



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 11  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. McClain and John

Holly Cantrell, Attorney

### SUMMARY

- Establishes the Backpack Scholarship Program to provide eligible students with an educational savings account (ESA) beginning in the 2024-2025 school year.
- Requires the Treasurer of State to administer the program.
- Qualifies a student for an ESA if the student's parent applies to participate in the program and, for the school year for which the ESA is sought, the student is either:
  - Enrolling in any of grades K-12 in a participating nonpublic school; or
  - Receiving home instruction for the equivalent of those grades.
- Specifies that, for the 2024-2025 school year, a student with an ESA must receive \$5,500, for grades K-8, or \$7,500, for grades 9-12; and requires that the amount to increase in future fiscal years by the same percentage as the statutory statewide average base cost per pupil.
- Requires the Department of Education to use state operating funding to meet the program's ESA financial obligations in a manner similar to how other state scholarship programs are funded under current law.
- Excuses a child from attending school if the child is receiving home instruction in core subject areas supervised and directed by the child's parent, instead of from a "qualified person."
- Requires students that enroll in a public school following any period of home education be placed in the appropriate grade level based on the policies of the student's resident school district.
- Repeals the Ed Choice and Cleveland Scholarship Programs on July 1, 2024.

---

## DETAILED ANALYSIS

### Backpack Scholarship Program

The bill establishes the Backpack Scholarship Program to begin operating in the 2024-2025 school year. It states that the purpose of the program is to permit eligible students to enroll in the educational environment that they and their parents determine is the best fit for them, whether that be a traditional school, home education, or other educational option. Under the program, the Treasurer of State must establish an education savings account for participating eligible students to purchase educational goods and services, including tuition at participating chartered and nonchartered nonpublic schools. The Department of Education must fund those accounts in a manner similar to how other state scholarship programs are funded under current law. A student is eligible if receiving home instruction or enrolled in a city, local, or exempted village school district, a community school, a STEM school, a chartered nonpublic school, or a nonchartered nonpublic school.<sup>1</sup>

#### Application for an education savings account (ESA)

The bill requires the Treasurer of State, by March 1, 2024, to develop an application procedure for the program. Under that procedure, the Treasurer must open an application period for a school year on March 1 immediately prior to the start of that year. The application must require the parent to provide the student's and parent's names and address, and other information determined necessary by the Treasurer. Beginning with ESAs sought for the 2024-2025 school year, the Treasurer must approve a completed application and establish an ESA for an eligible student, if the student is enrolling in any of grades K-12 in a participating nonpublic school or is receiving home instruction for the equivalent of any of those grades. The bill further specifies that an eligible student for whom an ESA is established must reapply to have an ESA established for a subsequent school year.<sup>2</sup>

Finally, the bill expressly states that a student who receives a scholarship under the Autism Scholarship Program or the Jon Peterson Special Needs Scholarship Program also may apply to have an ESA established under the Backpack Scholarship Program. On the other hand, since it also repeals the Educational Choice and Pilot Project (Cleveland) scholarship programs (see also below), the bill also states a student's entitlement to a scholarship under either of those two programs ceases on July 1, 2024. However, an eligible student who received either an Educational Choice or Cleveland scholarship may apply for a Backpack Scholarship.<sup>3</sup>

---

<sup>1</sup> R.C. 3310.21 and 3310.22.

<sup>2</sup> R.C. 3310.23(A) to (C).

<sup>3</sup> R.C. 3310.23(D) and (E).

## **ESA amount**

The bill specifies that a student for whom an ESA is established for the 2024-2025 school year must receive either \$5,500, if the student is in grades K-8 or the equivalent, or \$7,500, if the student is in grades 9-12 or the equivalent. For future fiscal years, those amounts must increase by the same percentage that the statutory statewide average base cost per pupil increases.<sup>4</sup>

## **Funding of ESAs**

The bill requires the Department of Education to use state operating funding to meet the program's financial obligations regarding ESAs in a manner similar to how other state scholarship programs are funded under current law.

