 (Wis. 1992) (“[T]he uniformity clause requires the legislature to provide . . . a free uniform basic education. . . . [E]xperimental attempts to improve upon that foundation in no way denies any student the opportunity to receive the basic education in the public school system.”).

The sole outlier is *Bush v. Holmes*, in which the Florida Supreme Court was interpreting a unique provision that imposes a “paramount duty” on the State, see Fla. Const. art. IX, § 1(a)—language absent from Tennessee’s Education Clause (as well as many other state constitutions). 919 So. 2d 392 (Fla. 2006). As a result, every state supreme court considering an exclusivity argument based on *Holmes* has rejected it. See, e.g., *Meredith*, 984 N.E.2d at 1223–24 (refusing to follow *Holmes*); *Schwartz*, 382 P.3d at 898 (“The plaintiffs’ reliance on *Bush v. Holmes* . . . is inapposite” because “Florida’s constitutional uniformity provision is different”).¹⁶ And every state supreme court that considered such an exclusivity argument before *Holmes* likewise rejected the argument. See *Benson*, 578 N.W.2d at 628; *Simmons-Harris*, 711 N.E.2d at 212 & n.2; *Grover*, 480 N.W.2d at 474. But even if Florida had analogous language to Tennessee’s Education Clause—and it does not—*Holmes* is a singularly unpersuasive decision.¹⁷ One has only to compare the majority and dissenting opinions to appreciate how flawed the

¹⁶ While the West Virginia Supreme Court did not consider *Holmes*, it nonetheless rejected its exclusivity argument. See *Beaver*, 887 S.E.2d at 627 (“[W]e find Respondents’ reliance on *expressio unius* to be misplaced.”)

¹⁷ In the 17 years since *Holmes* was decided, the Florida legislature has enacted numerous choice programs, including universal ones, that dwarf the program at issue in *Holmes*. Although this is not tantamount to *Holmes* being reversed, it casts doubt on any persuasive power it might have, as it suggests the case is not considered good law, even in Florida.

majority's reasoning was in that case and how glaring its many errors, which are too numerous to catalogue here.¹⁸

Plaintiffs relied on the flawed reasoning in *Holmes* in the chancery court (because they cannot, as explained above, rely on the plain text of the Education Clause to restrict the General Assembly's power). As in *Holmes*, they asked the chancery court to apply the *expressio unius* canon of statutory construction—arguing that the expression of one thing (providing a system of free public schools), excludes all others (no additional educational options). (V, 697–702.) But using a canon of

¹⁸ See, e.g., Jamie S. Dycus, *Lost Opportunity: Bush v. Holmes and the Application of State Constitutional Uniformity Clauses to School Voucher Schemes*, 35 J.L. & Educ. 415 (2006) (documenting critical flaws in court's reasoning, including failure to reconcile new interpretation of uniformity provision with past practice and precedent); Lila Haughey, Case Comment, *Florida Constitutional Law: Closing the Door to Opportunity: The Florida Supreme Court's Analysis of Uniformity in the Context of Article IX, Section 1*, 58 Fla. L. Rev. 945, 953 (2006) (“[W]hen the [*Holmes v. Bush*] court additionally required all state funded education programs to adhere to strict uniformity standards, it abandoned sixty-eight years of state education jurisprudence”); Clark Neily, *The Florida Supreme Court vs. School Choice: A “Uniformly” Horrid Decision*, 10 Tex. Rev. L. & Pol. 401, 412 (2006) (“The majority's opinion in [*Holmes v. Bush*] is among the most incoherent, self-contradictory, and ends-oriented court decisions in recent memory”); *Recent Developments*, 33 Fla. St. U. L. Rev. 1227, 1234–39 (2006) (discussing decision and pointing out that the dissent provides a more logical and persuasive framework than the majority); Editorial, *Why judges matter; School choice*, The Economist, Jan. 14, 2006 (N. Am. edition); George F. Will, Opinion, *Students disrupted by political struggles*, Miami Herald, Mar. 28, 2006, at A19; John Tierney, Opinion, *Black Students Lose Again*, N.Y. Times, Jan. 7, 2006, at A11; Andrew Coulson, Opinion, *War Against Vouchers*, Wall St. J., Jan. 9, 2006, at A13.

statutory interpretation for construing the scope of legislative authority under ambiguous statutes is inappropriate here—because we are dealing with a state constitutional provision and plenary power. The General Assembly is already vested with plenary power.¹⁹ Thus, Plaintiffs must identify how the Education Clause’s text *constrains* plenary power, and this they cannot do. *See* Tenn. Const. art. XI, § 12.

In sum, Plaintiffs’ argument that the Education Clause does not allow educational options in addition to a system of free public schools has no basis in the text of the Tennessee Constitution or the caselaw. The General Assembly is not prohibited from enacting the ESA Program. Nor do the Tennessee Supreme Court’s decisions bar the creation of additional educational options. Nearly every state supreme court to consider Plaintiffs’ theory has rejected it, and there is serious doubt as to the continued validity of the argument in the one court that accepted it. Plaintiffs have failed to state a claim for a violation of the Education Clause—this Court should affirm on this alternative ground.

B. The ESA Program Does Not Transform Private Schools Into Public Schools.

Plaintiffs erroneously believe that the General Assembly is prohibited from innovating outside the public-school system. Appellants’

¹⁹ As the Tennessee Supreme Court explained long ago, the plenary power in the General Assembly is “the rule” and prohibitions on exercising a particular power is the “exception” when analyzing a constitutional provision. *Andrews v. State*, 50 Tenn. 165, 175 (Tenn. 1871); *accord Hodges v. Craig*, 382 S.W.3d 325, 339 (Tenn. 2012).

Br. 56. They thus fault the ESA Program for allowing students to attend schools that do not “comply with the laws and regulations applicable to public schools in Tennessee.” Appellants’ Br. 37; *see also* (XIV, 2064–65, ¶¶ 121, 123–27.) But this is a red herring. The Constitution requires Tennessee to maintain a system of public schools; it does not require private schools to abide by the rules governing the public-school system.²⁰ When private schools participate in the ESA Program, they do not suddenly become part of the public-school system, let alone become subject to the requirements of a single system of public schools. Consequently, Plaintiffs’ attempt to convert the legislature’s mandate to establish a public-school system into a prohibition on innovation is unavailing.

The Constitution requires the General Assembly to maintain a system of “free public schools.” But even as it maintains that system, the legislature may recognize the “value of education and encourage[] its support” through additional means. Tenn. Const. art. XI, § 12. The ESA Program is just one way that the General Assembly is supporting the

²⁰ Confronted with Plaintiffs’ argument, other state high courts have come to the same conclusion. *See, e.g., Meredith*, 984 N.E.2d at 1224 (“[T]he voucher-program statute does not alter the structure or components of the public school system”); *Jackson*, 578 N.W.2d at 627 (holding that a school choice program “does not transform” private schools into district schools); *Davis*, 480 N.W.2d at 474 (“In no case have we held that the mere appropriation of public monies to a private school transforms that school into a public school.”).

education of Tennessee children.²¹ And it fully complies with the Tennessee Constitution’s Education Clause. The Court should thus affirm on the alternative ground that Plaintiffs have failed to state a claim under the Tennessee Constitution’s Education Clause.

III. Plaintiffs Have Failed to State a Claim Under Tennessee’s Appropriations Provisions –Article II, § 24 and Tenn. Code Ann. § 9-4-601.

Plaintiffs’ cause of action under the constitutional and statutory Appropriations Provisions fares no better. In their opening brief, Plaintiffs claim that the ESA Program is invalid because it violates Article II, § 24 of the Tennessee Constitution, which requires that the General Assembly appropriate first-year funding to an act during the session in which that act was passed. Appellants’ Br. 41–42. Plaintiffs also assert that, to the extent that the Tennessee Department of Education (“TDOE”) funded administration of the Program via a contract with ClassWallet, it illegally misappropriated funds in violation of the statutory appropriations provisions in Section 9-4-601(a)(1) of the Tennessee Code, which requires money drawn from the state treasury be

²¹ Other state high courts have reached the same conclusion when reviewing the constitutionality of educational choice programs. *See, e.g., Meredith*, 984 N.E.2d at 1216 (“In the absence of a constitutional violation, the desirability and efficacy of school choice are matters to be resolved through the political process.”); *Kotterman v. Killian*, 972 P.2d 606, 623–24 (Ariz. 1999) (“Some might argue that the statute in question runs counter to these goals by encouraging more students to attend private schools, thereby weakening the state’s public school system. But that is a matter for the legislature, as policy maker, to debate and decide.”).

made by appropriations duly authorized by law. *Id.* But Plaintiffs’ legal claims under the Appropriations Provisions are wholly unsupported and fail as a matter of law. In Part A, Parents explain why Article II, § 24 of the Tennessee Constitution is not a limit on the General Assembly’s power, but rather a procedural balanced-budget provision that the legislature complied with. In Part B, Parents show why the TDOE satisfied the statutory appropriations requirement under § 9-4-601(a)(1).

