IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, et al.,
Plaintiffs / Appellees,

v.

TENNESSEE DEPARTMENT OF EDUCATION, et al.,
Defendants / Appellants,

NATU BAH, et al.,
Intervenor-Defendants / Appellants.

No. M2020-00683-COA-R9-CV

ON APPEAL FROM THE ORDER OF THE CHANCERY COURT FOR DAVIDSON COUNTY NO. 20-0143-II

JOINT BRIEF OF INTERVENOR-DEFENDANTS / APPELLANTS BAH, DIALLO, BRUMFIELD, AND DAVIS

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QUESTION PRESENTED FOR REVIEW

Intervenor-Defendants / Appellants Natu Bah, Builguissa Diallo, Bria Davis, and Star Brumfield ("Parents"),[1] all of whom have children eligible to participate in the Tennessee Education Savings Account Pilot Program, Tenn. Code Ann. §§ 49-6-2601–2612 ("ESA Pilot Program" or "Pilot Program"), jointly present one question[2] for this Court's review:

I. Does the ESA Pilot Program violate Article XI, Section 9 of the Tennessee Constitution?

STATEMENT OF THE CASE

Plaintiffs, two county governments and a local board of education, sued the Tennessee Department of Education and a host of state officials ("State-Defendants"), alleging that the ESA Pilot Program is unconstitutional. (T.R. 1, Metro Compl.) The ESA Pilot Program offers low- and middle-income parents whose children attend underperforming schools in school districts that meet certain criteria the opportunity to send their children to a private school that better fits their children's needs. Because the Pilot Program provides benefits to parents with children assigned to these school districts, Plaintiffs allege that it violates

[1] The chancery court also permitted another set of parties to intervene in the case and defend the ESA Pilot Program: Greater Praise Christian Academy, Sensational Enlightenment Academy Independent School, Ciera Calhoun, Alexandria Medlin, and David Wilson, Sr. ("Greater Praise Intervenor-Defendants"). (T.R. 382, Agreed Order)

[2] Although the Court of Appeals granted review on a second question involving the Metropolitan Board of Education's standing, Parents did not address the party's standing in their briefing below and decline to do so here.

Article XI, Section 9 of the Tennessee Constitution ("Home Rule Amendment").

Plaintiffs alleged the ESA Pilot Program violated the Tennessee Constitution in three ways. First, that it violated the Home Rule Amendment. Second, that it violated the Equal Protection Clauses in Article I, Section 8 and Article XI, Section 8. Third, that it violated the General Assembly's mandate to establish a system of public education providing substantially equal educational opportunities to all students under Article XI, Section 12. (T.R. 35–42, Metro Compl.)

Parents, intervenor-defendants below, moved for judgment on the pleadings on each of Plaintiffs' claims under Tennessee Rule of Civil Procedure 12.03. (T.R. 673, Mot. J. Pleadings) Parents argued, *inter alia*, that the ESA Pilot Program did not violate the Home Rule Amendment.[3] (T.R. 685–90, Mem. of Law Supp. Mot. J. Pleadings) Plaintiffs filed a partial motion for summary judgment contending that the Pilot Program violated the Home Rule Amendment as a matter of law. (T.R. 448, Pls.' Mot. Summ. J.)

On May 4, 2020, after hearing oral argument on all the parties' dispositive motions (T.R. Vol. X–XII, XIV–XV, 4/29/20 Hearing Transcript), the chancery court granted Plaintiffs' Motion for Summary Judgment on their Home Rule Amendment claim, partially denying Parents' Joint Motion for Judgment on the Pleadings as to the same claim, and dismissing the Metropolitan Nashville Board of Education as

[3] The State-Defendants and the Greater Praise Intervenor-Defendants also filed dispositive motions. (T.R. 415, State-Defendants' Mot. Dismiss; T.R. 386, Greater Praise Intervenor-Defendants' Mot. Dismiss)

a party for lack of standing. (T.R. 1097, Metro Mem. and Order) In its order, the chancery court enjoined further implementation of the Pilot Program and took under advisement the parties' remaining arguments on Plaintiffs' Equal Protection and Education Clause claims, pending the outcome of this appeal. (T.R. 1127, Metro Mem. and Order)

To expedite the appellate process, the chancery court sua sponte granted Defendants permission to appeal pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure. Specifically, the court found that "this is a matter appropriate for interlocutory and expedited appellate consideration. It is a matter of significant public interest that is extremely time sensitive . . . ." (T.R. 1126, Metro Mem. and Order) On May 6, 2020, Parents applied for interlocutory review in the Tennessee Court of Appeals under Rule 9 of the Tennessee Rules of Appellate Procedure. *See* Int.-Defs.' TRAP 9 Application (filed May 6, 2020). The Plaintiffs responded to the Rule 9 application on May 18, 2020. *See* Pls.' Resp. in Opp. to State and Int.-Defs.' TRAP 9 Applications (filed May 18, 2020).

This Court granted Parents' application for review on May 19, 2020, along with the applications of State-Defendants and the Greater Praise Intervenor-Defendants, and declined to stay the chancery court's judgment pending resolution of the appeal. (T.R. 1230, Appeal Order). Parents also filed a motion on May 20, 2020, asking the Tennessee Supreme Court to assume jurisdiction, and the Court denied the motion on June 4, 2020.

STATEMENT OF FACTS

The Tennessee General Assembly created the ESA Pilot Program to improve the educational opportunities for children zoned to attend schools in local education agencies (LEAs), commonly referred to as school districts, that have "consistently had the lowest performing schools on a historical basis" and met certain performance criteria. Tenn. Code Ann. § 49-6-2611(a)(1). An LEA is "any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly." Tenn. Code Ann. § 49-1-103(2).