Specifically, the bill prescribes a "backpack scholarship unit" that consists of all students for whom an ESA is established for a fiscal year. It requires the Department to compute the sum of all students in the unit multiplied by their ESA amounts. The Department must pay the computed amount using state operating funding and transfer those funds to each student's ESA. The Department must distribute funds in two equal payments, one on July 15 and the other on January 15.<sup>5</sup>

## **Use of ESA funds**

The bill permits a student's parent to use funds in an ESA for the following purposes:

1. Tuition and fees at a participating nonpublic school;
2. Tuition and fees for a nonpublic online learning program;
3. Tutoring or intervention services by an individual or educational facility, provided those services are not provided by an immediate family member;
4. Fees for nationally standardized assessments, Advanced Placement (AP) exams, and any exams related to college or university admission, as well as tuition or fees for preparatory courses for those exams;
5. Tuition and fees for programs of study or course curriculum that lead to an industry-recognized credential that satisfies a workforce need;
6. Educational services, including occupational, behavioral, physical, speech-language, and audiology therapies;
7. Curriculum, textbooks, instructional materials, and supplies; and
8. Fees for after-school and summer education programs.<sup>6</sup>

---

<sup>4</sup> R.C. 3317.022(A)(14).

<sup>5</sup> R.C. 3317.02(K)(8) and (OO) and 3317.022(A)(14) and (I), and 3317.03(A)(2)(k).

<sup>6</sup> R.C. 3310.24(A).

## Disbursal of funds

Upon the request of the parent, the Treasurer must disburse funds from a student's ESA by either of the following methods as selected by the parent:

1. The Treasurer must disburse funds directly to an approved vendor who provides prescribed educational goods and services (see above) to the student. The Treasurer must establish a process to solicit and approve vendors. Under that process, a participating school that complies with the requirements prescribed for them (see below) must be considered an approved vendor.
2. The Treasurer must disburse funds to reimburse the student's parent for any costs the parent incurred for prescribed educational goods and services (see above) for the student. Prior to reimbursing a parent, the Treasurer must require the parent to provide appropriate documentation, as determined by the Treasurer, that the costs incurred for prescribed goods and services.<sup>7</sup>

The bill requires any refund or other repayment of funds by a participating nonpublic school or other educational provider to be returned to the ESA. It expressly prohibits repayment from being made directly to the student or the student's parent.<sup>8</sup>

The bill also specifies that it does not prohibit a student's parent from making payments for educational goods and services not covered by funds in the ESA. However, it expressly prohibits a parent from depositing funds into a student's ESA.<sup>9</sup>

## Disposition of remaining ESA funds

### Enrollment in a district, community school, or STEM school

If a student with an ESA established for a particular school year enrolls in a school district, community school, or STEM school in that year, the bill requires the Treasurer to transfer the balance of any funds in the ESA to the Department. The Department must then distribute those funds to the district or school in which the student enrolls.<sup>10</sup>

### Student applies for an ESA in subsequent year

If the parent of a student with an ESA established for a particular school year applies to have an ESA established for the next school year, the Treasurer must, on June 30, transfer to the student's new ESA 50% of the balance any funds in the student's old ESA. The Treasurer must transfer the remaining funds in the old ESA to the General Revenue Fund.<sup>11</sup>

---

<sup>7</sup> R.C. 3310.24(B).

<sup>8</sup> R.C. 3310.24(C).

<sup>9</sup> R.C. 3310.24(H).

<sup>10</sup> R.C. 3310.24(D).

<sup>11</sup> R.C. 3310.24(E).

### **Student does not apply for an ESA in subsequent year**

Generally, if the parent of a student with an ESA established for a particular school year does not apply for a new account for the next school year, the Treasurer must, on June 30, transfer the balance of any funds in the student's old ESA to the Department of Education. The Department must then distribute the funds to the school district, community school, or STEM school in which the student enrolls in the subsequent year. If the student does not enroll in a district or school, the Department must distribute the funds to the student's resident school district.<sup>12</sup>

### **Students who complete 12<sup>th</sup> grade**

If a student with an ESA established for a particular school year completes the 12<sup>th</sup> grade in that year, the student's parent may request that the Treasurer do either of the following regarding an amount equal to 50% of the balance of any funds in the ESA:

1. Transfer it to an ESA established for the student's sibling for the next school year; or
2. Use it to make a contribution to any qualified 529 education savings account.<sup>13</sup>

If a parent submits a request, the Treasurer must, on June 30, either transfer the funds or make a contribution as requested. The Treasurer must transfer the remaining funds in the ESA to the General Revenue Fund.<sup>14</sup>

The bill expressly prohibits a state personal income tax deduction for amounts contributed by the Treasurer to a 529 savings account maintained by the Ohio Tuition Trust Authority.<sup>15</sup>

(A 529 account is an education savings account for K-12 and college expenses for a beneficiary student that qualifies for special federal income tax treatment under Section 529 of the Internal Revenue Code. The State of Ohio operates a program offering 529 accounts through the Tuition Trust Authority, which is within the office of the Chancellor of Higher Education. Under that program, the contributor (or owner) of an account for a student may be eligible for a state income tax deduction for contributions to the account.)

