



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 136

129th General Assembly  
(As Introduced)

**Reps.** Huffman, Goodwin, Roegner, J. Adams, Thompson, McClain, Amstutz, Anielski, Brenner, Young, Derickson, Blessing, Slaby, Mecklenborg, Butler, Wachtmann, Stautberg, Blair, Maag, Uecker, Newbold, Sears, Patmon, Buchy, Combs, Hall, Gonzales, Martin, Landis, Batchelder, Stinziano, Beck, Henne, Bulp, Hollington, Boose, Hottinger, Burke

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## BILL SUMMARY

- Replaces the Educational Choice Scholarship Pilot Program and the Cleveland Scholarship and Tutoring Pilot Program with a new, income-based scholarship program, entitled the Parental Choice and Taxpayer Savings Scholarship Program (PACT), providing students with scholarships to attend nonpublic schools.
- Requires the Treasurer of State to establish and maintain an education savings account for each PACT scholarship student whose scholarship amount exceeds the student's tuition and fees.
- Permits a student or parent to use money in the student's education savings account for specified future primary, secondary, and post-secondary education expenses.
- Creates the Parental Choice and Taxpayer Savings Scholarship Program Support Fund, made up of interest on and leftover money from individual student education savings accounts, to be used to administer the PACT scholarship program.
- Creates the Special Education Scholarship Program to provide scholarships for disabled children in grades K through 12 to attend alternative public or private special education programs.
- Requires the Department of Education to develop a document that compares rights under state and federal special education law and rights under the Special Education Scholarship Program, and requires school districts to distribute that document to the parents of all special education students.

- Requires the Department of Education to conduct a "formative evaluation" of the Special Education Scholarship Program by December 31, 2014.
- Entitles the act, the "Parental Choice and Taxpayer Savings Scholarship Act."

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## CONTENT AND OPERATION

### PACT scholarship

#### Introduction

The bill repeals the Educational Choice Scholarship Pilot Program ("Ed Choice") and the Cleveland Scholarship and Tutoring Pilot Program ("Cleveland Scholarship") and establishes a scholarship program based on family income entitled the Parental Choice and Taxpayer Savings Scholarship Program ("PACT"). (For brief descriptions of the state's current scholarship programs, see "**Background on current scholarship programs**" at the end of this analysis.)

The PACT scholarship is a broader, statewide program for qualifying students. As with Ed Choice, the amount of the scholarship is deducted from a student's resident school district. The PACT program also includes an educational savings account for funds not used to pay for school tuition (see below). There is no limit on the number of PACT scholarships that can be awarded, and scholarships may be used at any eligible nonpublic school (see below). The bill "grandfathers" current recipients of Ed Choice and Cleveland scholarships by qualifying them for PACT scholarships, and phases in students already enrolled in nonpublic schools independently, not through either of the existing state scholarship programs.<sup>1</sup>

#### Eligibility

To qualify for a PACT scholarship, a student (1) must be entitled to attend school in an Ohio school district and (2) must either (a) have a family federal adjusted gross income for the preceding tax year less than or equal to 2.5 times the income standard for a reduced-price lunch or (b) have received an Ed Choice or Cleveland scholarship in the school year immediately prior to the school year in which the PACT scholarship program begins operating.<sup>2</sup>

For students who already attend a nonpublic school in Ohio immediately prior to the school year for which a PACT scholarship is sought, but not under the Ed Choice or Cleveland scholarship programs, the bill phases in eligibility as follows:

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<sup>1</sup> R.C. 3310.02.

<sup>2</sup> R.C. 3310.02(A).

School year for which student is applying for a scholarship	Eligible grades
2011-2012	Kindergarten
2012-2013	Kindergarten through 4th
2013-2014	Kindergarten through 8th
2014-2015 and thereafter	Kindergarten through 12th

A student who did not attend a nonpublic school in Ohio during the immediately preceding school year is eligible for a scholarship in any grade, K through 12, beginning in the 2011-2012 school year.<sup>3</sup>

A student remains eligible for a PACT scholarship and may continue to receive scholarships in subsequent school years until the student completes the high school curriculum, so long as the student (1) remains entitled to attend school in an Ohio school district (which essentially means that the student and the student's parent remain Ohio residents), (2) the student's family income continues to meet income eligibility requirements (unless that student is a "grandfathered" Ed Choice or Cleveland scholarship recipient), (3) the student takes each state achievement assessment prescribed for the student's grade level, and (4) the student is not absent for more than 20 days that the school is open for instruction, not including excused absences as defined by the State Board of Education.<sup>4</sup>

If a student who has received a PACT scholarship becomes ineligible, the student nevertheless may continue to use money accumulated in the student's education savings account (see below).<sup>5</sup>

## **Amount of scholarship**

### **Income thresholds**

The scholarship amount awarded to an eligible student is based on the student's family income for the preceding tax year, as measured by the family's federal adjusted gross income. The bill uses the standard for reduced-price lunch eligibility as a base for awarding scholarships. Currently, reduced-price lunch is 185% of the federal poverty line. According to the U.S. Department of Agriculture's Food and Nutrition web site, the Department advised state agencies administering food and nutrition programs to use the 2009-2010 school year guidelines to determine eligibility for the 2010-2011

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<sup>3</sup> R.C. 3310.03(B).

<sup>4</sup> R.C. 3310.03(C) and (E).