An eligible child is, among other things, a Tennessee resident who:

- 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 the federal free and reduced lunch program; and
- Is zoned to attend a school in an LEA, excluding the achievement school district (ASD), with ten or more schools:
    - Identified as priority schools in 2015, as defined by the state's accountability system under § 49-1-602;
    - Among the bottom ten percent (10%) of schools, as identified by the department in 2017 in accordance with § 49-1-602(b)(3); and
    - Identified as priority schools in 2018, as defined by the state's accountability system under § 49-1-602.
- A child zoned to attend a school in the ASD on May 24, 2019 is also eligible if their family meets the income requirement noted above.

Plaintiffs are the Metropolitan Government of Nashville and Davidson County ("Metro"), Shelby County Government ("Shelby"), and Metropolitan Nashville Board of Public Education ("Metro Board"). Plaintiffs asserted in several counts that the Pilot Program violated provisions of the Tennessee Constitution (the Home Rule Amendment, the Equal Protection Clauses, and the Education Clause). (T.R. 1, Metro Compl.)

The chancery court permitted Parents to intervene in the case to defend the constitutionality of the ESA Pilot Program. (T.R. 382, Agreed Order) Without the Pilot Program, Parents will be forced to re-enroll their children in their current assigned public schools where they face verbal and emotional abuse, (T.R. 1140–42, Bah Aff. Supp. Mot. to Stay ¶¶ 7–8, 14–15; T.R. 1144, Davis Aff. Supp. Mot. to Stay ¶¶ 7–9), where they regularly encounter violence (T.R. 1146, Brumfield Aff. Supp. Mot. to Stay ¶¶ 7–9), and where their academics will continue to suffer. (T.R. 1140, Bah Aff. Supp. Mot. to Stay, ¶¶ 4–6; T.R. 1148, Diallo Aff. Supp. Mot. to Stay ¶¶ 4–6).

SUMMARY OF ARGUMENT

The chancery court's ruling is unprecedented, erroneous, and reflects a radical departure from Tennessee law. It applies the Home Rule Amendment to deny a State benefit to Tennesseans that the State does not require Plaintiff counties to fund or provide. The General Assembly enacted the ESA Pilot Program to directly aid children assigned to some of the Tennessee's worst-performing school districts—something fully within its discretion. The Pilot Program is not applicable to Plaintiff counties at all, let alone in their governmental or proprietary capacities

as required to trigger the Amendment. Indeed, Plaintiffs are two steps removed from the process entirely. The ruling below, however, departs from the text of the Home Rule Amendment and the decades of case law interpreting it. Simply, direct aid to Tennesseans like the ESA Pilot Program cannot be invalidated by the Home Rule Amendment. Thus, this Court should reverse, vacate the chancery court's injunction, and remand the case for further proceedings.

STANDARD OF REVIEW

The issues raised here are questions of law subject to de novo review, and the Court owes no presumption of correctness to the trial court's decision. *See 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 Cty.*, 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

The chancery court erred in holding that the ESA Pilot Program violates the Home Rule Amendment, and this Court should reverse its ruling. In Part I, Parents show how the Pilot Program was enacted to provide benefits directly to children and parents using State funds. Parents also explain why the General Assembly is fully within its power

to accomplish this goal, and how the Plaintiffs are two steps removed from the individual educational choices made by the program's intended beneficiaries: parents and their children. Next, in Part II, Parents show why the Home Rule Amendment is not triggered when the General Assembly chooses to provide direct aid to Tennesseans, why the ESA Pilot Program does not apply to Plaintiff counties, let alone in their "governmental or . . . proprietary capacity," *see* Tenn. Const. art. XI, § 9, and why the ruling below conflicts the text of the Home Rule Amendment, decades of jurisprudence, and Plaintiffs' own charters.

I. The ESA Pilot Program Is A Direct Benefit to Parents and Children That Utilizes State Funds.

The ESA Pilot Program provides educational benefits directly to Tennessee children who would otherwise have little choice but to attend some of Tennessee's worst public schools. The General Assembly opted to fund the Pilot Program by converting an indirect benefit provided to children through their assigned school district to a direct benefit delivered straight to the children and their parents. Since school districts are "mere instrumentalities of the State," it is squarely within the General Assembly's power to redirect education funding to the students who reside within the districts. And Plaintiffs cannot use their mere association with certain LEAs to prevent a State-created benefit from being delivered to individual Tennesseans. The chancery court's ruling impermissibly interposes counties between Tennesseans and the General Assembly, and does so in an area—education—where the State possesses broad discretion.

A. The ESA Pilot Program Is a Direct Benefit that Provides Educational Options for Tennessee Children Assigned to Some of the State's Worst Public Schools.

The ESA Pilot Program provides a direct benefit to low- and middle-income families in the form of a modest scholarship that their children can use to attend a private school of their choice.[4] By providing this lifeline directly to children and their parents, the General Assembly ensured that students assigned to poorly performing public schools would have "funding for access to additional educational options" that they otherwise would be unable to afford. Tenn. Code Ann. § 49-6-2611.