A. Article II, § 24 Is a Procedural Balanced-Budget Provision—the General Assembly Complied With It.

In their opening brief, Plaintiffs assert that the General Assembly “did not make an appropriation for the estimated first year’s funding” of the ESA Program. Appellants’ Br. 41. This claim fails because Article II, Section 24 is a procedural balanced-budget provision, not a limit on the General Assembly’s power. And the General Assembly complied with it by appropriating funds toward the ESA Program for 2019–20.

Article II, § 24 of the Tennessee Constitution provides that “[n]o public money shall be expended except pursuant to appropriations made by law. Expenditures for any fiscal year shall not exceed the state’s revenue and reserves . . . for that year.” Under that overall objective, it also provides that “[a]ny law requiring the expenditure of state funds shall be null and void unless, during the session in which the act receives final passage, an appropriation is made for the estimated first year’s funding.” Tenn. Const. art. II, § 24. Collectively, these procedural provisions were “intended to prevent deficit spending and to force the legislature to fund any new programs that it implements.” Tenn. Op. Att’y Gen. No. 04-142, 2004 WL 2326699, at *2 (Sept. 1, 2004) (citing

Journal and Debates of the 1977 Limited Constitutional Convention, 1112–13 (Report on the Limitations on State Spending Committee, remarks by Mr. Burson)).

So cases interpreting the provisions have given the legislature a wide berth by construing those provisions liberally. “It is true, as claimed, that no money can be rightfully drawn from the treasury except in pursuance of an appropriation made by law, but such an appropriation may be made impliedly as well as expressly, and in general as well as in specific terms.” *State ex rel. Noonan v. King*, 67 S.W. 812, 813 (Tenn. 1902) (citation omitted)²²; *see also Joyner v. Priest*, 117 S.W.2d 9 (Tenn. 1938) (upholding an act against an appropriations challenge); *cf. Clover Bottom Hosp. & Sch. v. Townsend*, 513 S.W.2d 505, 508 (Tenn. 1974) (approving State liability for monetary damages in an FLSA action over the defense that damages amounted to an unauthorized “appropriation” of State funds). Viewed through this lens, the General Assembly complied with Article II, Section 24.

What’s more, the General Assembly did, in fact, appropriate state funds toward implementing the ESA Program in the 2019–20 budget. Governor Lee’s proposed budget, which was presented to the General

²² In *King*, the Court examined the precursor to modern Article II, § 24 of the Tennessee Constitution, which was ratified in 1978. At the time *King* was decided, Article II, § 24 read: “No money shall be drawn from the treasury but in consequence of appropriations made by law; and an accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at the rise of each stated session of the General Assembly.” Tenn. Const. (1870). The 1978 Amendments kept both original provisions.

Assembly before the ESA Program’s passage, included an appropriation of \$25,450,000 for Program implementation.²³ See State of Tennessee, The Budget Document FY2019-20, at A-37 and B-78;²⁴ *contra* (XIV, 2035, ¶ 7; 2046, ¶ 53; 2069, ¶ 151 (alleging that the proposed budget failed to include proper appropriations).) This proposed budget was incorporated into the final appropriations act. See 2019 Tenn. Pub. Acts ch. 405, at 52 (“From the appropriations made in this act, there hereby is appropriated a sum sufficient for implementation of any legislation cited . . . in the Budget Document transmitted by the Governor”).²⁵ Because the timeline for implementing the ESA Program had changed since Governor Lee’s proposed budget had been presented, the General Assembly included an amendment in the final appropriations act reducing Governor Lee’s proposed appropriation by \$24,678,700. See 2019 Tenn.

²³ The Court may take judicial notice of public records, including the proposed budget, the final budget, and other legislative records. See *Athena of S.C., LLC v. Macri*, No. E2016-00224-COA-R3-CV, 2016 WL 5956984, at*5 (Tenn. Ct. App. Oct. 14, 2016) (“Courts may also consider matters that the complaint incorporates by reference, items subject to judicial notice, orders, and matters of public record without converting a motion to dismiss into a motion for summary judgment.”); *Greenberg v. Life Ins. Co. of Va.*, 177 F.3d 507, 514 (6th Cir. 1999) (explaining that “when ‘a document is referred to in the complaint and is central to the plaintiff’s claim,’” the defendant may “submit an authentic copy to the court to be considered on a motion to dismiss, and the court’s consideration of the document does not require conversion of the motion to one for summary judgment” (citation omitted)).

²⁴ Available online at <https://www.tn.gov/content/dam/tn/finance/budget/documents/2020BudgetDocumentVol1.pdf>.

²⁵ Available online at <https://publications.tnsosfiles.com/acts/111/pub/pc0405.pdf>.

Pub. Acts ch. 405, at 100 (“SB 795 / HB 939 - Education Savings Accounts - NR Reduction”). The remaining funds—\$771,300—went to implementing the Program in its first year. In short, the General Assembly fully complied with Article II, Section 24.

B. The Department of Education Complied with the Statutory Appropriations Provisions.

The Tennessee Department of Education (“TDOE”) similarly complied with the statutory appropriations provisions of Tennessee Code Section 9-4-601(a)(1)²⁶ when it entered into its contract with ClassWallet. To begin with, Plaintiffs do not allege that the funds used for the ClassWallet contract were improperly appropriated to TDOE in the first instance—in other words, they have not alleged that TDOE ordered the disbursement of state funds belonging to another department or state entity.²⁷ Rather, Plaintiffs fault TDOE for “sign[ing] a \$2.5 million contract” with ClassWallet to administer the ESA Program, and further allege that “TDOE diverted public funds from an unrelated existing state program” to “instead pay ClassWallet \$1.2 million in 2019 for its work” on the ESA Program. Appellants’ Br. 41–42.

The ClassWallet contract, however, was “duly authorized by law.” See Tenn. Code Ann. § 9-4-601(a)(1). The 2019–20 Budget specifically

²⁶ “No money shall be drawn from the state treasury except in accordance with appropriations duly authorized by law.” Tenn. Code. Ann. § 9-4-601(a)(1).

²⁷ And, as a result, Plaintiffs’ failure alone satisfies the constitutional appropriations of Article II, Section 24 discussed in Part III.A., *supra*, which concerns balancing the budget and separation of powers, not matters of administrative accounting.

authorized departments to use budget surpluses within the department as needed. *See* 2019 Tenn. Pub. Acts ch. 405, at 53 (“[I]f the head of any department . . . of the state government finds that there is a surplus . . . under such entity, and a deficiency in any other division . . . then in that event the head of such department . . . may transfer such portion of such funds as may be necessary for the one division . . . where the surplus exists to the other . . .”). And at the very same committee hearing that Plaintiffs reference in their amended complaint to allege that TDOE’s deputy commissioner admitted to “divert[ing]” funds improperly from the Career Ladder program,²⁸ *see* (XIV, 2046–47, ¶ 55), the deputy commissioner explained that the Career Ladder program had “sunset” and that the funds were therefore no longer needed. *See* General Assembly Joint Government Operations Committee Hearing (Jan. 27, 2020), at 1:01:30–52.²⁹ Plaintiffs do not allege that the funds taken from

²⁸ That program was enacted in 1985 to provide teachers, principals, and supervisors who received outstanding evaluations with pay supplements. The General Assembly repealed the program in 2013, but with instructions to the Tennessee Department of Education to continue providing supplements to the remaining participants in the program for the rest of their tenure. *See* 2013 Tenn. Pub. Acts, ch. 214, § 1.

²⁹ Committee hearing available at http://tnga.granicus.com/MediaPlayer.php?view_id=424&clip_id=21304. Tennessee courts may . . . consider matters that the complaint incorporates by reference[.]” *See Athena of S.C., LLC*, 2016 WL 5956984, at *5; *see also Rodriguez v. Providence Cmty. Corr., Inc.*, 191 F. Supp. 3d 758, 762–63 (M.D. Tenn. 2016) (relying upon “hearing testimony and a number of affidavits and arrest warrants, which Plaintiffs submitted in support of their Motion for a Preliminary Injunction” to resolve Defendants’ motion to dismiss where “Defendants have not disputed the factual accuracy of any of these submissions”).

the Career Ladder program were needed by that program to function or did not otherwise constitute surplus. Given that the Career Ladder program was repealed in 2013 and was only being funded on an expiring basis, reallocating excess funds from the program to facilitate the ClassWallet contract was authorized by law consistent with state statute.

The ESA Program fully complies with the constitutional and statutory Appropriations Provisions. The Court should thus affirm on the alternative ground that Plaintiffs have failed to state a claim under Article II, § 24 and Tenn. Code Ann. § 9-4-601.

CONCLUSION

The ESA Program fully complies with the Tennessee Constitution. None of the legal claims invoked by Plaintiffs in their opening brief states a claim upon which relief can be granted. Accordingly, the Court can, and should, affirm on the alternative grounds that Parents advance here.

Dated: September 25, 2023.