<sup>5</sup> R.C. 3310.03(d).

school year.<sup>6</sup> Using those standards, the federal poverty level used for the 2010-2011 school year for a family of four is \$22,050. To qualify for reduced-price lunch, a family of four must have an annual income less than or equal to \$40,793.<sup>7</sup> As used in the chart below, that income standard for a reduced-price lunch shall be referred to as "the standard."

### Scholarship amount

The amount of the scholarship is based on the sum of the formula amount for each student plus the per pupil amount of base funding supplements, as calculated under the former Building Blocks model school funding system. The formula amount for FY 2011 is \$5,732.<sup>8</sup> (Current law does not specify a formula amount beyond FY 2011.) The base funding supplement amount for FY 2009 was \$50.90.<sup>9</sup> Thus, using the most recent and available amounts, the base amount for the scholarship would be \$5,732 + \$50.90, or \$5,782.90.

Students receive a percentage of the base amount, depending on the family's federal adjusted gross income for the preceding tax year, as follows:<sup>10</sup>

Family income	Amount of scholarship	Estimated dollar amount of scholarship using most recent available amounts
Less than or equal to 1.5 times the standard	80% of the base amount	\$4,626
Less than or equal to 1.75 times the standard	70% of the base amount	\$4,048
Less than or equal to 2 times the standard	60% of the base amount	\$3,470
Less than or equal to 2.25 times the standard	50% of the base amount	\$2,891
Less than or equal to 2.5 times the standard	40% of the base amount	\$2,313
Greater than 2.5 times the standard, but received either Ed Choice or Cleveland Scholarship in the year preceding the implementation of the PACT scholarship	40% of the base amount	\$2,313

<sup>6</sup> <http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs10-11.htm>, last visited 3/6/11.

<sup>7</sup> <http://www.fns.usda.gov/cnd/governance/notices/iegs/IEGs09-10.pdf>, last visited 3/6/11.

<sup>8</sup> R.C. 3317.02(B), not in the bill.

<sup>9</sup> R.C. 3317.012(C), not in the bill.

<sup>10</sup> R.C. 3310.05.

## **Financing and payment**

PACT scholarships are to be financed in a manner similar to Ed Choice scholarships. PACT students would be counted in the enrollments of their resident school districts for purposes of school funding, and then those students' scholarships would be deducted from their school districts' state payments.<sup>11</sup>

The Department of Education must pay the scholarship amount to each student's parent, or to the student if the student is at least 18 years old. Payments must be made on a periodic basis over the course of the school year. The Department must proportionately reduce or terminate payments for any student who withdraws from an eligible nonpublic school before the end of the school year. If the student leaves the nonpublic school and enrolls in the student's resident district or in a community school, the Department must partially restore the amount deducted from the school district's state funds.

If the scholarship amount exceeds the tuition and fees of the student's nonpublic school, and if the student remains enrolled in the school through the end of the school year, the Department must deposit the excess amount into the student's education savings account (see below).<sup>12</sup>

## **Disclosure to school districts**

The bill requires the Department to disclose, on each school district's state funding computation form, the total amount of state and local funding credited to the district for its PACT scholarship students minus the total amount of scholarships deducted for those students. The bill specifies a formula for the Department to use in determining the amount to disclose. Essentially that formula means the following:

[(The district's total state operating aid per pupil + its local operating tax revenue per pupil) x the district's number of PACT scholarship students] – the total deducted from the district's account for PACT scholarship students

The result would be the amount of state and local funds remaining after the scholarships are deducted.<sup>13</sup>

## **Eligible nonpublic schools**

A PACT scholarship may be used to pay tuition and fees at an eligible nonpublic school. An eligible nonpublic school is either a *chartered* nonpublic school, or an

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<sup>11</sup> R.C. 3310.08(C) and 3317.03.

<sup>12</sup> R.C. 3310.08(A), (B), and (C).

<sup>13</sup> R.C. 3310.08(D).

*approved* nonpublic school, that has registered with the Superintendent of Public Instruction its intent to accept scholarship students and its agreement to comply with the requirements of the program. A chartered nonpublic school is a private school that has received a state charter from the State Board of Education because it meets the State Board's minimum operating standards for schools.<sup>14</sup> An approved nonpublic school, under the bill, is a private school that:

(1) Is in the process of becoming a chartered nonpublic school and has received a preliminary approval to operate from the State Board within the past three years; and

(2) Files with the state Superintendent prior to the start of the school year either:

(a) A surety bond payable to the state, or a letter of credit with the state as beneficiary, in an amount equal to one-half of the PACT scholarship funds expected to be received during the school year, as determined by the Superintendent; or

(b) A guarantee in the amount of \$1 million from a person or organization with a net worth of at least \$5 million, demonstrated to the satisfaction of the Superintendent.<sup>15</sup>

### **Duties of nonpublic schools**

The bill requires nonpublic schools to do all of the following to remain eligible for the program:

(1) Communicate to the Department of Education the tuition structure for the school, including all discounts and other tuition adjustments to which a student may be entitled;

(2) Present to the parent of each student awarded a scholarship, or the student if at least 18 years of age, a statement detailing the tuition and required student fees that will be subject to payment from the student's scholarship amount;

(3) Administer the state achievement assessments (see below);

(4) Withdraw from the school any scholarship student as soon as it determines that the student will no longer attend the school. The student's withdrawal date is the last date that the student attended classes.