The beneficiaries of the Pilot Program are well-suited to receive an ESA: they are desperately in need of an alternative to their assigned public school but cannot afford one. To be eligible for the Pilot Program, the beneficiary must be a member of a household with an income that does not exceed twice the federal guidelines for the national school lunch program. Tenn. Code Ann. § 49-6-2602(3)(D). The beneficiary must be assigned to a public school in one of the Local Education Agencies (LEAs) that have "consistently had the lowest performing schools on a historical basis." Tenn. Code Ann. § 49-6-2611. The beneficiary must reside in an LEA that had at least ten schools ranked in the bottom 10 percent of all Tennessee schools in 2017 and that were considered priority schools in the statutorily mandated years of 2015 and 2018. Tenn. Code Ann. § 49-6-2602(3)(C). "Priority schools" include "the bottom five percent (5%) of

[4] Under the ESA Pilot Program, eligible students receive an ESA containing funds for a wide array of eligible educational expenses, including tuition, textbooks, and tutoring services. Tenn. Code Ann. § 49-6-2603(a)(4)(A)–(L).

schools in performance, all public high schools failing to graduate one-third (1/3) or more of their students, and schools with chronic[]" student performance issues even "after receiving additional targeted support" from the State. Tenn. Code Ann. § 49-1-602(b)(2). In other words, the ESA Pilot Program is precisely tailored to directly benefit children assigned to underperforming school districts.

Parents are the kind of beneficiaries that the General Assembly had in mind when the Pilot Program was passed. Each Parent is of modest means and has a child whose school is failing them. At A. Maceo Walker Middle School[5] in Shelby County, for example, the children of Parent Natu Bah are not progressing academically in an environment that has utterly "deteriorated." (T.R. 1140, Bah Aff. ¶ 6) Her older son has been "repeatedly verbally and emotionally abused" and "told to go back to Africa where he came from." (T.R. 1140–41, Bah Aff. ¶ 7) At Macon-Hall Elementary, Parent Builguissa Diallo has seen her daughter's reading ability regress since enrolling in the school. She reads worse now than she did when she completed pre-K. (T.R. 1148, Diallo Aff. ¶ 6) Parent Star-Mandolyn Brumfield fears sending her son back to an "unstable and overcrowded environment" where he "regularly encounters violence." (T.R. 1146, Brumfield Aff. ¶¶ 8–9) And Parent Bria Davis has already seen the effects of the poorly performing public schools that both her children attend. After being bullied, her daughter concluded that violence

[5] A mere 17.4% of students at this public school are at or above grade level. *See* A. Maceo Walker Middle School Report Card, Tenn. Dep't of Educ., available at https://reportcard.tnk12.gov/districts/792/schools/2740/page/SchoolAchievement.

was the way to survive and began doing things like stealing lunches. (T.R. 1144, Davis Aff. ¶ 9) Her son has become hostile toward learning and mimics bad behavior because he sees that it is tolerated in school. (T.R. 1145, Davis Aff. ¶ 12)

The ESA Pilot Program is a lifeline to such children. It provides beneficiaries with an educational option allowing parents and their children to choose whether to attend their assigned public school or enroll elsewhere. By providing "additional educational options" to such students, the Pilot Program directly benefits a uniquely disadvantaged group of Tennesseans by offering them a chance at a better education than that available at their assigned public school. Tenn. Code Ann. § 49-6-2611(a)(1).

B. The General Assembly Chose to Expand Educational Options by Creating ESAs with State Funds.

The General Assembly enacted the ESA Pilot Program to "provide[] funding for access to additional educational options to students who reside in LEAs that have consistently and historically had the lowest performing schools." Tenn. Code Ann. § 49-6-2611(a)(1).

The General Assembly chose to provide that "funding for access" by sending State funds directly to students assigned to underperforming LEAs. The participating student is entitled to no more than "the amount *representing* the per pupil state and local funds…for the LEA in which the participating student resides." Tenn. Code Ann. § 49-6-2605 (emphasis added). The way the formula works is simple: If a student participates in the ESA Pilot Program, then she is counted in the enrollment figures for the LEA where she resides. Then, the State of

Tennessee funds the ESA at the student's per-pupil LEA allocation amount and sends the money directly to the student. Tenn. Code Ann. § 49-6-2605. During this time, neither the LEA nor the assigned public school ever possesses the ESA funds—the ESA funds instead go directly from the State to the student.

The formula reinforces the fact that parents and children are the intended beneficiaries of the ESA Pilot Program. By creating ESAs, the General Assembly allows a benefit that was provided *indirectly* through a child's assigned school district to become a *direct* benefit to the child using an ESA.

C. The General Assembly Is Fully Within Its Power to Use State Dollars to Directly Benefit Tennessee Children Because School Districts Are "Mere Instrumentalities of the State."

The General Assembly has broad and encompassing powers over education. It is an "accepted fact that public education in Tennessee rests upon the solid foundation of State authority to the exclusion of county and municipal government." *Cagle v. McCanless*, 285 S.W.2d 118, 122 (Tenn. 1955) (emphasis omitted); *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn. 1988) ("Not only does Article XI, § 12, of the Tennessee Constitution expressly require the General Assembly to 'provide for the maintenance, support and eligibility standards of a system of free public schools,' but this Court has recognized for many years that education is a State function."); *accord Rollins v. Wilson Cty. Gov't*, 967 F. Supp. 990, 996 (M.D. Tenn. 1997) ("[E]ducation is, at core, a state rather than a county or municipal function.").

Included within the General Assembly's power is the ability to create and regulate LEAs. An LEA refers to "any…local public school system or school district created or authorized by the general assembly." Tenn. Code Ann. § 49-1-103(2) (defining "Local Education Agency"). The Tennessee Supreme Court has held that LEAs are "mere instrumentalit[ies] of the State created exclusively for public purposes subject to *unlimited control* of the Legislature." *Perritt v. Carter*, 325 S.W.2d 233, 234 (Tenn. 1959) (emphasis added).

When an LEA is failing to properly educate children, the General Assembly acts wholly within its discretion when it passes legislation to address the problem. This includes improving educational opportunities for Tennessee children assigned to LEAs that have "consistently had the lowest performing schools on a historical basis." Tenn. Code Ann. § 49-6-2611(a)(1). The reason is simple: LEAs do not exist for their own sake. They exist to educate children at the sufferance of the General Assembly. In other words, if the General Assembly determines that LEAs are chronically underperforming, it may deliver education in ways that it determines is more effective. Here, when the General Assembly chose to provide alternative educational options to Parents and families with children trapped in some of Tennessee's worst-performing public-school districts, it acted squarely within its discretion.