Respectfully submitted,

Justin Owen (BPR No. 027450)
BEACON CENTER OF TENNESSEE
1200 Clinton Street, #205
Nashville, TN 37203
Tel: (615) 383-6431
Email: justin@beacontn.org

/s/ Arif Panju

Arif Panju* (TX Bar No. 24070380)
INSTITUTE FOR JUSTICE
816 Congress Avenue, Suite 960
Austin, TX 78701
Tel: (512) 480-5936
Fax: (512) 480-5937
Email: apanju@ij.org

David Hodges*
(D.C. Bar No. 1025319)
Keith Neely*
(D.C. Bar No. 888273735)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, VA 22203
Tel: (703) 682-9320
Fax: (703) 682-9321
Email: dhodges@ij.org
Email: kneely@ij.org

*Admitted *pro hac vice*

*Attorneys for Parent Appellees
Natu Bah, Builguissa Diallo, and
Star Brumfield*

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements set forth in Tenn. Sup. Ct. R. 46, § 3.02. My word processing system indicates that the sections of the brief subject to the 15,000 word limitation contain 7,959 words.

/s/ Arif Panju
Arif Panju

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2023 a true and exact copy of the foregoing was served via the court's electronic filing system and electronic mail to:

Christopher M. Wood
414 Union Street, Suite 900
Nashville, TN 37219
cwood@rgrdlaw.com

Sophia Mire Hill
111 East Capitol Street, Suite 280
Jackson, MS 39201
sophia.mire@splcenter.org

Stephanie A. Bergmeyer
Jim Newsom
Office of Tenn. Attorney Gen.
P.O. Box 20207
Nashville, TN 37202-0207
stephanie.bergmeyer@ag.tn.gov
jim.newsom@ag.tn.gov

M.E. Buck Dougherty III
Liberty Justice Center
440 N. Wells Street, Suite 200
Chicago, IL 60654
bdougherty@libertyjusticecenter.org

Stella Yarbrough
P.O. Box 120160
Nashville, TN 37212
syarbrough@aclu-tn.org

Wendy Lecker
Jessica Levin
60 Park Place, Suite 300
Newark, NJ 07102
wlecker@edlawcenter.org
jlevin@edlawcenter.org

/s/ Arif Panju
Arif Panju

ADDENDUM

West's Tennessee Code Annotated
Constitution of the State of Tennessee
Article I. Declaration of Rights (Refs & Annos)

TN Const. Art. 1, § 8

§ 8. Deprivation of life, liberty or property under law; due process

[Currentness](#)

That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

[Notes of Decisions \(1218\)](#)

Const. Art. 1, § 8, TN CONST Art. 1, § 8

Current with laws from the 2022 Second Regular Sess. of the 112th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated
Constitution of the State of Tennessee
Article XI. Miscellaneous Provisions

TN Const. Art. 11, § 8

§ 8. General or special law

[Currentness](#)

The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities,¹ or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law. No corporation shall be created or its powers increased or diminished by special laws but the General Assembly shall provide by general laws for the organization of all corporations, hereafter created, which laws may, at any time, be altered or repealed and no such alteration or repeal shall interfere with or divest rights which have become vested.

[Notes of Decisions \(635\)](#)

Footnotes

¹ So in original. Probably should be “immunities.”

Const. Art. 11, § 8, TN CONST Art. 11, § 8

Current with laws from the 2022 Second Regular Sess. of the 112th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

West's Tennessee Code Annotated
Constitution of the State of Tennessee
Article XI. Miscellaneous Provisions

TN Const. Art. 11, § 12

§ 12. Education; public schools; higher education

[Currentness](#)

The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.

Credits

Amendment adopted in Convention Oct. 11, 1977, approved at election March 7, 1978, and proclaimed by Governor March 31, 1978.

[Notes of Decisions \(74\)](#)

Const. Art. 11, § 12, TN CONST Art. 11, § 12

Current with laws from the 2022 Second Regular Sess. of the 112th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated
Constitution of the State of Tennessee
Article II. Distribution of Powers
Legislative Department

TN Const. Art. 2, § 24

§ 24. Appropriations; balanced budget

Currentness

No public money shall be expended except pursuant to appropriations made by law. Expenditures for any fiscal year shall not exceed the state's revenues and reserves, including the proceeds of any debt obligation, for that year. No debt obligation, except as shall be repaid within the fiscal year of issuance, shall be authorized for the current operation of any state service or program, nor shall the proceeds of any debt obligation be expended for a purpose other than that for which it was authorized.

In no year shall the rate of growth of appropriations from state tax revenues exceed the estimated rate of growth of the state's economy as determined by law. No appropriation in excess of this limitation shall be made unless the General Assembly shall, by law containing no other subject matter, set forth the dollar amount and the rate by which the limit will be exceeded.

Any law requiring the expenditure of state funds shall be null and void unless, during the session in which the act receives final passage, an appropriation is made for the estimated first year's funding.

No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.

An accurate financial statement of the state's fiscal condition shall be published annually.

Credits

Amendment adopted in Convention Nov. 30, 1977, approved at election March 7, 1978, and proclaimed by Governor March 31, 1978.

Notes of Decisions (34)

Const. Art. 2, § 24, TN CONST Art. 2, § 24

Current with laws from the 2022 Second Regular Sess. of the 112th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated

Title 9. Public Finances

Chapter 4. State Funds, State Budget and Appropriations

Part 6. Disbursement and Investment of State Funds (Refs & Annos)

T. C. A. § 9-4-601

§ 9-4-601. Authorizing warrants; electronic transfers of funds

Effective: May 16, 2013

[Currentness](#)

(a)(1) No money shall be drawn from the state treasury except in accordance with appropriations duly authorized by law. Every disbursement from the state treasury, except as hereinafter provided, shall be upon the authorization of the commissioner of finance and administration, which authorization shall be in the form of a warrant, drawn in favor of the payee, and the warrant shall, upon being signed by the commissioner and delivered to the payee, become a draft on the treasury of the state. Electronic transfer of funds, in lieu of a warrant, may be utilized when such use is deemed by the commissioner and the state treasurer to be in the best interest of the state. When this method of disbursement is utilized, the commissioner shall authorize such transfer in writing, and the state treasurer shall accept such written advice in lieu of a warrant.

(2) Notwithstanding title 66, chapter 29, warrants, drafts, and checks drawn on the state treasury that have not been redeemed within twelve (12) months of issue date shall be cancelled and written off the state's books, with the funds reverting to the fund of issue. Subsequent claims by the payee of said instruments shall be honored upon receipt of documentation to substantiate the claim. The commissioner of finance and administration and the state treasurer shall ensure the state's compliance with the unclaimed property law.

(b) The commissioner may, with the approval of the state treasurer and the comptroller of the treasury, authorize warrants as set forth in subsection (a) to be issued on the commissioner's behalf by another state official or by a third party pursuant to contract with the state. In exercising discretion pursuant to this subsection (b), the commissioner shall set out in writing such commissioner's authorization and the limitations and restrictions upon that authorization.

(c) All state money in any depository of the state government shall stand on the books of the depository to the credit of the state treasurer. Transfer of funds between depositories, in order to facilitate a concentration of funds for immediate investment, or payment of state obligations pursuant to subsection (a), shall be made by electronic transfer of funds or in accordance with such other procedures authorized by the state treasurer and approved by the commissioner and the comptroller of the treasury.

(d) The state treasurer is specifically authorized to purchase investments which are otherwise authorized by law or by authority delegated to the state treasurer pursuant to [§ 9-4-602](#) by electronic transfer of funds or in accordance with such other procedures authorized by the state treasurer and approved by the commissioner and the comptroller of the treasury.

(e) Whenever electronic transfer of funds is used for the purpose authorized by this section, such electronic funds transfer shall be made through the federal reserve system upon instructions of the state treasurer confirmed by written documentation, or by magnetic tape, disc or other medium designed for electronic communication. Copies of such written documentation or electronic

communication shall be furnished immediately to the commissioner and shall contain a full description of the transaction in a form acceptable to the commissioner.

Credits

1985 Pub.Acts, c. 118, § 41; 1986 Pub.Acts, c. 551, § 1; 2013 Pub.Acts, c. 454, § 30, eff. May 16, 2013.

Notes of Decisions (1)

T. C. A. § 9-4-601, TN ST § 9-4-601

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated
Title 49. Education
Chapter 6. Elementary and Secondary Education
Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2601

§ 49-6-2601. Short title

Effective: May 24, 2019

[Currentness](#)

This part shall be known and may be cited as the “Tennessee Education Savings Account Pilot Program.”