(5) Obtain criminal records checks of its employees and contractors, and deny employment to those who committed disqualifying offenses, in the same manner required by current law for chartered nonpublic schools.<sup>16</sup>

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<sup>14</sup> See R.C. 3301.16, not in the bill.

<sup>15</sup> R.C. 3310.09(A).

## **Tuition and fees for scholarship students**

Eligible nonpublic schools may not charge a scholarship student tuition and fees that exceed the cost of providing education to the student. In determining tuition for a PACT scholarship student, an eligible nonpublic school must apply any tuition discounts or rates for which the student qualifies, including but not limited to, sibling discounts or child of employee discounts. Further, pursuant to the school's policy, if one exists, the bill permits an eligible nonpublic school to treat the amount of the PACT scholarship as a parental resource that may be considered as a factor in awarding institutional financial aid.<sup>17</sup>

The bill also authorizes eligible nonpublic schools to file PACT scholarship applications on behalf of eligible students and their parents if so designated in writing by a parent or student, if 18 or older. However, the school may not charge a fee for doing so.<sup>18</sup>

## **Assessments and data**

### **Ed Choice and Cleveland requirements carried over to PACT**

As is the case under current law for the Ed Choice and Cleveland scholarship programs, the bill requires (1) eligible nonpublic schools that enroll students with PACT scholarships to administer the state achievement assessments to the scholarship students and to report their scores to the Department of Education, and (2) the Department to report performance data derived from the achievement assessments taken by the PACT students. The Department must post the performance data on its web site and distribute it to the parent of each student eligible to participate in the scholarship program.<sup>19</sup>

The Department must group the data by school district (including all participants in the program from that district), by eligible nonpublic school (including all participants enrolled in that school), and by state (including all participants statewide). The data also must be disaggregated within each group by (1) age, (2) race and ethnicity, (3) gender, (4) students who have participated in the scholarship program for three or more years, (5) students who have participated between one and three

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<sup>16</sup> R.C. 109.572 and 3310.09(B) and (C). See R.C. 3319.39, 3319.391, and 3319.392, none in the bill.

<sup>17</sup> R.C. 3310.13(B) and (C).

<sup>18</sup> R.C. 3310.13(A).

<sup>19</sup> R.C. 3310.14 and 3310.15(A).

years, (6) students who have participated for one year or less, and (7) economically disadvantaged students.<sup>20</sup>

In reporting performance data for scholarship students, the Department may not report data that is statistically unreliable or that could result in the identification of individual students. The bill prohibits the Department from reporting data for any group that contains less than ten scholarship students. Therefore, for example, if a nonpublic school enrolls 20 scholarship students across several grade levels, the Department could report the school-wide assessment results, but there may be too few students in a particular grade or racial group to report the results by grade level without endangering a student's privacy.<sup>21</sup>

The Department must provide the parent of each scholarship student with a comparison of the student's achievement assessment scores with the average scores of similar students enrolled in the school district-operated building the scholarship student would otherwise attend. For this purpose, the scholarship student must be compared to students of similar age, grade, race or ethnicity, gender, and socioeconomic status.<sup>22</sup>

#### **Additional requirements**

In computing student performance data, the bill requires the Department, "to the greatest extent possible," to include student performance growth using the value-added progress dimension.<sup>23</sup>

Moreover, the bill requires the Department, to extent permitted under federal law, to release student assessment scores and performance data relating to the PACT scholarship program to independent research organizations that are part of, or formally affiliated with, accredited public or private universities. The data release must be for the purpose of conducting longitudinal analysis of PACT student performance. The released data may not be used to disclose the academic level of individual students.<sup>24</sup>

Normally, under the federal Family Educational Rights and Privacy Act (and under the implementing state law), the Department and public and private schools are not permitted to release student personally identifiable data without a student's or parent's consent. However, the law provides a number of specific exceptions. One

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<sup>20</sup> R.C. 3310.15(B).

<sup>21</sup> R.C. 3310.15(D).

<sup>22</sup> R.C. 3310.15(E).

<sup>23</sup> R.C. 3310.15(C). See R.C. 3302.021, not in the bill.

<sup>24</sup> R.C. 3310.15(F).

exception permits the release of data to organizations to conduct studies "for, or on behalf of," the educational agency to "develop, validate, or administer predictive tests; administer student aid programs; or improve instruction." In applying this exception, the state or a school must ensure that the information (1) is used only by the organization requesting the data and (2) is destroyed when no longer needed by the organization.<sup>25</sup> It is this exception that the Department likely would invoke in order to lawfully release student data to outside researchers.

### **Purpose statement**

Similar to a statement in current law for the Ed Choice program, the bill states that it is the policy adopted by the General Assembly that the PACT scholarship program is one of several options available for eligible students. It states that those students may choose to enroll in the schools of the student's resident district, in community schools, in the schools of another school district pursuant to an open enrollment policy, in nonpublic schools with or without a PACT scholarship, or in other schools as the law may provide.<sup>26</sup>

### **Rule-making**

The bill requires the State Board of Education to adopt rules that prescribe procedures for the administration of the PACT scholarship program. As stated in current law for Ed Choice, the bill also states that the State Board and the Department may not require eligible nonpublic schools to comply with any education laws, rules, or other requirements that are not specified under the bill's provisions, if they otherwise would not apply to eligible nonpublic schools.<sup>27</sup>

### **Education savings accounts**

If the amount of a PACT scholarship awarded to a student exceeds the amount of tuition and fees charged by the student's eligible nonpublic school, the excess must be paid into an "education savings account" established uniquely for that student. Unlike the scholarship payments themselves, which are paid periodically throughout a school year, the excess, if there is any, may not be paid into the student's account until the end of the school year; and then only if the student is still enrolled in a participating eligible nonpublic school.<sup>28</sup> Each student's account is in the custody of the Treasurer of State, but not held in the state treasury. The Treasurer of State is required to adopt rules

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<sup>25</sup> 20 United States Code (U.S.C.) 1232g(b)(1)(F) and 34 Code of Federal Regulations 99.31(a)(6).