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The ESA Pilot Program uses State funds to create a direct benefit for parents and children assigned to chronically underperforming LEAs. The Home Rule Amendment was not intended to bar the General Assembly from regulating its own entities, particularly when those

entities are demonstrably failing to achieve their purpose. Nor was the Amendment intended to allow a county to block the State from delivering benefits directly to its citizens. The Pilot Program was enacted to provide educational benefits direct to Tennessee children assigned to LEAs created and regulated by the State. Plaintiffs cannot use their mere association with those LEAs to prevent a State-created benefit from being delivered to individual Tennesseans. As explained in Part II, *infra*, by finding that this direct benefit for individual Tennesseans triggers the Home Rule Amendment, the ruling below conflicts with the Amendment's text and marks a radical departure from Tennessee law.

II. The Home Rule Amendment is Not Triggered When the General Assembly Provides Direct Aid to Tennesseans.

When the General Assembly legislates to provide direct aid to Tennesseans, it does not—and cannot—violate the Home Rule Amendment. By ignoring this principle, the chancery court's ruling contradicts over a century of established case law decided both before and after the Home Rule Amendment was ratified. In Part II.A, Parents show why the ESA Pilot Program does not apply to counties and thus cannot trigger the Amendment. In Part II.B, Parents explain why the ruling below goes against decades of case law confirming the Amendment's fixed meaning. In Part II.C., Parents show why Plaintiffs' own charters prohibit them from interfering with State-funded programs that provide educational options directly to Tennesseans.

A. The ESA Pilot Program Is Applicable to No County and Thus Cannot Trigger the Home Rule Amendment.

The ESA Pilot Program does not fall within the scope of the Home Rule Amendment. Under the Home Rule Amendment, the General Assembly is prohibited from enacting legislation that is "applicable to a particular county or municipality in either its governmental or its proprietary capacity" unless it receives approval of the local legislative body. Tenn. Const. art. XI, § 9. The General Assembly did not run afoul of this provision when it passed the ESA Pilot Program.

As established above, counties and municipalities, like Plaintiffs here, are not the beneficiaries of the ESA Pilot Program. Nor do the Plaintiffs help implement or fund the Pilot Program in any way. Instead, Plaintiffs are the counties associated with those LEAs—two steps removed from the actual beneficiaries of the Pilot Program. Plaintiffs and the chancery court try to sidestep this reality by focusing on the "partnership" between Plaintiffs and LEAs. Because Plaintiffs are required to partially fund LEAs by law, the chancery court reasoned below, any regulation of specific LEAs was therefore "directed at a particular county . . . in its governmental or its proprietary capacity" within the meaning of the Home Rule Amendment. (T.R. 1121–24, Metro Mem. and Order).

That is wrong. In Part 1, Parents first explain why the chancery court's ruling is at odds with the plain text of the Home Rule Amendment, with the case law interpreting the Amendment, and with how the ESA Pilot Program actually works. Next, in Part 2, Parents explain why the case law that informed the text chosen by the framers of the Home Rule

Amendment confirms why it cannot encompass direct aid programs benefitting Tennesseans.

1. The ESA Pilot Program does not apply to a county in its "governmental or . . . proprietary capacity."

The ESA Pilot Program is not applicable to Plaintiff counties in their "governmental or . . . proprietary capacity" because they are two steps removed from the children the Pilot Program benefits. The ruling below not only ignores that the General Assembly had the power to pass the ESA Pilot Program, *see supra* Part I.C., it also conflicts with the text of the Home Rule Amendment, the Tennessee Supreme Court's jurisprudence interpreting the Amendment, and how the Pilot Program actually functions in practice.

First, the ESA Pilot Program does not, on its face, refer to counties at all. This matters because the plain text of the Home Rule Amendment makes clear that it is only triggered if a law is "applicable to a particular county or municipality either in its governmental or its proprietary capacity." Tenn. Const. art. XI, § 9. The term "LEA" is referenced in the Pilot Program—and LEAs are not counties. Rather, LEAs are school districts—a term defined by the General Assembly that includes a wide array of school districts—and those entities are separate and distinct from counties.[6]

[6] LEA is defined as "any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly." Tenn. Code Ann. § 49-1-103(2).

Second, the Tennessee Supreme Court has never held that LEAs, or any school district falling under that defined term, can trigger the Home Rule Amendment. *See infra* n.10. To the contrary, a mere six years after the Amendment was ratified the Tennessee Supreme Court rejected an invitation to expand the Amendment's scope to encompass special school districts. *Perritt*, 325 S.W.2d at 234. The Court insisted that the Amendment's plain text controls and that its text "is not broad enough to cover special school districts." *Id.* In other words, the school districts at issue in *Perritt* do "not come within the definition of a municipality as contemplated in [the] Home Rule Amendment." *Id.* And nothing in the decades of case law that followed so much as suggests, let alone holds, that the result should be any different in this case.[7]

Third, the ESA Pilot Program does not require Plaintiff counties to *do* anything or *fund* anything. Rather, the law requires that a participating child be counted in the enrollment figures for the LEA where the student resides—a purely ministerial task and nothing more. Tenn. Code Ann. § 49-6-2605(b)(1). Then, the student receives an ESA