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

[Notes of Decisions \(1\)](#)

T. C. A. § 49-6-2601, TN ST § 49-6-2601

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated
Title 49. Education
Chapter 6. Elementary and Secondary Education
Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2602

§ 49-6-2602. Definitions

Effective: May 5, 2023

[Currentness](#)

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

(1) “Department” means the department of education;

(2) “Eligible postsecondary institution” means:

(A) An institution operated by:

(i) The board of trustees of the University of Tennessee;

(ii) The board of regents of the state university and community college system; or

(iii) A local governing board of trustees of a state university in this state; or

(B) A private postsecondary institution accredited by an accrediting organization approved by the state board of education;

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

(A)(i) Was previously enrolled in and attended a Tennessee public school for the one (1) full school year immediately preceding the school year for which the student receives an education savings account;

(ii) Is eligible for the first time to enroll in a Tennessee school;

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

(iv) Was enrolled in and attended a Tennessee public school for one (1) full school year in the 2019-2020, 2020-2021, or 2021-2022 school year; or

(v) Was eligible for the first time to enroll in a Tennessee public school in the 2019-2020, 2020-2021, or 2021-2022 school year;

(B) Is a student in any of the grades kindergarten through twelve (K-12);

(C)(i) Is zoned to attend a school in an LEA, excluding the achievement school district (ASD), with five (5) or more schools:

(a) Identified as priority schools in 2015, as defined by the state's accountability system pursuant to § 49-1-602;

(b) Among the bottom ten percent (10%) of schools, as identified by the department in 2017 in accordance with § 49-1-602(b)(3);

(c) Identified as priority schools in 2018, as defined by the state's accountability system pursuant to § 49-1-602; and

(d) Identified as priority schools in 2021, as defined by the state's accountability system pursuant to § 49-1-602; or

(ii) Is zoned to attend a school that is in the ASD on May 24, 2019; and

(D) Is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch;

(4) "ESA" means an education savings account created by this part;

(5) "High school" means a school in which any combination of grades nine through twelve (9-12) are taught; provided, that the school must include grade twelve (12);

(6) "Legacy student" means a participating student who:

(A)(i) Graduates from high school; or

(ii) Exits the program by reaching twenty-two (22) years of age;

(B) Has funds remaining in the student's education savings account; and

(C) Has an open education savings account;

- (7) “Local education agency” or “LEA” has the same meaning as defined in § 49-1-103;
- (8) “Parent” means the parent, guardian, person who has custody of the child, or individual who has caregiving authority under § 49-6-3001;
- (9) “Participating school” means a private school, as defined by § 49-6-3001(c)(3)(A)(iii), that meets the requirements established by the department of education and the state board of education for a Category I, II, or III private school, and that seeks to enroll eligible students;
- (10) “Participating student” means:
- (A) An eligible student who is seventeen (17) years of age or younger and whose parent is participating in the education savings account program; or
 - (B) An eligible student who has reached the age of eighteen (18) and who is participating in the education savings account program;
- (11) “Program” means the education savings account program created in this part;
- (12) “Provider” means an individual or business that provides educational services in accordance with this part and that meets the requirements established by the department of education and the state board of education; and
- (13) “State board” means the state board of education.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019; 2023 Pub.Acts, c. 171, § 1, eff. April 17, 2023; 2023 Pub.Acts, c. 328, § 1, eff. May 5, 2023.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education, 2022, 645 S.W.3d 141.](#)>

Notes of Decisions (1)

T. C. A. § 49-6-2602, TN ST § 49-6-2602

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative

session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated

Title 49. Education

Chapter 6. Elementary and Secondary Education

Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2603

§ 49-6-2603. Eligibility requirements and conditions for ESA program participation; closure of account

Effective: July 1, 2023

[Currentness](#)

(a) To participate in the program, a parent of an eligible student who is seventeen (17) years of age or younger, or an eligible student who has reached the age of eighteen (18) must agree in writing to:

(1) Ensure the provision of an education for the participating student that satisfies the compulsory school attendance requirement provided in § 49-6-3001(c)(1) through enrollment in a private school, as defined in § 49-6-3001(c)(3)(A)(iii), that meets the requirements established by the department and the state board for a Category I, II, or III private school;

(2) Not enroll the participating student in a public school while participating in the program;

(3) Release the LEA in which the participating student resides from all obligations to educate the participating student while participating in the program. Participation in the program has the same effect as a parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1414);

(4) Only use the funds deposited in a participating student's ESA for one (1) or more of the following expenses of the student:

(A) Tuition or fees at a participating school;

(B) Textbooks required by a participating school;

(C) Tutoring services provided by a tutor or tutoring facility that meets the requirements established by the department and the state board;

(D) Fees for transportation to and from a participating school or educational provider paid to a fee-for-service transportation provider;

(E) Fees for early postsecondary opportunity courses and examinations required for college admission;

Document received by the TN Court of Appeals.

- (F) Computer hardware, technological devices, or other technology fees approved by the department, if the computer hardware, technological device, or technology fee is used for the student's educational needs and is purchased through a participating school, private school, or provider;
 - (G) School uniforms, if required by a participating school;
 - (H) Tuition and fees for summer education programs and specialized afterschool education programs, as approved by the department, which do not include afterschool childcare;
 - (I) Tuition and fees at an eligible postsecondary institution;
 - (J) Textbooks required by an eligible postsecondary institution;
 - (K) Educational therapy services provided by therapists that meet the requirements established by the department and the state board; or
 - (L) Fees for the management of the ESA by a private or nonprofit financial management organization, as approved by the department. The fees must not exceed two percent (2%) of the funds deposited in a participating student's ESA in a fiscal year; and
- (5) Verify that the student's household income meets the requirements of § 49-6-2602(3)(D) by providing a federal income tax return from the previous year or by providing proof that the parent of an eligible student who is seventeen (17) years of age or younger, or an eligible student who has reached the age of eighteen (18), is eligible to enroll in the state's temporary assistance for needy families (TANF) program. Household income must be verified under this subdivision (a)(5):
- (A) When the parent of the eligible student or the eligible student, as applicable, submits an application to participate in the program; and
 - (B) At least once every year, according to the schedule and income-verification process developed by the department.
- (b) This part does not prohibit a parent or third party from paying the costs of educational programs and services for a participating student that are not covered by the funds in an ESA.
- (c) When a participating student reaches eighteen (18) years of age, the rights accorded to, and any consent required of, the participating student's parent under this part transfer from the participating student's parent to the participating student.
- (d) For purposes of continuity of educational attainment, and subject to the eligibility requirements of § 49-6-2602(3)(A) and (B), a participating student may participate in the program, unless the student is suspended or terminated from participating in the program under § 49-6-2608, until:

(1) The participating student:

(A) Enrolls in a public school;

(B) Ceases to be a resident of the LEA in which the student resided when the student began participating in the program;

(C) Graduates or withdraws from high school; or

(D) Reaches twenty-two (22) years of age between the commencement of the school year and the conclusion of the school year, whichever occurs first; or

(2) The parent of the participating student or the participating student, as applicable:

(A) Fails to verify that the participating student's household income meets the requirements of § 49-6-2602(3)(D) according to the schedule and income-verification process developed by the department; or

(B) Verifies, according to the schedule and income-verification process developed by the department, that the participating student's household income does not meet the requirements of § 49-6-2602(3)(D).

(e) A participating student, who is otherwise eligible to return to the student's LEA, may return to the student's LEA at any time after enrolling in the program. Upon a participating student's return to the student's LEA, the student's ESA will be closed and any remaining funds must be returned to the state treasurer to be placed in the Tennessee investment in student achievement formula (TISA) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(f)(1) If a participating student ceases to be a resident of the LEA in which the student resided when the student began participating in the program, then the student's ESA will be closed and any remaining funds must be returned to the state treasurer to be placed in the Tennessee investment in student achievement formula (TISA) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(2) If the parent of a participating student or the participating student, as applicable, fails to verify that the participating student's household income meets the requirements of § 49-6-2602(3)(D) according to the schedule and income-verification process developed by the department, or if the parent of a participating student or the participating student, as applicable, verifies, according to the schedule and income-verification process developed by the department, that the participating student's household income does not meet the requirements of § 49-6-2602(3)(D), then the student's ESA will be closed and any remaining funds must be returned to the state treasurer to be placed in the Tennessee investment in student achievement formula (TISA) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(g) Any funds remaining in a participating student's ESA upon graduation from high school or exiting the program by reaching twenty-two (22) years of age may be used by the student when the student becomes a legacy student to attend or take courses from an eligible postsecondary institution, with qualifying expenses subject to the conditions of subdivision (a)(4).

(h) A participating student's ESA will be closed, and any remaining funds must be returned to the state treasurer to be placed in the Tennessee investment in student achievement formula (TISA) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358, after the first of the following events:

- (1) Upon a legacy student's graduation from an eligible postsecondary institution;
- (2) After four (4) consecutive years elapse immediately after a legacy student enrolls in an eligible postsecondary institution;
- (3) After a participating student or legacy student exits the program and is not enrolled in an eligible postsecondary institution; or
- (4) After a participating or legacy student reaches twenty-two (22) years of age and is not enrolled in an eligible postsecondary institution.

(i) Funds received pursuant to this part:

- (1) Constitute a scholarship provided for use on qualified educational expenses listed in subdivision (a)(4); and
- (2) Do not constitute income of a parent of a participating student under title 67, chapter 2 or any other state law.

(j) A student who is eligible for both the program created under this part and an individualized education account under the Individualized Education Act, compiled in chapter 10, part 14 of this title, may apply for both programs but must only participate and receive assistance from one (1) program.