<sup>26</sup> R.C. 3310.06.

<sup>27</sup> R.C. 3310.17.

<sup>28</sup> R.C. 3310.08(A).

under the Administrative Procedure Act for the establishment and administration of student education savings accounts.<sup>29</sup>

Once an account is established for a student, money in the account can be used by the student or student's parents for any of the following:

- Tuition and fees at an eligible nonpublic school under the PACT scholarship program for future school years;
- Textbooks required by an eligible nonpublic school or an institution of higher education in Ohio;
- Tuition and fees for enrollment in any institution of higher education in Ohio; and
- Fees for national norm-referenced examinations, advanced placement exams, and any exams for admission to an institution of higher education in Ohio.<sup>30</sup>

(Ohio higher education institutions where the money in the accounts can be spent include state and private colleges and universities and for-profit proprietary colleges and schools.<sup>31</sup>)

A student's account must be maintained as long as there is money in it, until either (1) the student reaches 25 years of age or (2) dies before reaching that age. Any money left in the account at that time must be paid into the Parental Choice and Taxpayer Savings Scholarship Program Support Fund, which is created by the bill. Similarly, all investment earnings on money in each student's account must be paid into that separate support fund.<sup>32</sup>

### **Support Fund**

The bill creates in the state treasury the Parental Choice and Taxpayer Savings Scholarship Program Support Fund. That fund is made up of interest earned on individual student education savings accounts and any unused money left in a student's account when the student reaches the age of 25 or dies before reaching that

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<sup>29</sup> R.C. 3310.10(A).

<sup>30</sup> R.C. 3310.10(B).

<sup>31</sup> R.C. 3310.01(B). See R.C. 3365.01(A), not in the bill.

<sup>32</sup> R.C. 3310.10(A) and (C).

age. Money in the fund must be used by the Department of Education to support administration of the PACT scholarship program.<sup>33</sup>

### **Report**

The Treasurer of State must issue an annual report to the Governor and the General Assembly on the total amount paid into the Support Fund from interest and leftover moneys in individual student education savings accounts.<sup>34</sup>

## **Special Education Scholarship Program**

### **Background on IDEA**

Under the federal Individuals with Disabilities Education Act (IDEA), children identified as disabled are entitled to a "free appropriate public education" that provides special education and related services to enable them to benefit from educational instruction.<sup>35</sup> Related services include transportation and support services such as speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling services, and diagnostic medical services. Under both the IDEA and state law, an "individualized education program" (IEP) must be developed for each child identified as disabled. The IEP specifies the services to which the child is entitled and are therefore guaranteed by law. It is developed by a team including representatives of the child's resident school district (or community school or STEM school) and the child's parent or the parent's counsel.<sup>36</sup> A child's school district or school may provide the services specified in the IEP, or it may enter into an agreement with another public or private entity to provide those services.

### **The bill**

The bill establishes the Special Education Scholarship Program to provide scholarships for disabled children to attend special education programs other than those offered by their school districts. The program applies to any identified disabled child in grades K through 12. A scholarship may be used to pay the expenses of a public or private provider of special education programs for implementation of the child's IEP and other services that are not in the IEP but are associated with educating

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<sup>33</sup> R.C. 3310.18.

<sup>34</sup> R.C. 3310.10(D).

<sup>35</sup> See 20 U.S.C. 1400 *et seq.*

<sup>36</sup> See 20 U.S.C. 1414 and R.C. 3323.011, not in the bill.

the child. The bill also permits the "eligible applicant" (generally the child's parent, see below) and the provider to agree to alter the services provided to the child.<sup>37</sup>

While a child is using a scholarship, the school district in which the child would otherwise be enrolled has no obligation to provide the child with a free appropriate public education. But the bill also specifies that if that district has agreed to provide some services for the child, or if the district is required by separate law to provide some services, including transportation services, the district may not discontinue them pending completion of any administrative proceedings regarding those services. (See "**Continuation of some school district services**" below.) The district also has a continuing obligation to develop the child's IEP.<sup>38</sup>

## **Eligibility**

### **"Qualified special education child"**

Under the bill, a child is eligible, or "qualified," for a special education scholarship if the child is from 5 to 21 years old and the child's resident school district has identified the child as disabled and developed an IEP for the child. In addition, the child must either (1) have been enrolled in the district in which the child is entitled to attend school in any grade from K through 12 in the school year prior to the year in which the scholarship would first be used or (2) be eligible to enroll for services from that district in the school year in which the scholarship would first be used. The bill explicitly specifies that a child attending a public special education program under an agreement between the child's school district and the program provider, or a child attending a community school, may apply for a scholarship.<sup>39</sup>

But, under the bill, a community school is not considered a child's school district of residence.<sup>40</sup> Therefore, any IEP developed by the community school would not qualify the child to receive a scholarship. It is not clear under the bill whether a community school student would need to enroll in a district school to receive a new district-developed IEP prior to receiving a scholarship.