[7] Tennessee is not alone in refusing to apply its Home Rule Amendment to school districts. *See, e.g.*, *State ex rel. Harbach v. Milwaukee*, 206 N.W. 210, 213 (Wis. 1925) (Home Rule Amendment "imposes no limitation upon the power of the Legislature to deal with the subject of education."); *see also Barth v. Sch. Dist. of Philadelphia*, 143 A.2d 909, 911 (Pa. 1958) ("A School District is a creature or agency of the Legislature and has only the powers that are granted by statute . . . ."); *Gurba v. Cmty. High Sch. Dist. No. 155*, 18 N.E.3d 149, 156 (Ill. App. Ct. 2014) (explaining that a school district has "the somewhat lesser status of a quasi-municipality, acting for the state as its administrative arm overseeing the establishment and implementation of free schools").

that merely *represents* the amount of state and local per-pupil funding that the LEA would receive *from the State*. At no point does the LEA—or the county—possess the child's ESA funds. But despite the ESA Pilot Program not requiring Plaintiffs to do anything, or to fund anything, and despite the Pilot Program consisting of *direct aid* to Tennesseans using *State funds*, the chancery court held that a "partnership" between a county and LEA is sufficient to trigger the Home Rule Amendment.

To be clear, the benefit under the ESA Pilot Program flows from the State directly to the eligible child. The only relation between the State funds directed to an eligible child and the LEA the child is assigned to is a *State* formula used to process the benefit once a child is found eligible. And the only relation the county has with the State funds is that it has an association with the LEA. In law and in fact, the county's association has no bearing, directly or indirectly, on the direct benefit available to Tennesseans under the ESA Pilot Program.

2. **The history of the phrase "governmental or . . . proprietary capacity" confirms it does not include direct aid programs benefitting Tennesseans**.

The case law informing the text of the Home Rule Amendment confirms that it does not encompass direct aid programs that benefit individual Tennesseans like the ESA Pilot Program. Although the Home Rule Amendment was first added to the Tennessee Constitution in 1953, the phrase "governmental or . . . proprietary capacity" is a term of art that predates the Amendment by several decades, specifically in cases involving Tennessee's Equal Protection Clauses.

By incorporating the exact phrase "governmental or . . . proprietary capacity" into the Tennessee Constitution, the drafters of the Amendment clearly intended to import the term as it had been defined by Tennessee courts. This is a "cardinal rule" of construction—when a drafter employs a term of art, "it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken." *F.A.A. v. Cooper*, 566 U.S. 284, 292 (2012) (citation omitted). The Equal Protection cases addressing the term "governmental or . . . proprietary capacity" are therefore not just probative; they are dispositive as to the meaning of this term of art as it is used in the Home Rule Amendment.

Before the ratification of the Home Rule Amendment, legislative enactments that were applicable to a particular city or county in its governmental or its proprietary capacity were exceptions to the general rule—safeguarded by Tennessee's Equal Protection Clauses—that the legislature could not convey private benefits to some citizens over others without a good reason.[8] *See Town of McMinnville v. Curtis*, 192 S.W.2d 998, 999 (Tenn. 1946) ("It is, of course, settled law that special legislation affecting particular counties or municipalities in their governmental or political capacities may be enacted without violating Article XI, Section 8 of the [Tennessee] Constitution."). The rationale for this exception was

[8] In enacting the ESA Pilot Program, the General Assembly provided a very good reason to limit its scope to children assigned to certain LEAs—those LEAs "consistently had the lowest performing schools on a historical basis." Tenn. Code Ann. § 49-6-2611(a)(1); *see also* Part I, *supra*.

simple and straightforward: Because public corporations like counties were "created exclusively for public purposes, subject to the unlimited control of the Legislature," *State v. Wilson*, 12 Lea 246, 257 (Tenn. 1883), they could be "acted upon as governmental agencies, or arms of the state government, as contradistinguished from the regulation of the affairs of the citizens themselves" without restriction, *Nashville, C. & St. L. Ry. v. Marshall Cty*, 30 S.W.2d 268, 271 (Tenn. 1930).

Two cases discussing and applying the exception, both involving education, help to illustrate the meaning of "governmental or . . . proprietary capacity" as it was understood by the drafters of the Home Rule Amendment. In *State ex rel. Scandlyn v. Trotter*, 281 S.W. 925 (Tenn. 1926), the Court entertained an equal-protection challenge to a state law that provided free textbooks to students only in Knox County, to be paid for by the local courts and board of education. In holding that the Equal Protection Clauses applied without exception, the Court observed that "[i]t is sometimes difficult to draw the line of demarcation between acts dealing with counties and cities in their governmental or political capacity, and the acts affecting the citizens in their private rights." *Id.* at 927. Concluding that the free books "affect[] primarily private rights," the Court determined that "[t]he benefits conferred and the burdens imposed affect the individual citizens in their private relations, *rather than the county in its corporate capacity; that is, in the form, machinery, and instrumentalities of governmental operation and control*." *Id.* (emphasis added). Notably, the Court reached this decision *despite* the fact that the local governments—in that case the local courts

and board of education—were directly and solely responsible for funding the benefit provided.

By contrast, in *State ex rel. Bise v. Knox County*, 290 S.W. 405 (Tenn. 1926), the Court applied the "governmental or . . . proprietary capacity" exception in an equal-protection challenge to a state law that required only Knox County to provide pensions to certain tenured teachers. In distinguishing *Knox County* from its decision in *Trotter*, the Court held that "it is apparent that the [pension] legislation deals primarily with the county *as a governmental agency*, conferring benefits upon private citizens, not as such, but as county government employees only." *Id.* at 406 (emphasis added). Because the law therefore "deal[t] with the county of Knox in its governmental capacity," the Equal Protection Clauses did not apply, and the law was upheld.