(k) A participating student is ineligible to participate in a sport sanctioned by an association that regulates interscholastic athletics for the first year in which the student attends a participating school if:

- (1) The participating student attended a Tennessee public school and participated in that sport;
- (2) The student participated in that sport in the year immediately preceding the year in which the participating student enrolled in the participating school; and
- (3) The participating student has not relocated outside the LEA in which the Tennessee public school that the participating student formerly attended is located.

(l) The state board shall adopt rules regarding the spending requirements for ESA funds and the use of any unspent funds, as well as rules providing for determining that a student is no longer participating in the program or that a student's ESA should be closed. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019; 2022 Pub.Acts, c. 966, § 53, eff. July 1, 2023.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

Notes of Decisions (1)

T. C. A. § 49-6-2603, TN ST § 49-6-2603

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated

Title 49. Education

Chapter 6. Elementary and Secondary Education

Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2604

§ 49-6-2604. Establishment of procedures for eligibility, applications, income verification, and participating schools; maximum annual student-participants; enrollment lottery

Effective: May 24, 2019

[Currentness](#)

(a) The department shall establish:

(1) Procedures to determine student eligibility in accordance with the requirements established by this part;

(2)(A) An application form that a parent of a student or a student who has reached eighteen (18) years of age may submit to the department to determine the student's eligibility for an ESA and make the application form readily available on the department's website;

(B) An application process that provides a timeline, before the start of the school year for which an application is being submitted, when a parent of a student, or a student who has reached eighteen (18) years of age, as applicable, must submit an application to participate in the program. If the application is approved, then the student may participate in the program beginning with the school year identified in the application. If a participating student exits the program, then the student's parent, or the student, as applicable, may reapply to participate in the program in accordance with the application process and timeline established by the department under this subdivision (a)(2)(B);

(3) An approval process for a Category I, II, or III private school to become a participating school;

(4) An application form that a Category I, II, or III private school may submit to the department to become a participating school and make the application form readily available on the department's website;

(5) An annual application period for a parent of a student, or a student who has reached eighteen (18) years of age, to apply for the program; and

(6) An income-verification process for a parent of a participating student who is seventeen (17) years of age or younger, or a participating student who has reached eighteen (18) years of age, as applicable, to verify that the participating student's household income meets the requirements of § 49-6-2602(3)(D).

(b) The program shall begin enrolling participating students no later than the 2021-2022 school year.

Document received by the TN Court of Appeals.

(c) The number of participating students enrolled in the program must not exceed:

(1) For the first school year of operation, five thousand (5,000) students;

(2) For the second school year of operation, seven thousand five hundred (7,500) students;

(3) For the third school year of operation, ten thousand (10,000) students;

(4) For the fourth school year of operation, twelve thousand five hundred (12,500) students; and

(5) For the fifth school year of operation, and for each school year thereafter, fifteen thousand (15,000) students.

(d)(1) Notwithstanding subsection (c), if, in the application period for a school year, the number of program applications received by the department does not exceed seventy-five percent (75%) of the maximum number of students that may participate in the program for that school year under subsection (c), then the maximum number of students that may participate in the program for that school year must remain in place for subsequent school years until the number of applications during a subsequent program application period exceeds seventy-five percent (75%) of that maximum number.

(2) Once the number of applications during a subsequent program application period exceeds seventy-five percent (75%) of the maximum number that has remained in place under subdivision (d)(1), then, during the next school year for which an increase is practicable, the maximum number of students that may participate in the program for that school year shall increase to the number of students provided for under subsection (c) that is in excess of the most recent maximum number of students allowed to participate in the program.

(3) This subsection (d) is subject to the caps on the maximum number of students that may participate in the program for a particular school year under subsection (c).

(e) If, in the application period for a school year, the number of program applications received by the department exceeds the maximum number of students that may participate in the program for that school year under subsection (c), then the department shall select students for participation in the program through an enrollment lottery process. Students who participated in the program in the previous school year receive enrollment preference and, as a result, are excluded from entering into an enrollment lottery. If an enrollment lottery is conducted, then enrollment preference must be granted in the following order:

(1) Students who have a sibling participating in the program;

(2) Students zoned to attend a priority school as defined by the state's accountability system pursuant to § 49-1-602;

(3) Students eligible for direct certification under 42 U.S.C. § 1758(b)(4); and

(4) All other eligible students.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education, 2022, 645 S.W.3d 141.](#)>

Notes of Decisions (1)

T. C. A. § 49-6-2604, TN ST § 49-6-2604

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated

Title 49. Education

Chapter 6. Elementary and Secondary Education

Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2605

§ 49-6-2605. Maximum annual amount for a participating student--how computed; program funding; information to be provided concerning the program; fraud reporting service

Effective: July 1, 2023

Currentness

(a) The maximum annual amount to which a participating student is entitled under the program must be equal to the amount representing the per pupil state and local funds generated and required through the TISA for the LEA in which the participating student resides, but must not exceed the combined statewide average of required state and local TISA allocations per pupil. The state board of education may promulgate rules to annually calculate and determine the combined statewide average of required state and local TISA allocations per pupil.

(b)(1) For the purpose of funding calculations, each participating student must be counted in the enrollment figures for the LEA in which the participating student resides. The ESA funds for participating students must be subtracted from the state TISA funds otherwise payable to the LEA. The department shall remit funds to a participating student's ESA on at least a quarterly basis. Any funds awarded under this part are the entitlement of the participating student or legacy student, under the supervision of the participating student's or legacy student's parent if the participating student or legacy student is seventeen (17) years of age or younger.

(2)(A) There is established a school improvement fund to be administered by the department that, for the first three (3) fiscal years in which the program enrolls participating students and subject to appropriation, shall disburse an annual grant to each LEA to be used for school improvement in an amount equal to the ESA amount for participating students under the program who:

(i) Were enrolled in and attended a school in the LEA for the one (1) full school year immediately preceding the school year in which the student began participating in the program; and

(ii) Generate TISA funds for the LEA in the applicable fiscal year that will be subtracted from the state TISA funds payable to the LEA under subdivision (b)(1).

(B)(i) Any balance of unused funds allocated to the program remaining at the end of any of the first three (3) fiscal years of the program must be disbursed as an annual school improvement grant to LEAs that have priority schools as defined by the state's accountability system pursuant to § 49-1-602, but that do not have participating students in the program.

(ii) After the first three (3) fiscal years in which the program enrolls participating students, the department shall disburse any appropriations to the fund established in this subdivision (b)(2) as school improvement grants for programs to support

schools identified as priority schools, as defined by the state's accountability system pursuant to § 49-1-602, for 2021 or any year thereafter.

(3) Any balance in the fund established in subdivision (b)(2) remaining unexpended on the program at the end of any fiscal year after the third fiscal year does not revert to the general fund, but is carried forward for expenditure in subsequent years.

(c) The department shall provide parents of participating students or students, as applicable, with a written explanation of the allowable uses of ESA funds, the responsibilities of parents regarding ESA funds and the parents' participating students, and the department's duties regarding ESA funds and eligible students, participating students, and legacy students.

(d) The department shall post on the department's website a list of participating schools for each school year, the grades taught in each participating school, and any other information that the department determines may assist parents in selecting a participating school.

(e) The department shall strive to ensure that lower-income families and families with students listed under § 49-6-2604(e) are notified of the program and of the eligibility requirements to participate in the program.

(f) The department shall strive to ensure that parents of students with disabilities receive notice that participation in the program has the same effect as a parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1414).

(g) The department shall adopt policies or procedures necessary for the administration of the program, including, but not limited to, procedures for establishing, or contracting for the establishment of, an anonymous online fraud reporting service and telephone hotline, for reporting fraudulent activity related to ESAs, and for conducting or contracting for random, quarterly, or annual review of accounts.

(h) The department may deduct six percent (6%) from the annual ESA award amount to cover the costs of overseeing the funds and administering the program.

(i) The department may contract with a nonprofit organization to administer some or all portions of the program.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

Notes of Decisions (1)

T. C. A. § 49-6-2605, TN ST § 49-6-2605

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated

Title 49. Education

Chapter 6. Elementary and Secondary Education

Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2606

§ 49-6-2606. Annual TCAP tests for participating students; parental satisfaction surveys; annual report; program audits

Effective: May 24, 2019

[Currentness](#)

(a)(1) As a condition of participating in the program, participating students in grades three through eleven (3-11) must be annually administered the Tennessee comprehensive assessment program (TCAP) tests for math and English language arts, or successor tests authorized by the state board of education for math and English language arts.

(2) For participating students enrolled full-time in a participating school, the participating school shall annually administer the tests required in subdivision (a)(1) to participating students.

(3) For participating students seventeen (17) years of age or younger who are not enrolled full-time in a participating school, the participating student's parent must ensure that the participating student is annually administered the tests required in subdivision (a)(1). A participating student who has reached the age of eighteen (18) and who is not enrolled full-time in a participating school must ensure that the participating student is annually administered the tests required in subdivision (a)(1).

(b) The department shall ensure that:

(1) Parents report the participating student's graduation from high school to the department; and

(2) A parental satisfaction survey is created and annually disseminated to parents of participating students that requests the following information:

(A) Parental satisfaction with the program, including parental recommendations, comments, and concerns;

(B) Whether the parent terminated the participating student's participation in the program and the reason for termination;

(C) Methods to improve the effectiveness of the program, including parental recommendations for doing so; and

(D) The number of years the parent's participating student has participated in the program.