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<sup>37</sup> R.C. 3310.52.

<sup>38</sup> R.C. 3310.53 and 3310.62(C).

<sup>39</sup> R.C. 3310.51(F) and 3310.61.

<sup>40</sup> R.C. 3310.51(I).

Moreover, a child is not eligible for a scholarship in any school year in which the child has been awarded a scholarship under the Autism Scholarship Program (see **COMMENT**) or the bill's new PACT scholarship program.<sup>41</sup>

The bill also specifies that a child must remain in compliance with the state's Compulsory Attendance Law. Under that law, the parent of a child who resides in the state who is between 6 and 18 years of age must attend a public or private school that meets the minimum education standards of the State Board of Education unless the student is excused from attendance for home instruction. A child can face juvenile sanctions and a child's parent can face criminal sanctions violations of that law.<sup>42</sup>

A child is not eligible for a scholarship for the first time while the child's IEP is being developed or while any administrative or judicial proceedings regarding the content of that IEP are pending. On the other hand, the bill also specifies that, in the case of a child for whom a scholarship already has been awarded, development of subsequent IEPs and the prosecuting of administrative or judicial mediation or proceedings with respect to any of those subsequent IEPs do not affect continued eligibility for scholarship payments. In other words, a scholarship will not be awarded and paid until the child's IEP is in place and it is clear that there are no challenges to that IEP. But *future* challenges to *subsequent* IEPs will not disqualify the child for a scholarship.<sup>43</sup>

#### **"Eligible applicant"**

The bill permits the following individuals to apply for and accept a scholarship for a qualified special education child:

(1) The child's custodial natural or adoptive parent or parents. The bill specifically excludes a parent whose custodial rights have been terminated.

(2) The child's guardian;

(3) The child's custodian other than the parent;

(4) The child's grandparent if the grandparent is an attorney-in-fact under a power of attorney or if the grandparent has executed a caregiver affidavit (both under continuing law);

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<sup>41</sup> R.C. 3310.51(F)(5).

<sup>42</sup> R.C. 3310.51(F)(6). See R.C. Chapter 3321., not in the bill.

<sup>43</sup> R.C. 3310.62.

(5) The child's "surrogate parent" appointed under state and federal special education law; or

(6) The child, if the child does not have a custodian or guardian and is at least 18 years old.<sup>44</sup>

### **Annual limit on the number of scholarships**

The bill limits the number of scholarships that may be awarded each year under the Special Education Scholarship Program to not more than 5% of the number of identified disabled students residing in the state during the previous fiscal year.<sup>45</sup>

### **Alternative providers of special education programs**

Scholarships may be used to pay for special education programs provided by alternative public providers or by private entities registered with the Superintendent of Public Instruction.

#### **Alternative public providers**

An alternative public provider must be either (1) a school district other than the district obligated to educate the disabled child (or the child's resident school district, if different) or (2) another public entity that agrees to enroll the child and implement the child's IEP. In addition, the alternative public provider must be an entity to which the eligible applicant, rather than a school district or other public entity, owes fees for the services provided to the child. In other words, an eligible applicant cannot use a scholarship to enroll a child in a school district or other public entity to which the child's school district would send the child for special education services because, in that case, the child's district would be required to pay the receiving district or entity for the services provided to the child. Nor may an eligible applicant use a scholarship to enroll the child in a community school because the community school, as a public school, would receive funds to educate the child even without the scholarship. The eligible applicant must use the scholarship to pay for special education and related services provided by a school district or public entity from which the eligible applicant otherwise would not receive those services for the child free of charge.<sup>46</sup>

#### **Registered private providers**

Nonpublic schools and other private entities may accept scholarship children under the bill, but first they must register with the Superintendent of Public Instruction.

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<sup>44</sup> R.C. 3310.51(C).

<sup>45</sup> R.C. 3310.52(B).

<sup>46</sup> R.C. 3310.51(A).

To be registered by the Superintendent, the private school or entity must meet the following requirements:

(1) It must comply with the antidiscrimination provisions of the federal Civil Rights Act of 1964,<sup>47</sup> which prohibits discrimination on the basis of *race, color, or national origin* in the administration of benefits assisted with federal funds. The bill specifies that this antidiscrimination statement applies to a registered private provider regardless of whether the provider receives federal financial assistance. A student's scholarship under the program is not funded with federal money.

(2) It agrees to conduct criminal records checks of applicants for employment and contractors, if it is not already required to do so pursuant to law;<sup>48</sup>

(3) It meets applicable health and safety standards;

(4) It agrees to retain any documentation required by the Department of Education;

(5) It agrees to provide to the child's resident school district a record of the implementation of the child's IEP, including evaluation of the child's progress; and

(6) It agrees that if it declines to enroll a particular child under the program, it will notify the eligible applicant in writing of its reasons for declining to enroll that child.<sup>49</sup>

If the Superintendent of Public Instruction determines that a private school or entity no longer meets these criteria, the Superintendent must revoke its registration. The school or entity must be allowed a hearing prior to revocation.<sup>50</sup>

### **Scholarship amount**

Each Special Education scholarship is worth the *smaller* of:

(1) The total fees charged by the provider; or

(2) A maximum amount based on the per pupil amount that would have been computed for payment to a school district for the student under the former Building Blocks Model school funding system. That amount is the sum of:

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<sup>47</sup> 42 U.S.C. 2000d.