By incorporating this decades-old distinction into the text of the Home Rule Amendment, the drafters intended to limit the Legislature's power over county and municipal governments, *but only to the extent that the Legislature sought to act upon them as government agencies.* It left unaffected the Legislature's longstanding ability to "regulat[e] . . . the affairs of the citizens themselves." *Nashville, C. & St. L. Ry.*, 30 S.W.2d at 271. As the Court succinctly explained in another equal-protection challenge involving education:

> True, education is a government function. And in the exercise of this function the county acts in a governmental capacity. A distinction is to be drawn, however, between legislation primarily designed to affect the governmental agency as such and legislation designed primarily to affect the employees or citizens of such governmental agency as individuals.

State ex rel. Bales v. Hamilton Cty., 95 S.W.2d 618, 619 (Tenn. 1936) (citations omitted).

The ESA Pilot Program provides State-funded education savings accounts to individuals—benefitting children and parents—assigned to some of the worst-performing school districts in the state. Like the free books in *Trotter*, the Pilot Program's education savings accounts "affect[] primarily private rights" of individual Tennesseans rather than the counties in their corporate capacity. 281 S.W. at 927. Indeed, the facts of *Trotter* present a *stronger* case of legislation applying to a county in its "governmental or . . . proprietary capacity" than the Plaintiffs do here. Unlike in *Trotter*, where the law explicitly required local government entities to fund the challenged program, the ESA Pilot Program is funded exclusively by the State. To the extent that the Plaintiff counties are affected by the ESA Pilot Program at all, it is only indirectly—through their obligation to partially fund LEAs—and as a tertiary consequence of students and parents' exercising the private rights vested in them by the General Assembly.[9] This is a far cry from legislation "primarily designed to affect the governmental agency as such." *State ex rel. Bales*, 95 S.W.2d at 619.

[9] And if the Home Rule Amendment's drafters intended indirect financial effect to be sufficient to trigger the Amendment's application, they knew how to do so. *See* Tenn. Const. art. II, § 24 ("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."). The lack of such express language in the Home Rule Amendment suggests that its authors intended something else.

B. The Decades of Case Law in the Wake of the Home Rule Amendment's Ratification Reaffirm Its Fixed Meaning.

In the decades after the Home Rule Amendment was added to the Tennessee Constitution, the Tennessee Supreme Court had many opportunities to weigh in on the meaning of "governmental or . . . proprietary capacity" in the context of the Home Rule Amendment. Not once did the Court depart from the meaning it had given the phrase in the seventy years preceding the Amendment's ratification. *See, e.g.*, *Durham v. Dismukes*, 333 S.W.2d 935, 939 (Tenn. 1960) (holding that an act designed to expand the jurisdiction of "a county court, created for well-recognized county purposes, the presiding judge of which may be paid for his services out of the county treasury" was "applicable to Sumner County in its governmental capacity"); *Lawler v. McCanless*, 417 S.W.2d 548 (Tenn. 1967) (similarly holding that an act designed to expand the jurisdiction of the Gibson County General Sessions Court was applicable to Gibson County in its governmental capacity); *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975) (holding that an act designed to require Shelby County to hold run-off elections for its county mayoral races was applicable to Shelby County in its governmental capacity); *Chattanooga-Hamilton Cty. Hosp. Auth. v. City of Chattanooga*, 580 S.W.2d 322, 325 (Tenn. 1979) (holding that an act establishing a local hospital authority as a "public instrumentality acting on behalf of the county" applied to the county in its governmental capacity). In each case, the Court determined that the challenged legislation fell within the meaning of "governmental or . . . proprietary capacity" because it was designed to—and did—act upon the local government as a government

agency, whether by expanding the jurisdiction of a county court, modifying a county's election rules, or creating a new county government entity.

By contrast, the Court consistently rejected attempts to expand the scope of the Home Rule Amendment beyond its fixed meaning. *See, e.g.*, *Fountain City Sanitary Dist. v. Knox Cty. Election Comm'n*, 308 S.W. 2d 482, 484 (Tenn. 1957) (refusing to apply the Home Rule Amendment to legislation concerning a sanitary district because it was "not a municipality within the meaning of the Home Rule Amendment"); *Perritt*, 325 S.W.2d 233 (similarly refusing to apply the Home Rule Amendment to legislation concerning a special school district); *Gibson Cty. Special Sch. Dist. v. Palmer*, 691 S.W.2d 544 (Tenn. 1985) (same).

In fact, not once in the Tennessee Supreme Court's decades-long line of Home Rule Amendment jurisprudence has a direct benefit for individual Tennesseans ever triggered the Home Rule Amendment.[10] Not

[10] *See First Util. Dist. of Carter Cty. v. Clark*, 834 S.W.2d 283 (Tenn. 1992) (applying Amendment to law modifying county utility commissioner selection process); *Civil Serv. Merit Bd. of City of Knoxville v. Burson*, 816 S.W.2d 725 (Tenn. 1991) (refusing to apply Amendment to law modifying municipal service board elections); *Gibson Cty. Special Sch. Dist. v. Palmer*, 691 S.W.2d 544 (Tenn. 1985) (refusing to apply Amendment to law modifying special school district); *City of Knoxville ex rel. Roach v. Dossett*, 672 S.W.2d 193 (Tenn. 1984) (refusing to apply Amendment to law modifying municipal court jurisdiction); *Chattanooga-Hamilton Cty. Hosp. Auth. v. City of Chattanooga*, 580 S.W.2d 322 (Tenn. 1979) (applying Amendment to law establishing county hospital authority); *Leech v. Wayne Cty.*, 588 S.W.2d 270 (Tenn. 1979) (applying Amendment to law prohibiting two counties from transferring judicial functions to the county executive); *State ex rel. Maner v. Leech*, 588 S.W.2d 534 (Tenn.

once has this State's high court applied the Amendment to legislation that requires a county to do nothing and pay nothing.[11] And not once does the case law interpreting the Home Rule Amendment so much as suggest that legislation runs afoul of the Amendment if it allows individual Tennesseans to exercise a choice that a county may find inconvenient.