Document received by the TN Court of Appeals.

(c) In compliance with all state and federal student privacy laws, beginning at the conclusion of the first fiscal year in which the program enrolls participating students, the department shall produce an annual report that is accessible on the department's website with information about the program for the previous school year. The report must include:

- (1) The number of students participating in the program;
- (2) Participating student performance on annual assessments required by this section, aggregated by LEA and statewide;
- (3) Aggregate graduation outcomes for participating students in grade twelve (12); and
- (4) Results from the parental satisfaction survey required in subdivision (b)(2).

(d) In compliance with all state and federal student privacy laws, the program is subject to audit by the comptroller of the treasury or the comptroller's designee no later than the first fiscal year in which the program enrolls participating students and annually thereafter. The audit may include a sample of ESAs to evaluate the eligibility of the participating students, the funds deposited in the ESAs, and whether ESA funds are being used for authorized expenditures. The audit may also include an analysis of the department's ESA monitoring process and the sufficiency of the department's fraud protection measures. The department shall cooperate fully with the comptroller of the treasury or the comptroller's designee in the performance of the audit. The audit must be made available to the members of the general assembly.

(e)(1) Data from the Tennessee comprehensive assessment program (TCAP) tests, or successor tests authorized by the state board of education, that are annually administered to participating students in grades three through eleven (3-11) pursuant to subsection (a) must be used to determine student achievement growth, as represented by the Tennessee Value-Added Assessment System (TVAAS), developed pursuant to chapter 1, part 6 of this title, for participating schools.

(2) The department shall, in compliance with all state and federal student privacy laws, make the TVAAS score of each participating school publicly available on the department's website.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

Notes of Decisions (1)

T. C. A. § 49-6-2606, TN ST § 49-6-2606

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated

Title 49. Education

Chapter 6. Elementary and Secondary Education

Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2607

§ 49-6-2607. Verifying use of ESA funds and documenting compliance; refunds, rebates, or sharing of funds; ensuring safe, equitable treatment of participating students; school records of participating student to be provided to participating school

Effective: May 24, 2019

Currentness

- (a) ESA funds shall only be used for the expenses listed in § 49-6-2603(a)(4).
- (b) The department shall establish and maintain separate ESAs for each participating student and shall verify that the uses of ESA funds are permitted under § 49-6-2603(a)(4) and institute fraud protection measures. Use of ESA funds on tuition and fees, computer hardware or other technological devices, tutoring services, educational therapy services, summer education programs and specialized afterschool education programs, and any other expenses identified by the department must be preapproved by the department. Preapproval shall be requested by completing and submitting the department's preapproval form. The department shall develop processes to effectuate this subsection (b).
- (c) To document compliance with subsection (a), participating schools, providers, and eligible postsecondary institutions shall provide parents of participating students or participating students, as applicable, with a receipt for all expenses paid to the participating school, provider, or eligible postsecondary institution using ESA funds.
- (d) A participating school, provider, or eligible postsecondary institution shall not, in any manner, refund, rebate, or share funds from an ESA with a parent of a participating student or a participating student. The department shall establish a process for funds to be returned to an ESA by a participating school, provider, or eligible postsecondary institution.
- (e) To ensure the safety and equitable treatment of participating students, participating schools shall:
- (1) Comply with all state and federal health and safety laws applicable to nonpublic schools;
 - (2) Certify that the participating school will not discriminate against participating students or applicants on the basis of race, color, or national origin;
 - (3) Comply with § 49-5-202;
 - (4) Conduct criminal background checks on employees; and

Document received by the TN Court of Appeals.

(5) Exclude from employment:

(A) Any person who is not permitted by state law to work in a nonpublic school; and

(B) Any person who might reasonably pose a threat to the safety of students.

(f) An LEA shall provide a participating school that has admitted a participating student with a complete copy of the participating student's school records in the LEA's possession to the extent permitted by state and federal student privacy laws.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

Notes of Decisions (1)

T. C. A. § 49-6-2607, TN ST § 49-6-2607

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated

Title 49. Education

Chapter 6. Elementary and Secondary Education

Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2608

§ 49-6-2608. Suspension or termination of participating students or participating schools or providers; unauthorized use of ESA funds; restitution; fraud; funds remaining in an ESA that is closed; promulgation of rules and regulations

Effective: July 1, 2023

Currentness

(a)(1) The department may suspend or terminate a participating school's or provider's participation in the program if the department determines that the participating school or provider has failed to comply with the requirements of this part.

(2) The state board shall promulgate rules allowing the department to suspend or terminate a participating school's participation in the program due to low academic performance, as determined by the department.

(3) If the department suspends or terminates a participating school's or provider's participation under this subsection (a), then the department shall notify affected participating students and the parents of participating students of the decision. If a participating school's or provider's participation in the program is suspended or terminated, or if a participating school or provider withdraws from the program, then affected participating students remain eligible to participate in the program.

(b) The department may suspend or terminate a participating student from the program, or close a legacy student's ESA, if the department determines that the participating student's or legacy student's parent or the participating student or legacy student has failed to comply with the requirements of this part. If the department terminates a participating student's or legacy student's participation in the program, then the department shall close the participating student's or legacy student's ESA.

(c) A parent of a participating student, a participating student, a legacy student, or any other person who uses the funds deposited in a participating student's ESA for expenses that do not constitute one (1) or more of the qualified expenses listed in § 49-6-2603(a)(4), or a parent of a participating student, a participating student, a legacy student, or any other person who misrepresents the nature, receipts, or other evidence of any expenses paid by the parent of a participating student, by a participating student, or by a legacy student is liable for restitution to the department in an amount equal to the amount of such expenses.

(d) If a person knowingly uses ESA funds for expenses that do not constitute one (1) or more of the qualified expenses listed in § 49-6-2603(a)(4) with the intent to defraud the program or knowingly misrepresents the nature, receipts, or other evidence of any expenses paid with the intent to defraud the program, then the department may refer the matter to the appropriate enforcement authority for criminal prosecution.

(e) Any funds remaining in an ESA that is closed in accordance with subsection (b) must be returned to the state treasurer to be placed in the Tennessee investment in student achievement formula (TISA) account of the education trust fund of 1992 under §§ 49-3-357 and 49-3-358.

(f) The state board shall promulgate rules to effectuate this section, including rules to establish a process for a participating school's, provider's, participating student's, or legacy student's suspension or termination from the program. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019; 2022 Pub.Acts, c. 966, § 56, eff. July 1, 2023.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

Notes of Decisions (1)

T. C. A. § 49-6-2608, TN ST § 49-6-2608

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated
Title 49. Education
Chapter 6. Elementary and Secondary Education
Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2609

§ 49-6-2609. Autonomy of participating schools or providers

Effective: May 24, 2019

[Currentness](#)

- (a) A participating school or provider is autonomous and not an agent of this state.
- (b) The creation of the ESA program does not expand the regulatory authority of this state, the officers of this state, or an LEA to impose any additional regulation of participating schools or providers beyond the rules and regulations necessary to enforce the requirements of the program.
- (c) This state gives participating schools and providers maximum freedom to provide for the educational needs of participating students without governmental control. Neither a participating school nor a provider is required to alter its creed, practices, admissions policies, or curriculum in order to accept participating students, other than as is necessary to comply with the requirements of the program.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

[Notes of Decisions \(1\)](#)

T. C. A. § 49-6-2609, TN ST § 49-6-2609

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

West's Tennessee Code Annotated
Title 49. Education
Chapter 6. Elementary and Secondary Education
Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2610

§ 49-6-2610. Promulgation of rules

Effective: May 24, 2019

[Currentness](#)

The state board is authorized to promulgate rules to effectuate the purposes of this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

Notes of Decisions (1)

T. C. A. § 49-6-2610, TN ST § 49-6-2610

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated

Title 49. Education

Chapter 6. Elementary and Secondary Education

Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2611

§ 49-6-2611. Legislative intent; evaluating program effectiveness; severability; local boards of education

Effective: May 24, 2019

Currentness

(a)(1) The general assembly recognizes this state's legitimate interest in the continual improvement of all LEAs and particularly the LEAs that have consistently had the lowest performing schools on a historical basis. Accordingly, it is the intent of this part to establish a pilot program that provides funding for access to additional educational options to students who reside in LEAs that have consistently and historically had the lowest performing schools.

(2)(A) On January 1 following the third fiscal year in which the program enrolls participating students, and every January 1 thereafter, the office of research and education accountability (OREA), in the office of the comptroller of the treasury, shall provide a report to the general assembly to assist the general assembly in evaluating the efficacy of the program. The report must include, in compliance with all state and federal student privacy laws:

- (i) The information contained in the department's annual report prepared pursuant to § 49-6-2606(c);
- (ii) Academic performance indicators for participating students in the program including, but not limited to, data generated from the tests administered to participating students pursuant to § 49-6-2606(a)(1);
- (iii) Audit reports prepared by the comptroller of the treasury or the comptroller's designee pursuant to § 49-6-2606(d);
- (iv) A list of the LEAs that meet the requirements of § 49-6-2602(3)(C)(i) for the most recent year in which the department collected such information; and
- (v) Recommendations for legislative action if, based upon the list provided pursuant to subdivision (a)(2)(A)(iv), the LEAs with students who are eligible to participate in the program under § 49-6-2602(3)(C)(i) is no longer consistent with the intent described in subdivision (a)(1).