<sup>48</sup> R.C. 109.57, 109.572, 3319.39, 3319.391, and 3319.392 (last three not in the bill).

<sup>49</sup> R.C. 3310.58.

<sup>50</sup> R.C. 3310.59.

(a) The "formula amount," which for FY 2011 is \$5,732; plus

(b) The per pupil base funding supplements as they were calculated for FY 2009 (\$50.90); plus

(c) A weighted special education amount, equal to the formula amount multiplied by one of the following weights:

- 0.2892, for a student with a category one disability (speech and language disabled only);
- 0.3691, for a student with a category two disability (specific learning disabled, developmentally disabled, or other health impaired-minor);
- 1.7695, for a student with a category three disability (vision impaired, hearing disabled, or severe behavior disabled);
- 2.3646, for a student with a category four disability (orthopedically disabled or other health impaired-major);
- 3.1129, for a student with a category five disability (multiple disabilities); or
- 4.7342, for a student with a category six disability (autism, traumatic brain injuries, or both visually and hearing impaired).

Before applying these multiples, the bill specifies that they must be adjusted by multiplying them by 0.80 (in other words, 80% of the prescribed weight).<sup>51</sup>

The prescribed weights and categories are the same ones used under the former Building Blocks Model.<sup>52</sup> They are slightly different from the ones prescribed under the current system for funding school districts (unofficially known as the "Evidence-Based Model" (or EBM)).<sup>53</sup> Under current law, the EBM weights (like the former Building Blocks weights) are multiplied by 90%, instead of 80%.

### **Payment of scholarships**

Like other current scholarship programs and the bill's new PACT scholarship program, the Department of Education must make periodic payments throughout the school year to the eligible applicant for services provided to a qualified special

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<sup>51</sup> R.C. 3310.56.

<sup>52</sup> R.C. 3317.013, not in the bill.

<sup>53</sup> R.C. 3306.02(D) and 3306.11, neither in the bill.

education child, until the full amount of the scholarship has been paid. The amount of the scholarship is deducted from the state aid account of the school district in which the child is entitled to attend school. That district is authorized to count the child in its formula ADM and special education ADM. If the child is not included in the formula ADM of that district, the Department must adjust the district's ADM to include the child and recalculate the district's state aid payments for the entire fiscal year accordingly.

The scholarship may be used only to pay fees charged by the alternative special education program for implementation of the child's IEP and other services agreed to by the provider and the eligible applicant that are not in the IEP but are associated with educating the child. The Department must prorate a child's scholarship amount if the child withdraws from the alternative program before the end of the school year.<sup>54</sup>

### **Application deadlines**

In order to qualify for a scholarship, either for the first time or to renew a scholarship an eligible applicant must submit an application in the manner prescribed by the Department of Education and notify the child's school district. The bill prescribes April 15 as the application deadline for academic terms that begin between July 1 and December 31 (the first half of a school year), and November 15 for academic terms that begin between January 1 and June 30 (the second half of a school year).<sup>55</sup>

### **Continuation of some school district services**

The bill provides that, if the resident school district of a child awarded a scholarship has agreed to provide some services for the child or, if the district is required by law to provide some services for the child, including transportation services, the district may not discontinue the services pending completion of any administrative proceedings regarding those services. It also specifies that the prosecuting, by the eligible applicant on behalf of the child, of administrative proceedings regarding those services does not affect the applicant's and the child's continued eligibility for scholarship payments.<sup>56</sup>

### **Written notice of rights and informed consent**

The bill requires the Department of Education to develop, within 60 days after the bill's effective date, and subsequently to revise as necessary, a document that compares a parent's and child's rights under state and federal special education law

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<sup>54</sup> R.C. 3310.52, 3310.54, 3310.55, 3310.57, and 3317.03(A), (B), and (F)(5).

<sup>55</sup> R.C. 3310.52(C).

<sup>56</sup> R.C. 3310.60 and 3310.62(C).

with their rights under the Special Education Scholarship Program, including the scholarship program's statutory application deadlines (see above). It also requires the Department and each school district to distribute the document to parents of disabled children as a part of, appended to, or in conjunction with the procedural safeguards notice required under federal law. It then specifies that an eligible applicant's receipt of the comparison document, as acknowledged in a format prescribed by the Department, constitutes notice that the eligible applicant has been informed of those rights. It further provides that acceptance of a scholarship constitutes the eligible applicant's informed consent to the provisions of the Special Education Scholarship Program.<sup>57</sup>

## **Background**

Federal special education law requires that the parents of disabled children be given notice of the procedural safeguards available to them regarding their children's special education and related services. Specifically, both the state and each school district are obligated to provide a "full explanation" of those safeguards "written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner."<sup>58</sup> That document must be provided once each year and upon referral or request for the child's evaluation, upon the first filing of an administrative complaint, or upon parental request. The federal statute and rules provide an extensive list of items that must be included in the document.

In compliance with this federal requirement, the Ohio Department of Education has developed a document entitled "Whose IDEA is This? A Resource Guide for Parents," written in English, Spanish, and French. School districts must distribute it to parents in accordance with the law, and it also is available on the Department's web site.<sup>59</sup>

## **Provider profile**

Each alternative public provider and each registered private provider that enrolls a child under the program must submit a written "profile" of the provider's services to the eligible applicant. The profile must be in a form prescribed by the Department of Education and must contain a description of the methods of instruction that will be used in providing services to the child and the qualifications of teachers, instructors, and other persons who will provide those services. As a condition of receiving

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<sup>57</sup> R.C. 3310.53(C) and 3323.052.