In that sense, the chancery court's ruling is genuinely radical. It would not only contradict decades of established Tennessee case law, it

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1979) (refusing to apply Amendment to law establishing transition process for Knox County government); *Bozeman v. Barker*, 571 S.W.2d 279 (Tenn. 1978) (refusing to apply Amendment to law modifying trial court officer salary for counties over a certain population); *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975) (applying Amendment to law modifying Shelby County mayoral election process); *Metro. Gov't of Nashville & Davidson Cty. v. Reynolds*, 512 S.W.2d 6 (Tenn. 1974) (refusing to apply Amendment to law requiring metropolitan governments to fund discretionary primary elections); *Doyle v. Metro. Gov't of Nashville & Davidson Cty.*, 471 S.W.2d 371 (Tenn. 1971) (refusing to apply Amendment to law requiring defendants in metropolitan courts to pay court costs); *Jones v. Haynes*, 424 S.W.2d 197 (Tenn. 1968) (refusing to apply Amendment to law prohibiting fireworks in Fentress County); *Lawler v. McCanless*, 417 S.W.2d 548 (Tenn. 1967) (applying Amendment to law modifying county court jurisdiction); *State ex rel. Ross v. Fleming*, 364 S.W.2d 892 (Tenn. 1963) (applying Amendment to law modifying county attorney salary); *Durham v. Dismukes*, 333 S.W.2d 935 (Tenn. 1960) (applying Amendment to law modifying county judge salary); *Perritt v. Carter*, 325 S.W.2d 233 (Tenn. 1959) (refusing to apply Amendment to law modifying school district); *Fountain City Sanitary Dist. v. Knox Cty. Election Comm'n*, 308 S.W.2d 482 (Tenn. 1957) (refusing to apply Amendment to law modifying sanitary utility district); *State ex rel. Cheek v. Rollings*, 308 S.W.2d 393 (Tenn. 1957) (refusing to apply Amendment to law discontinuing a state court); *Shelby Cty. v. Hale*, 292 S.W.2d 745 (Tenn. 1956) (applying Amendment to law modifying county commissioner salary).

[11] *Id.*

would also mean that the Home Rule Amendment has no meaningful limiting principle. If good law, it would fundamentally reshape the relationship between Tennesseans and their local and state governments, effectively barring the legislature from experimenting with pilot programs before expanding them statewide.[12]

In sum, Plaintiffs have identified no case, and Parents are aware of none, in which a Tennessee court has applied the Home Rule Amendment to legislation concerning direct-aid programs, much less to the school districts responsible for implementing them, *much less still* to counties that have been incidentally affected by their implementation. Plaintiffs' position, fully embraced in the ruling below, is thus triply unprecedented—and triply wrong—and should be rejected.

C. Plaintiffs Own Charters Bar Them From Interfering With State-Funded Programs that Provide Educational Options Directly to Tennesseans.

The charters governing Plaintiffs' governmental functions prohibit them from interfering with the ESA Pilot Program. As explained above, the Tennessee Supreme Court has long held that the power to create and

[12] Left unchecked, the chancery court's ruling threatens the General Assembly's ability to use pilot programs in the future—something it does, and has done, in a wide swath of policy areas. *See, e.g.*, Tenn. Code Ann. §§ 63-10-601 (pilot program establishing tele-pharmacies in a single county in Tennessee's eastern grand division); 7-52-601 (pilot program for services involving municipal electrical system); 12-4-308 (pilot program providing reimbursements to supportive living facilities for mentally ill individuals). Under the chancery court's unbound reading of the Home Rule Amendment, each of these pilot programs should be or should have been struck down absent county approval.

regulate school districts like LEAs to provide public education to Tennesseans resides exclusively with the State. *See Cagle*, 285 S.W.2d at 122; *Perritt*, 325 S.W.2d at 234; *Ayers*, 756 S.W.2d at 221. By administering direct aid to Tennessee children and parents in the form of education savings accounts, the State is fulfilling its long-recognized obligation to provide education to Tennesseans.

Plaintiffs, by contrast, are asking Tennessee courts to empower them with what amounts to a veto of State regulation of LEAs with chronically underperforming schools—power that *their own governing charters* deny them. For example, Article VI ("Prohibitions") of Shelby County's Home Rule Charter is unambiguous: "The provisions of this charter shall not apply to county school funds or to the county board of education, or the county superintendent of education." (T.R. 970, Shelby Cty. Home Rule Charter art. VI, § 6.02(A)) Plainly, per Shelby's own charter, LEAs fall outside the bounds of its governmental or proprietary capacity. Metro Nashville's Charter similarly requires that the local school district be "administered and controlled" by the Metropolitan Board of Public Education. (T.R. 439, Charter of the Metropolitan Government of Nashville and Davidson County § 9.01) Both counties are required by the State to "provide necessary funds to enable the county board [of education] to meet all obligations," Tenn. Code Ann. § 49-2-101(1)(A), but such a financial connection "does not detract from the essentially separate functions of these two entities" nor entitle the counties to legal control, *Hill v. McNairy Cty.*, No. 03-1219-T, 2004 WL 187314, at *2 n.2 (W.D. Tenn. Jan. 15, 2004) (citation omitted). In other words, the charters of Shelby County and Metro confirm what the case

law makes clear: Providing educational options for Tennesseans is a State function. County governments should not be permitted to utilize Tennessee courts to circumvent their own charters in order to interpose themselves between Tennesseans and the General Assembly in a matter—education—that is "fundamentally a State concern." *Ayers*, 756 S.W.2d at 222.