(B) The department shall assist the OREA in its preparation of the report required under this subdivision (a)(2).

(C) The OREA's initial report to the general assembly under this subdivision (a)(2) must include the information outlined in subdivisions (a)(2)(A)(i)-(iii) for each of the three (3) preceding school years in which the program enrolled participating students.

(b) If any provision of this part or this part's application to any person or circumstance is held invalid, then the invalidity must not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to that end the provisions of this part are severable.

(c) Notwithstanding subsection (b), if any provision of this part is held invalid, then the invalidity shall not expand the application of this part to eligible students other than those identified in § 49-6-2602(3).

(d) A local board of education does not have authority to assert a cause of action, intervene in any cause of action, or provide funding for any cause of action challenging the legality of this part.

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

Notes of Decisions (1)

T. C. A. § 49-6-2611, TN ST § 49-6-2611

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated
Title 49. Education
Chapter 6. Elementary and Secondary Education
Part 26. Tennessee Education Savings Account Pilot Program

T. C. A. § 49-6-2612

§ 49-6-2612. State or local public benefit

Effective: May 24, 2019

[Currentness](#)

An education savings account is a state or local public benefit under [§ 4-58-102](#).

Credits

2019 Pub.Acts, c. 506, § 1, eff. May 24, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see [Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education](#), 2022, 645 S.W.3d 141.>

Notes of Decisions (1)

T. C. A. § 49-6-2612, TN ST § 49-6-2612

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated
Title 49. Education
Chapter 3. Finances
Part 1. Tennessee Investment in Student Achievement Act

T. C. A. § 49-3-103

§ 49-3-103. Tennessee investment in student achievement formula established

Effective: July 1, 2023

[Currentness](#)

(a) The Tennessee investment in student achievement formula (TISA) is a student-based funding formula established as the system for funding education for kindergarten through grade twelve (K-12) public schools. The TISA is established to support the following goals:

- (1) Empowering each student to read proficiently by third grade and each grade thereafter;
- (2) Preparing each high school graduate to succeed in the postsecondary program or career of the graduate's choice; and
- (3) Providing each student with the resources needed to succeed, regardless of the student's individual circumstances.

(b) The department shall implement the TISA beginning with the 2023-2024 school year.

(c) The funding described in this part must be allocated in accordance with this part and with rules promulgated by the department in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) By July 1, 2023, and by each July 1 thereafter, the department shall create and publish a TISA guide outlining the department's procedures for administering the TISA. At a minimum, the TISA guide must:

- (1) Identify the data that the department must receive from each LEA for purposes of administering the TISA;
- (2) Explain how and when the data identified pursuant to subdivision (d)(1) must be submitted to the department;
- (3) Explain how an LEA may dispute an alleged error in an allocation made to the LEA;
- (4) State that pursuant to [§ 49-3-108\(h\)](#), the comptroller shall not approve a local government budget that fails to include the local contribution; and

(5) Identify each LEA that qualifies as a sparse district or a small district.

Credits

2022 Pub.Acts, c. 966, § 1, eff. July 1, 2023.

T. C. A. § 49-3-103, TN ST § 49-3-103

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated
Title 49. Education
Chapter 3. Finances
Part 1. Tennessee Investment in Student Achievement Act

T. C. A. § 49-3-104

§ 49-3-104. Definitions

Effective: July 1, 2023

[Currentness](#)

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

- (1) “Average daily membership” or “ADM” means the sum of the total number of days a student is enrolled divided by the number of days school is in session during this period;
- (2) “Base funding amount” means the uniform dollar amount that each student generates towards the student's funding allocation in a given year;
- (3) “Baseline funding amount” means:
 - (A) The basic education program allocations an LEA received in the 2022--2023 school year;
 - (B) The coordinated school health grant allocations an LEA received in the 2022--2023 school year;
 - (C) The family resource center grant allocations an LEA received from the department in the 2022--2023 school year; and
 - (D) The school safety grant allocations an LEA received in the 2022--2023 school year;
- (4) “Career and technical program” means a coordinated, non-duplicative sequence of academic and technical content that:
 - (A) Incorporates challenging state academic standards;
 - (B) Addresses academic and technical knowledge and skills, including employability skills;
 - (C) Is aligned with the needs of industries in the economy of the state, region, or local area;

- (D) Progresses in specificity, beginning with all aspects of an industry or career cluster and leading to more occupation-specific instruction, including early postsecondary instruction;
 - (E) Has multiple entry and exit points that incorporate credentialing;
 - (F) Culminates in the attainment of a recognized credential; and
 - (G) Is established and categorized into one (1) of three (3) levels by the department, as provided in the department's rules, based on the additional resources required to support the program and the wage-earning potential for students participating in the program;
- (5) “Commissioner” means the commissioner of education;
 - (6) “Concentrated poverty” means that a student is a member in a school that is eligible for Title I schoolwide designation;
 - (7) “Department” means the department of education;
 - (8) “Direct allocation” means an allocation in addition to the base funding amount for a student expressed as a flat dollar amount;
 - (9) “Distribution period” means the period for which the department distributes funds pursuant to a distribution schedule established pursuant to [§ 49-3-108](#);
 - (10) “Economically disadvantaged” means, as defined in Tennessee's Every Student Succeeds Act (ESSA) plan established pursuant to the federal Every Student Succeeds Act ([20 U.S.C. § 6301 et seq.](#)), a homeless, foster, runaway, or migrant student or a student eligible for free or reduced-price school meals or milk through the direct certification eligibility guidelines established pursuant to [42 U.S.C. §§ 1751-1769](#);
 - (11) “Existing educator” means an individual who is evaluated pursuant to [§ 49-1-302\(d\)\(2\)](#) and who provides direct service to students at school sites;
 - (12) “Fiscal capacity” means the percentage of the local share that a county must contribute;
 - (13) “Fiscal capacity calculation” means the formula evaluated by the comptroller of the treasury and approved by the state board that determines fiscal capacity as the average of the fiscal capacity estimates generated by the formula established by the Boyd Center for Business and Economic Research at the University of Tennessee and the formula established by the Tennessee advisory commission on intergovernmental relations;
 - (14) “Local contribution” means the dollar amount of local funds that a local government must pay toward the local share;

(15) “Local education agency” or “LEA” means a county, city, or special school district, unified school district, school district of a metropolitan form of government, or another school system established by law;

(16) “Membership” means a student is enrolled and assigned to a class;

(17) “Postsecondary readiness assessment” means the assessment required pursuant to § 49-6-6001(b);

(18) “Small district” means an LEA with a membership of one thousand (1,000) or fewer students;

(19) “Sparse district” means a county LEA located in a county with fewer than twenty-five (25) students per square mile;

(20) “State board” means the state board of education;

(21) “TCAP” means the Tennessee comprehensive assessment program;

(22) “Tennessee investment in student achievement formula” or “TISA” means the student-based funding formula established pursuant to this part that consists of student-generated funding allocations pursuant to §§ 49-3-105 and 49-3-106;

(23) “Unique learning need” means a learning need for which an LEA must provide the student individualized services, interventions, accommodations, or modifications to meet the student's need pursuant to § 49-1-229, § 49-10-108, the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), or the state board's rules for English as a second language programs, that are documented in a written plan and provided in accordance with § 49-1-229, § 49-10-108, the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), or the state board's rules for English as a second language programs, as applicable, and that are established and categorized into ten (10) levels by the department, as provided in the department's rules, based on the level of additional resources necessary to manage the unique learning need. “Unique learning needs” include, but are not limited to, disabilities, characteristics of dyslexia, giftedness, or limited English proficiency. A student may have multiple unique learning needs, including multiple unique learning needs of different levels or of the same level; and

(24) “Weighted allocation” means an allocation in addition to the base funding amount for a student that is expressed as a percentage of the base funding amount.

Credits

2022 Pub.Acts, c. 966, § 1, eff. July 1, 2023.

T. C. A. § 49-3-104, TN ST § 49-3-104

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated
Title 49. Education
Chapter 3. Finances
Part 1. Tennessee Investment in Student Achievement Act

T. C. A. § 49-3-105

§ 49-3-105. Base funding; weighted allocations; direct allocations

Effective: July 1, 2023

[Currentness](#)

(a) Each student generates a funding allocation that includes the following:

- (1) The base funding amount;
- (2) Weighted allocations for which the individual student satisfies the criteria established in subsection (b); and
- (3) Direct allocations for which the individual student satisfies the criteria established in subsection (c).