<sup>58</sup> 20 U.S.C. 1415(d) and 34 C.F.R. 300.503 and 300.504.

<sup>59</sup> On the Department's home page (<http://www.ode.state.oh.us>), click on "Learning Supports," then on "Students with Disabilities," then on "Resources and Support," and finally on "Whose IDEA is this?"

scholarship payments under the program, an eligible applicant must attest, in a form and manner prescribed by the Department, to having received the profile.<sup>60</sup>

### **State Board rules**

The State Board of Education must adopt rules for the Special Education Scholarship Program in accordance with the Administrative Procedure Act so that they are in effect not later than 120 days after the bill's effective date. Those rules must include application procedures and standards and procedures for the registration of private providers of special education programs.<sup>61</sup>

### **Formative evaluation**

The bill requires the Department of Education to conduct a "formative evaluation" of the Special Education Scholarship Program and to report its findings to the General Assembly by December 31, 2014. In doing so, the Department is required to the extent possible to gather comments from parents who have been awarded scholarships under the program, school district officials, representatives of registered private providers, educators, and representatives of educational organizations. The Department also is required to use quantitative and qualitative analyses in conducting its evaluation. The study must include an assessment of the level of the participating student's and parent's satisfaction with the program and the fiscal impact to the state and resident school districts. The bill also authorizes the Department to contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct the study and to accept grants to assist in funding the study.<sup>62</sup>

### **Transportation for all scholarship students**

Under the bill, PACT scholarship students are entitled to transportation to and from the nonpublic schools they attend in the manner prescribed under continuing law. Special Education scholarship children are entitled to transportation to and from the alternative special education programs they attend in the same manner as disabled students attending nonpublic schools.

Continuing law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and who live more than two miles from the school they attend. Districts may, but are not required to, transport high school students to and from their nonpublic schools. A district, however, is not

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<sup>60</sup> R.C. 3310.521.

<sup>61</sup> R.C. 3310.64; Section 3.

<sup>62</sup> Section 4.

required to transport students of any age to and from a nonpublic school if the direct travel time by school bus, from the district school the student would otherwise attend to the nonpublic school, is more than 30 minutes. When transportation by the district is impractical, the district may offer payment to a student's parent instead of providing the transportation. In the case of some special education students, transportation might be mandated by their IEPs.<sup>63</sup>

### **Access to data verification codes; privacy of records**

As is the case under current law for the Ed Choice and Cleveland programs, the bill permits the Department of Education to request the data verification codes of students applying for PACT and Special Education scholarships 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.

The bill also requires the Department to provide each PACT scholarship student's data verification code to the chartered nonpublic school in which the student enrolls. Under current law, when a scholarship student takes the statewide achievement tests (which is a requirement for maintaining eligibility for the scholarship program) the chartered nonpublic school must administer the tests in the same manner as public schools, including placing the student's data verification code on each test.<sup>64</sup>

Neither the Department nor a chartered nonpublic school 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

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<sup>63</sup> R.C. 3310.04 and 3310.60. See R.C. 3327.01, not in the bill.

<sup>64</sup> R.C. 3301.0711(A)(1) and (K), not in the bill, and R.C. 3310.11.

public records, but may be released only in accordance with state and federal privacy laws.<sup>65</sup>

### **Confidentiality of Ed Choice and Cleveland scholarship participants**

The bill stipulates any document in the Department of Education's files related to the Ed Choice or Cleveland scholarship programs that contains both a student's name or other personally identifiable information and the student's data verification code is not a public record.<sup>66</sup> This is a continuation of current law.

### **Prohibition on using more than one scholarship program at a time**

The bill specifically prohibits a student from using more than one state scholarship at a time. In other words, in any particular school year, a student and the student's parents must choose to use only one of the state scholarship programs, but from one year to the next they would be free to choose a different program, assuming they were eligible for it.<sup>67</sup>

### **Background on current scholarship programs**

The PACT scholarship program would replace two of the state's three current scholarship programs: The Cleveland Scholarship and Tutoring Pilot Program and the Educational Choice Scholarship Pilot Program. While both the Cleveland and Ed Choice programs provide scholarships for students to attend nonpublic schools, they each operate somewhat differently. Current law states that "the two pilot programs are separate and distinct," each with its own prescribed scholarship amount in recognition of its unique eligibility criteria. The Cleveland program "is a district-wide program that may award scholarships to students who do not attend district schools that face academic challenges, whereas the Educational Choice Scholarship Pilot Program . . . is limited to students of individual district school buildings that [do] face academic challenges."<sup>68</sup>

### **Cleveland Scholarship and Tutoring program**

The law authorizing the Cleveland Scholarship and Tutoring program was enacted in 1995. The program consists of two components: scholarships for students living in the Cleveland Municipal School District to attend nonpublic schools, and tutorial assistance grants for students who attend the schools of the Cleveland district.

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<sup>65</sup> R.C. 3301.0714(D), 3310.12, and 3310.63.

<sup>66</sup> R.C. 3310.16.

<sup>67</sup> R.C. 3310.02 and 3310.51(F)(5).

<sup>68</sup> Current R.C. 3310.05.

