

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 943

By: Jett

AS INTRODUCED

An Act relating to students; creating the Oklahoma Parent Empowerment Act for Kids; providing short title; providing legislative intent; defining terms; creating the Oklahoma Parent Empowerment Act for Kids Program; providing for administration; providing method of application; directing publication of application; requiring procedures to approve applications within certain time period; providing for contents of parent agreement; providing certain construction; requiring renewal of OK PEAK Accounts on annual basis; allowing closure of accounts under certain circumstances; requiring notification within certain time period of certain student re-enrolling in certain school; providing for suspension of deposits into account; providing for remittance of unused funds; providing for calculation of State Aid amount; requiring transfer of certain calculated amount on a monthly basis; prohibiting certain provider from sharing, refunding, or rebating an amount with a parent or certain student; prohibiting personal deposits into certain account; prohibiting certain funds from being considered income; providing for accrual of account funds; requiring certain agency to maintain list of certain providers; requiring certain agency to provide certain information to certain parents; requiring notice to be provided to parents of certain children; allowing certain agency to contract with certain firm or organization; allowing withholding of certain percentage of funds to administer program; requiring the establishment of certain payment system; requiring implementation of certain system to share information about education service providers; providing for partial payment to an education service provider; authorizing certain auditing; providing for

1 the removal of certain parent or student from
2 eligibility under certain circumstances; providing
3 for appeal; allowing referral for certain
4 investigation; allowing for payments to cease to
5 certain providers under certain circumstances;
6 providing for appeal; allowing acceptance of gifts
7 and grants for certain purposes; providing for
8 promulgation of rules; providing process for
9 approving education service providers; directing
10 provision of certain student records in accordance
11 with certain act; providing certain construction;
12 directing certain decrease in state funding upon
13 certain finding of noncompliance; creating cause of
14 action for certain noncompliance; creating the OK
15 PEAK Account Revolving Fund; specifying sources of
16 fund; providing for expenditures; providing purpose
17 of fund; providing for establishment of burden in
18 certain legal proceeding; providing immunity from
19 liability for certain actions; allowing certain
20 parents to intervene in certain legal proceeding;
21 providing for severability; providing for
22 codification; providing an effective date; and
23 declaring an emergency.

24
25 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

26 SECTION 1. NEW LAW A new section of law to be codified
27 in the Oklahoma Statutes as Section 28-100 of Title 70, unless there
28 is created a duplication in numbering, reads as follows:

29 A. This act shall be known and may be cited as the "Oklahoma
30 Parent Empowerment Act for Kids".

31 B. It is the intent of the Legislature that parents, legal
32 guardians, and others with legal authority over children in this
33 state be able to access educational services that meet the needs of
34 their individual children by directing State Aid for which each

1 child is eligible to the education provider of their choice. The
2 Legislature affirms that parents and legal guardians are best suited
3 to make decisions to help children in this state reach their full
4 potential and achieve a brighter future.

5 SECTION 2. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 28-101 of Title 70, unless there
7 is created a duplication in numbering, reads as follows:

8 A. As used in the Oklahoma Parent Empowerment Act for Kids:

9 1. "Agency" means the Office of the State Treasurer;

10 2. "Curriculum" means a complete course of study for a
11 particular content area or grade level;

12 3. "Oklahoma Parent Empowerment Act for Kids Account" or "OK
13 PEAK Account" means the account in which funds are deposited by the
14 Agency to pay for qualifying education expenses for an OK PEAK
15 student;

16 4. "Education service provider" means a person, business,
17 public school district, public charter school, magnet school,
18 institution within The Oklahoma State System of Higher Education, or
19 organization that receives payments from a parent directing an OK
20 PEAK Account to provide educational goods and/or services to OK PEAK
21 students;

22 5. "Eligible student" means:

23 a. a resident of this state who lives in a county with a
24 population of more than ten thousand (10,000) or whose
25

1 parent works in a county with a population of more
2 than ten thousand (10,000) according to the latest
3 Federal Decennial Census, and who is eligible to
4 enroll in a public school in this state, or

- 5 b. a resident of this state who lives in a county with a
6 population of less than ten thousand (10,000)
7 according to the latest Federal Decennial Census and
8 who is eligible to enroll in a public school in this
9 state that has been determined by a reporting agency
10 to be a trigger district;

11 6. "OK PEAK student" means an eligible student approved for
12 participation in the OK PEAK Account Program;

13 7. "Parent" means a biological or adoptive parent, legal
14 guardian, custodian, or other person with legal authority to act on
15 behalf of an eligible student;

16 8. "Qualified expense" means the following services provided by
17 an education service provider:

- 18 a. tuition and/or fees at a private school accredited or
19 in the process of obtaining accreditation by the State
20 Board of Education or another accrediting association
21 approved by the State Board of Education,
22 b. tuition and/or fees for non-public online learning
23 programs,