(b) A student generates weighted allocations, none of which is mutually exclusive of another, as follows:

- (1) The weighted allocation for a student who is economically disadvantaged is twenty-five percent (25%);
- (2) The weighted allocation for a student who experiences concentrated poverty is five percent (5%);
- (3) The weighted allocation for a student who resides in a small district is five percent (5%);
- (4) The weighted allocation for a student who resides in a sparse district is five percent (5%); and
- (5) The department shall establish and categorize unique learning needs into ten (10) levels by rule based on the additional resources required to support each unique learning need. Before the department categorizes unique learning needs by rule, the department shall submit the proposed categorizations to the state board. The state board shall issue a positive, neutral, or negative recommendation for the proposed categorizations. The state board's recommendation for the proposed categorizations must be included in the filing of the rule with the office of the secretary of state. A student generates a weighted allocation for each of the student's unique learning needs as follows:
 - (A) The weighted allocation for a level one (1) unique learning need is fifteen percent (15%);

- (B) The weighted allocation for a level two (2) unique learning need is twenty percent (20%);
 - (C) The weighted allocation for a level three (3) unique learning need is forty percent (40%);
 - (D) The weighted allocation for a level four (4) unique learning need is sixty percent (60%);
 - (E) The weighted allocation for a level five (5) unique learning need is seventy percent (70%);
 - (F) The weighted allocation for a level six (6) unique learning need is seventy-five percent (75%);
 - (G) The weighted allocation for a level seven (7) unique learning need is eighty percent (80%);
 - (H) The weighted allocation for a level eight (8) unique learning need is one hundred percent (100%);
 - (I) The weighted allocation for a level nine (9) unique learning need is one-hundred twenty-five percent (125%); and
 - (J) The weighted allocation for a level ten (10) unique learning need is one-hundred fifty percent (150%).
- (c) The department shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to set the direct allocation amounts generated pursuant to this subsection (c). Before the department begins the rulemaking process, the department shall submit the proposed direct allocation amounts to the state board. The state board shall issue a positive, neutral, or negative recommendation for the proposed direct allocation amounts. The state board's recommendation for the proposed direct allocation amounts must be included in the filing of the rule with the office of the secretary of state. Direct allocation amounts are generated for the following students:
- (1) A rising fourth grade student who is determined to not be proficient in English language arts (ELA) based on the student achieving a performance level rating of “below” or “approaching” on the ELA portion of the student's most recent TCAP test;
 - (2)(A) A student assigned to the first year of a level one (1) career and technical program;
 - (B) A student assigned to the second year of a level one (1) career and technical program;
 - (C) A student assigned to the third year of a level one (1) career and technical program;
 - (D) A student assigned to the fourth year of a level one (1) career and technical program;
 - (E) A student assigned to the first year of a level two (2) career and technical program;

- (F) A student assigned to the second year of a level two (2) career and technical program;
 - (G) A student assigned to the third year of a level two (2) career and technical program;
 - (H) A student assigned to the fourth year of a level two (2) career and technical program;
 - (I) A student assigned to the first year of a level three (3) career and technical program;
 - (J) A student assigned to the second year of a level three (3) career and technical program;
 - (K) A student assigned to the third year of a level three (3) career and technical program; and
 - (L) A student assigned to the fourth year of a level three (3) career and technical program;
- (3)(A) A junior or senior in high school who has not previously taken a postsecondary readiness assessment; and
- (B) A junior or senior in high school who has previously taken a postsecondary readiness assessment, but only once;
- (4) A student in any of the grades kindergarten through three (K-3); and
- (5) A student who attends a public charter school.
- (d) The funding that a student generates pursuant to this section must be administered and allocated by the department to the LEA in which the student is a member for the duration of the student's membership in the LEA, except that the funding a student generates pursuant to subdivision (c)(3) shall not be allocated to the LEA, but must be maintained by the department. A student's membership in an LEA begins on the first day of the student's membership and ends on the last day of the student's membership in the LEA, except that the membership of a student who graduates early is extended to the student's expected graduation date for funding purposes.
- (e) A portion of any annual increase in the base funding amount may be restricted by act of the general assembly for the sole purpose of providing salary increases to existing educators. If a portion of an annual increase in the base funding amount is restricted pursuant to this subsection (e), then an LEA or public charter school must use the portion restricted to provide salary increases to existing educators. The state board shall increase the minimum salary on the state salary schedule, as appropriate, based on the amount of funds restricted for salary increases, if any.
- (f) Funding allocations made pursuant to this section are based on data collected for an LEA during the immediately preceding school year.

Credits

2022 Pub.Acts, c. 966, § 1, eff. July 1, 2023.

T. C. A. § 49-3-105, TN ST § 49-3-105

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Document received by the TN Court of Appeals.

West's Tennessee Code Annotated

Title 49. Education

Chapter 3. Finances

Part 1. Tennessee Investment in Student Achievement Act

T. C. A. § 49-3-106

§ 49-3-106. Student outcome incentives

Effective: July 1, 2023

Currentness

(a) Subject to available appropriations, the department shall allocate student-generated outcome incentive dollars to an LEA based on the achievement of member students in the LEA's public schools.

(b) An LEA may receive student-generated outcome incentive dollars if the member students in the LEA's public schools achieve the outcome goals established by the department. The department shall establish outcome goals by rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Before the department begins the rulemaking process, the department shall submit the proposed outcome goals to the state board. The state board shall issue a positive, neutral, or negative recommendation for the proposed outcome goals. The state board's recommendation for the proposed outcome goals must be included in the filing of the rule with the office of the secretary of state.

(c) The department shall allocate available appropriations for student-generated outcome incentive dollars to LEAs in direct proportion to the number of outcome incentive dollars generated by students who are members in each of the LEA's public schools, relative to the total number of outcome incentive dollars generated by all Tennessee public school students.

(d) Funding allocations made pursuant to subsections (a)-(c) are based on the data collected for the LEA during the immediately preceding school year.

(e) Funds allocated pursuant to this part that remain unexpended at the end of a fiscal year shall not revert to the general fund but must be used to supplement future allocations of outcome incentive dollars pursuant to this section.

(f) The commissioner shall convene a group of individuals with relevant experience or expertise to advise the commissioner regarding outcome incentive dollars and outcome goals. The group must consist of:

(1) Three (3) directors of schools, one (1) selected from an LEA located:

(A) In an urban area in this state;

(B) In a suburban area in this state; and

Document received by the TN Court of Appeals.

- (C) In a rural area in this state;
- (2) One (1) teacher;
- (3) The chair of the:
 - (A) Education committee of the senate;
 - (B) Education administration committee of the house of representatives; and
 - (C) Education instruction committee of the house of representatives;
- (4) The chair of the state board of education;
- (5) One (1) parent of a student enrolled in a Tennessee public school;
- (6) One (1) resident of this state;
- (7) One (1) private business leader in this state; and
- (8) One (1) member of a local school board.

Credits

2022 Pub.Acts, c. 966, § 1, eff. July 1, 2023.

T. C. A. § 49-3-106, TN ST § 49-3-106

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

West's Tennessee Code Annotated
Title 49. Education
Chapter 3. Finances
Part 1. Tennessee Investment in Student Achievement Act

T. C. A. § 49-3-109

§ 49-3-109. State and local contributions; determination of fiscal capacity

Effective: July 1, 2023

Currentness

(a) The state shall provide:

(1) Seventy percent (70%) of the total funding allocation that students generate pursuant to § 49-3-105(a)(1) and (a)(2); and

(2) One hundred percent (100%) of:

(A) The total funding allocation that students generate pursuant to § 49-3-105(a)(3);

(B) The total funding allocation that students generate pursuant to § 49-3-106; and

(C) The total funding allocated pursuant to § 49-3-107.

(b) The local share, which must be paid with local government funds, is the remaining thirty percent (30%) of the total funding allocation that students funded by a local government generate pursuant to § 49-3-105(a)(1) and (a)(2).

(c) Each county's fiscal capacity must be determined pursuant to the fiscal capacity calculation no later than May 1 immediately preceding the school year for which students generate the total funding allocation. The annual fiscal capacity calculation, including the underlying data and the determination for each county, must be reported publicly. The fiscal capacity of a county for a school year shall not be revised after its fiscal capacity has been determined for that school year.

(d) A county's local contribution is calculated by multiplying the county's fiscal capacity by the local share. Each local government's local contribution must be proportional to the funding allocation that students generate in the local government's jurisdiction pursuant to § 49-3-105(a)(1) and (a)(2).

(e) The intent of the general assembly is to provide funding on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenues.

(f) If a local government fails to approve a budget that includes the local government's local contribution and maintenance of effort obligations by October 1, then the commissioner shall not distribute TISA funds to the LEA until the local government approves a budget that includes such obligations.

(g) This part and § 49-3-314(c) establish the minimum education funding that a local government must contribute. This part does not prohibit or limit a local government from contributing more than the local contribution required in subsection (b).

Credits

2022 Pub.Acts, c. 966, § 1, eff. July 1, 2023.

T. C. A. § 49-3-109, TN ST § 49-3-109

Current with laws from the 2023 Regular Sess. and 1st Extraordinary Sess. of the 113th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.