## **Cleveland Scholarship program**

Initial scholarships to attend nonpublic schools are available to Cleveland students attending grades K through 8 only. High school students may receive scholarships only if they received a scholarship prior to high school.<sup>69</sup> The scholarship amount for any student attending an alternative school is based on the lesser of (1) the actual tuition charges of the school or (2) an amount established by the state Superintendent. This amount may not exceed \$3,450.<sup>70</sup> But the state actually pays only 75% or 90%, according to the student's family income, of the base scholarship amount. The remainder is statutorily required to be paid by a third party.

While there are no income standards to participate, the law requires that preference be given to students from low-income families. The "low-income" threshold is not established in statute; instead, the Superintendent of Public Instruction has established this threshold as 200% of the federal poverty guideline. The Superintendent must also determine whether each selected student qualifies for 75% or 90% of the scholarship amount. Students whose family income is at or above 200% of the federal poverty guideline qualify for 75% of the scholarship amount, and students whose family income is below that 200% threshold qualify for 90%.<sup>71</sup>

The Cleveland Scholarship program is financed partially with state funds and partially with an amount set aside from the Cleveland district's state account. For each of FY 2010 and 2011, the current budget act sets aside \$11.9 million from Cleveland's account, of which up to \$1 million in each year is for the tutoring component.<sup>72</sup>

## **Cleveland Tutoring program**

The tutoring component of the Cleveland program allows the parent of a student enrolled in the Cleveland district's schools to obtain tutoring from an approved provider. It authorizes grants to cover the tutorial provider's charges, up to \$400 per year.<sup>73</sup>

## **Ed Choice**

The law authorizing the Educational Choice Scholarship Pilot Program was enacted in 2005, and the first scholarships were awarded for the 2006-2007 school year.

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<sup>69</sup> R.C. 3313.975, repealed by the bill.

<sup>70</sup> R.C. 3313.978(C)(1), repealed by the bill.

<sup>71</sup> R.C. 3313.978(A), repealed by the bill.

<sup>72</sup> Section 265.30.40 of Am. Sub. H.B. 1 of the 128th General Assembly.

<sup>73</sup> R.C. 3313.975, 3313.976(D), 3313.978, and 3313.979, repealed by the bill.

Students may use the scholarships to pay tuition at chartered nonpublic schools. No more than 14,000 scholarships may be awarded in any year. There are no income limits to participate, but priority must be given to prior recipients and to new applicants whose family incomes are at or below 200% of the federal poverty guideline.<sup>74</sup>

The program provides scholarships for primary and secondary students of under-performing schools in districts other than Cleveland. Generally, a student is eligible to apply for an Ed Choice scholarship if the student is attending, or otherwise would be assigned to, a school building operated by the student's resident district that has been declared to be in academic watch or academic emergency for at least two of the last three school years, and was not rated excellent or effective in the most recent of those years. A student who receives an Ed Choice scholarship may receive scholarships until the student completes grade 12, so long as (1) the student's resident district stays the same or the student transfers to a new district and would be assigned in that new district to a qualifying building, (2) the student takes each state achievement assessment prescribed for the student's grade level while enrolled in a chartered nonpublic school, and (3) the student is not absent from that school for more than 20 days (not including excused absences).<sup>75</sup>

The amount of each annual Ed Choice scholarship is the *lesser* of (1) the tuition charged by the chartered nonpublic school in which the student is enrolled or (2) a "maximum" amount, which is:

- (a) \$4,250 for grades K through 8; and
- (b) \$5,000 for grades 9 through 12.<sup>76</sup>

The scholarships are financed through a "deduct and transfer" method. Each student awarded an Ed Choice scholarship is counted in the enrollment of the student's resident school district for school funding purposes. The Department of Education is then required to deduct \$5,200 from the district's state funding account for each of the district's students awarded a scholarship. This deduction funds scholarships under both the Ed Choice and the Cleveland programs.<sup>77</sup>

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<sup>74</sup> Current R.C. 3310.02.

<sup>75</sup> Current R.C. 3310.03(B).

<sup>76</sup> Current R.C. 3310.08(A) and 3310.09.

<sup>77</sup> Current R.C. 3310.08(C)(1) and 3317.03(A)(2)(g).

## Autism Scholarship Program

A third program, the Autism Scholarship Program, pays scholarships to the parents of certain autistic children in grades *pre-kindergarten* to 12.<sup>78</sup> The bill's proposed Special Education Scholarship Program contains many of the same concepts of the smaller Autism Scholarship Program and applies those concepts to children of all categories of disability. The bill's larger Special Education program does not apply to pre-kindergarten students.

The bill does not affect the Autism Scholarship Program. In fact, neither program changes or conflicts with the provisions of the other, and it appears that the two programs could coexist. However, the bill excludes a student from simultaneously participating in both programs. Nevertheless, children with autism who are in grades K through 12 would be eligible for and their parents could choose either of the two programs. For example, if a parent of a child with autism could not participate in the new program because its 5% cap had been reached, the parent likely could turn to the Autism Scholarship Program, which has no cap. On the other hand, the due process provisions between the two programs are somewhat different. Under the Autism Scholarship Program, a parent may not be awarded a scholarship if there is any pending dispute over the child's IEP. Under the Special Education Scholarship Program, the prohibition on award and payment of a scholarship applies only until the child's first IEP is developed.

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## HISTORY

ACTION	DATE
Introduced	03-01-11

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<sup>78</sup> R.C. 3310.41, not in the bill.