CONCLUSION

The ESA Pilot Program does not violate the Home Rule Amendment. It is a direct benefit to parents and children, it uses State funds, and it fully complies with the Tennessee Constitution. In obstructing the General Assembly's ability to provide this educational benefit directly to Tennesseans, the ruling below cannot be squared with the Home Rule Amendment's text, the decades of case law interpreting the Amendment, and how the ESA Pilot Program actually functions. For these reasons, the Court should reverse, vacate the chancery court's injunction, and remand the case for further proceedings.

Dated: June 30, 2020.

TAB 1

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

TN Const. Art. 11, § 9

§ 9. Justice courts; municipal government; home rule

Currentness

The Legislature shall have the right to vest such powers in the Courts of Justice, with regard to private and local affairs, as may be expedient.

The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Any municipality may by ordinance submit to its qualified voters in a general or special election the question: “Shall this municipality adopt home rule?”

In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.

Any municipality after adopting home rule may continue to operate under its existing charter, or amend the same, or adopt and thereafter amend a new charter to provide for its governmental and proprietary powers, duties and functions, and for the form, structure, personnel and organization of its government, provided that no charter provision except with respect to compensation of municipal personnel shall be effective if inconsistent with any general act of the General Assembly and provided further that the power of taxation of such municipality shall not be enlarged or increased except by general act of the General Assembly. The General Assembly shall by general law provide the exclusive methods by which municipalities may be created, merged, consolidated and dissolved and by which municipal boundaries may be altered.

A charter or amendment may be proposed by ordinance of any home rule municipality, by a charter commission provided for by act of the General Assembly and elected by the qualified voters of a home rule municipality voting thereon or, in the absence of such act of the General Assembly, by a charter commission of seven (7) members, chosen at large not more often than once in two (2) years, in a municipal election pursuant to petition for such election signed by qualified voters of a home rule municipality not less in number than ten (10%) percent of those voting in the then most recent general municipal election.

It shall be the duty of the legislative body of such municipality to publish any proposal so made and to submit the same to its qualified voters at the first general state election which shall be held at least sixty (60) days after such publication and such proposal shall become effective sixty (60) days after approval by a majority of the qualified voters voting thereon.

The General Assembly shall not authorize any municipality to tax incomes, estates, or inheritances, or to impose any other tax not authorized by Sections 28 or 29 of Article II of this Constitution. Nothing herein shall be construed as invalidating the provisions of any municipal charter in existence at the time of the adoption of this amendment.

The General Assembly may provide for the consolidation of any or all of the governmental and corporate functions now or hereafter vested in municipal corporations with the governmental and corporate functions now or hereafter vested in the counties in which such municipal corporations are located; provided, such consolidations shall not become effective until submitted to the qualified voters residing within the municipal corporation and in the county outside thereof, and approved by a majority of those voting within the municipal corporation and by a majority of those voting in the county outside the municipal corporation.

Credits

Amendment adopted in Convention June 4, 1953, approved at election Nov. 3, 1953, and proclaimed by Governor Nov. 19, 1953.

Notes of Decisions (174)

Const. Art. 11, § 9, TN CONST Art. 11, § 9

Current through the 2019 general election. 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.

End of Document

TAB 2

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.

T. C. A. § 49-6-2612, TN ST § 49-6-2612
Current with laws from the 2020 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through June 15, 2020. 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.

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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.

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

Current with laws from the 2020 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through June 15, 2020. 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.

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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.

T. C. A. § 49-6-2610, TN ST § 49-6-2610
Current with laws from the 2020 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through June 15, 2020. 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.

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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.

T. C. A. § 49-6-2609, TN ST § 49-6-2609
Current with laws from the 2020 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through June 15, 2020. 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.

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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: May 24, 2019
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 basic education program (BEP) 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.

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

Current with laws from the 2020 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through June 15, 2020. 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.

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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 pre-approved by the department. Pre-approval shall be requested by completing and submitting the department's pre-approval 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

(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.

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

Current with laws from the 2020 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through June 15, 2020. 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.

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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.

(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.

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

Current with laws from the 2020 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through June 15, 2020. 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.

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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: May 24, 2019
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 basic education program (BEP) for the LEA in which the participating student resides, but must not exceed the combined statewide average of required state and local BEP 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 BEP 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 BEP 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 BEP funds for the LEA in the applicable fiscal year that will be subtracted from the state BEP 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.

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

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Title 49. Education
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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.

(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.

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

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Title 49. Education
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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: May 24, 2019
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;

(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 non-profit 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 basic education program 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 basic education program 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 basic education program 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 basic education program 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.

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

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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 24, 2019
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; or

(iii) Received an education savings account in the previous 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 ten (10) 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); and

(c) Identified as priority schools in 2018, 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.

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

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Title 49. Education
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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.

T. C. A. § 49-6-2601, TN ST § 49-6-2601
Current with laws from the 2020 First Reg. Sess. of the 111th Tennessee General Assembly, eff. through June 15, 2020. 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.

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TAB 3

West's Tennessee Code Annotated
Title 49. Education
Chapter 1. State Administration
Part 1. General Provisions (Refs & Annos)

T. C. A. § 49-1-103

§ 49-1-103. Definitions

Effective: August 11, 2009
Currentness

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

(1) "Board," "local board," or "local board of education" means the board of education that manages and controls the respective local public school system; and

(2) "Local education agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.

Credits
1925 Pub.Acts, c. 115, § 2; 1974 Pub.Acts, c. 654, § 1; 1979 Pub.Acts, c. 20, § 1.

Formerly Shannon's Code Supp., § 1487a16; 1932 Code, § 2307; § 49-102.

T. C. A. § 49-1-103, TN ST § 49-1-103
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