If the parent of a student who completed the 12<sup>th</sup> grade does not submit a request, the Treasurer must transfer the balance of any funds in the ESA to the General Revenue Fund.<sup>16</sup>

---

<sup>12</sup> R.C. 3310.24(F).

<sup>13</sup> R.C. 3310.24(G)(1).

<sup>14</sup> R.C. 3310.24(G)(2).

<sup>15</sup> R.C. 5747.70(D).

<sup>16</sup> R.C. 3310.24(G)(3).

## **Participating nonpublic schools**

### **Notification of intent to participate**

The bill requires a chartered nonpublic or nonchartered nonpublic school that elects to participate in the program for the 2024-2025 school year to notify the Treasurer by February 15, 2024. Thereafter, a nonpublic school that elects to participate for a school year must notify the Treasurer by February 15 immediately prior to the start of a school year.<sup>17</sup>

### **Requirements regarding assessments**

Each participating nonpublic school must administer nationally recognized measures of achievement, as determined by the school, in reading, math, and history to students enrolled in grades 1-8 at least every other year. In addition, each chartered nonpublic schools that elects to participate must administer state assessments to students enrolled in grades 9-12 in accordance with continuing law.

All participating nonpublic schools must report to the Treasurer the aggregate results of the measures and assessments administered to students. The Treasurer must publish those results and provide them to the parents of eligible students upon request.<sup>18</sup>

### **Requirement to accept only scholarship amount for low-income students**

The bill prohibits a participating nonpublic school from charging a student with a family income at or below 200% of the federal poverty level (FPL) a tuition that is greater than the maximum scholarship amount.<sup>19</sup>

### **Removal from program**

The bill permits the Treasurer to remove a school from the list of participating nonpublic schools if the Treasurer determines the school has routinely failed to comply with the requirements prescribed for those schools.<sup>20</sup>

### **Rights of participating nonpublic schools**

The bill states that, while participating nonpublic schools must comply with requirements prescribed for them, they are autonomous and not an agent of the state or federal government. As such, it further specifies that:

1. The Treasurer is prohibited from regulating the educational or instructional program of a chartered nonpublic school, nonchartered nonpublic school, or other educational provider that accepts funds under the program.

---

<sup>17</sup> R.C. 3310.25(A).

<sup>18</sup> R.C. 3301.0711(P)(4) and 3310.25(B).

<sup>19</sup> R.C. 3310.25(C).

<sup>20</sup> R.C. 3310.25(E).

2. The program does not expand the authority of the Treasurer to impose additional requirements on chartered nonpublic or nonchartered nonpublic schools beyond those prescribed under the bill.
3. Chartered nonpublic and nonchartered nonpublic schools that elect to participate must be given maximum freedom to provide for the educational needs of their students.<sup>21</sup>

However, the bill also specifies that it does not affect the State Board of Education's authority to issue charters or adopt minimum education standards or minimum operating standards under continuing law.<sup>22</sup>

### **Treasurer of State – other administrative responsibilities**

The bill requires the Treasurer, in administering the program, to:

1. Contract with an entity to establish ESAs in accordance with the bill;
2. Execute contracts or other instruments for necessary goods and services;
3. Employ necessary personnel and engage the services of private consultants, actuaries, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice;
4. Determine a method to ensure that all expenditures from ESAs are in accordance with the purposes prescribed under the bill;
5. Determine penalties for any fraudulent activity by participating nonpublic schools, other educational providers, students, or students' parents;
6. Collaborate with stakeholders and state agencies determined appropriate by the Treasurer to promote the program to the parents of eligible students; and
7. Establish a website that includes information regarding the program and participating nonpublic schools. The bill requires the Treasurer to update the website at least annually, and it requires the Department of Education to post a link to that information on the Department's website.<sup>23</sup>

The bill also requires the Treasurer to adopt rules in accordance with the Administrative Procedure to implement the program.<sup>24</sup>

### **Data verification codes**

As is the case with other state scholarship programs, the bill permits the Department of Education to request the data verification codes of students applying for scholarships

---

<sup>21</sup> R.C. 3310.25(D).

<sup>22</sup> R.C. 3310.25(F).

<sup>23</sup> R.C. 3310.22.

<sup>24</sup> R.C. 3310.27.

established by the bill from (1) those students' resident school districts, (2) a community school in which a student is enrolled, or (3) the independent contractor hired by the Department to create and maintain the codes. This authority, which is an exception to the general prohibition against the Department's having access to data verification codes when they could be matched with personally identifiable student data, is limited solely to administering the scholarship programs. School districts and community schools must provide a student's data verification code to the Department or the student's parent, upon request, in a manner specified by the Department. If a student will be entering kindergarten and has not yet been assigned a data verification code, the resident school district must assign a code to the student prior to submission. If the district does not assign the code by a date specified by the Department, the Department must assign the code. Each year, the Department must provide school districts with the name and data verification code of each scholarship student living in the district who has been assigned a code by the Department.

Neither the Department nor a provider may release a student's data verification code to any person, unless such release is otherwise authorized by law. The bill specifies that materials containing both a student's name or other personally identifiable data and the student's data verification code are not public records. Other documents relative to the scholarship program that are held by the Department are public records, but may be released only in accordance with state and federal privacy laws.<sup>25</sup>

## **Home education and school attendance**

Current law authorizes a school district superintendent to excuse a child from attendance upon a satisfactory showing that the child is being instructed at home by a person qualified to teach. It also requires a parent to file papers with the superintendent that show how the qualifications of the child's home educator were determined.

The bill directly exempts from school attendance students who receive home education under the supervision and direction of a parent on requisite subject areas. Under the bill, the school district superintendent is not required to receive any proof of qualification for home educators. Rather, parents annually must file notice with the superintendent of the district of residence within five days of the start of school in the child's school district of residence. The notice must include the parent's name and address, the child's name, and an assurance that the child will receive instruction in required subjects. The superintendent must send a letter of acknowledgement upon receipt of notification.<sup>26</sup>

---

<sup>25</sup> R.C. 3310.26.

<sup>26</sup> R.C. 3321.042(A).



The bill also requires students that enroll in a public school following any period of home education be placed in the appropriate grade level based on the policies of the student's resident school district.<sup>27</sup>

## **Repeal of Ed Choice and Cleveland Scholarship Programs**

Effective July 1, 2024, the bill repeals the Educational Choice (Ed Choice) Scholarship Program and the Pilot Project (Cleveland) Scholarship Program.<sup>28</sup>

The bill specifies that a student who was eligible for an Ed Choice or Cleveland scholarship prior to July 1, 2024, may apply for an ESA under the Backpack Scholarship Program. However, it states that the student's entitlement to a scholarship under either Ed Choice or Cleveland ceases on July 1, 2024.<sup>29</sup>

### **Background**

The Ed Choice Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students to use in enrolling in participating chartered nonpublic schools. A student qualifies for a scholarship if:

1. The student is assigned or would be assigned to a district school building that has persistently low academic achievement according to performance index ranking (known as "traditional" or "performance-based" Ed Choice);
2. The student is from a family with an income beneath a prescribed federal poverty level (known as "income-based" Ed Choice Expansion); or
3. The student satisfies criteria with regard to a child placed with a guardian, custodian, foster caregiver, kinship caregiver, or another adult, or if the student's sibling received a scholarship.<sup>30</sup>

The Pilot Project (Cleveland) Scholarship Program allows students who are residents of the Cleveland Municipal School District to obtain scholarships to attend participating nonpublic schools or public schools in adjacent districts or to receive tutorial assistance grants.<sup>31</sup>

---

<sup>27</sup> R.C. 3321.042(B). An LSC corrective amendment is needed to remove the current law requirement for home schooling that conflicts with the bill and to fix cross references related to the changes in the bill.

<sup>28</sup> Repealed R.C. 3310.01, 3310.02, 3310.03, 3310.031, 3310.032, 3310.033, 3310.034, 3310.035, 3310.036, 3310.04, 3310.05, 3310.06, 3310.07, 3310.10, 3310.11, 3310.12, 3310.13, 3310.14, 3310.15, 3310.16, 3310.17, 3313.974, 3313.975, 3313.976, 3313.977, 3313.978, and 3313.979 and Section 6; conforming changes in R.C. 125.04, 311.29, 3301.0711, 3301.0714, 3301.163, 3302.036, 3302.04, 3302.10, 3310.51, 3365.07, and 5703.21.

<sup>29</sup> R.C. 3310.23(E).

<sup>30</sup> R.C. 3310.01 to 3310.17.

<sup>31</sup> R.C. 3313.974 to 3313.979.

---

## HISTORY

Action	Date
Introduced	02-15-23

---