- 1 c. tutoring services provided by an individual or a
2 tutoring facility,
- 3 d. services contracted for and provided by a public
4 school district, public charter school, or magnet
5 school including but not limited to classes and
6 extracurricular activities and programs,
- 7 e. textbooks, curriculum, or other instructional
8 materials including but not limited to supplemental
9 materials or associated online instruction required by
10 an education service provider,
- 11 f. computer hardware or other technological devices,
12 educational software, and applications that are used
13 to meet an OK PEAK student's curriculum needs,
- 14 g. tuition and/or fees for a curriculum or program, along
15 with related instruments, supplies, accessories, and
16 materials, that provides instruction in drama, music,
17 speech and debate, agriculture, or other similar
18 activities,
- 19 h. school uniforms,
- 20 i. fees for nationally standardized assessments including
21 but not limited to assessments used to determine
22 college admission and advanced placement examinations
23 as well as tuition and/or fees for tutoring or
24 preparatory courses for the assessments,

- j. tuition and/or fees for summer education programs and specialized after-school education programs; provided, however, that such expense does not include before-school or after-school childcare,
- k. tuition, fees, instructional materials, and assessment fees for a curriculum or program offered by a technology center school,
- l. educational services and therapies including but not limited to occupational, behavioral, physical, speech-language, and audiology therapies,
- m. tuition and fees for concurrent enrollment at an institution within The Oklahoma State System of Higher Education,
- n. fees for transportation paid to a fee-for-service provider for the student to travel to and from an education service provider, or
- o. any other qualified expense approved by the Agency;

9. "Reporting agency" means:

- a. the parent's state representative or state senator,
- b. the board of education for the resident district of the parent, as determined by Section 1-113 of Title 70 of the Oklahoma Statutes,
- c. the State Board of Education, or

1 d. the county sheriff for the county in which the parent
2 resides; and

3 10. "Trigger district" means a school district in this state
4 where any of the following concepts or activities have been
5 advocated or tolerated:

6 a. violations of Section 24-157 of Title 70 of the
7 Oklahoma Statutes,

8 b. violations of Section 1-125 of Title 70 of the
9 Oklahoma Statutes,

10 c. violations of Section 27-106 of Title 70 of the
11 Oklahoma Statutes,

12 d. instruction in gender identity and sexual orientation
13 including instruction designed to promote gender
14 confusion,

15 e. possession of books which contain obscene material as
16 defined by Section 1024.1 of Title 21 of the Oklahoma
17 Statutes,

18 f. curriculum which is sexual in nature, except as
19 provided for in Section 11-105.1 of Title 70 of the
20 Oklahoma Statutes,

21 g. the presence of any school employee or volunteer
22 engaged in anthropomorphic behavior commonly referred
23 to as furies,

- 1 h. climate change ideology including, but not limited to,
2 disparaging the oil and natural gas industry or the
3 agriculture industry,
4 i. curriculum promoting social and emotional learning,
5 j. curriculum promoting animal rights activism,
6 k. instruction that disparages the Second Amendment to
7 the United States Constitution,
8 l. ideology that encourages efforts to defund the police,
9 or
10 m. curriculum promoting a Marxist ideology including, but
11 not limited to, violations of Section 1266.4 of Title
12 21 of the Oklahoma Statutes.

13 B. There is hereby created the Oklahoma Parent Empowerment Act
14 for Kids or OK PEAK Program to be administered by the Agency to
15 provide an OK PEAK Account for qualified expenses to support the
16 education of OK PEAK students in this state.

17 C. 1. To apply for an OK PEAK Account, a parent of an eligible
18 student shall submit an application to the Agency on a form
19 prescribed by the Agency and published on its website. The
20 application may be submitted online or by mail.

21 2. The Agency shall establish procedures to approve
22 applications within ten (10) business days after receipt. There
23 shall be no deadline for submission of applications. Applications
24

1 shall be approved if the parent signs an agreement to do all of the
2 following:

- 3 a. use the OK PEAK Account only for qualified expenses to
4 provide an education for an eligible student in at
5 least the subjects of reading, English language arts,
6 mathematics, science, and social studies,
- 7 b. not enroll the eligible student as a full-time student
8 in a public school district, public charter school, or
9 magnet school after acceptance of an OK PEAK Account,
- 10 c. comply with rules and requirements of the OK PEAK
11 Account Program established by the Agency, and
- 12 d. not accept a scholarship from the Lindsey Nicole Henry
13 Scholarships for Students with Disabilities Program
14 created by Section 13-101.2 of Title 70 of the
15 Oklahoma Statutes while participating in the OK PEAK
16 Account Program.

17 3. No student shall, on the grounds of race, color, or national
18 origin, be excluded from participation in, be denied the benefits
19 of, or be subjected to discrimination under the OK PEAK Account
20 Program.

21 D. Nothing in this act shall be construed to require that an OK
22 PEAK student be enrolled full time or part time in a private school
23 or a nonpublic online school.

1 E. The Agency shall renew OK PEAK Accounts on an annual basis.

2 An account may be closed if:

3 1. The parent of an OK PEAK student re-enrolls the student as a
4 full-time student in a public school, as provided for by subsection
5 F of this section;

6 2. The Agency closes the account due to intentional misuse as
7 provided for in Section 3 of this act; or

8 3. The OK PEAK student graduates from high school or reaches
9 the age of twenty-one (21), whichever comes first.

10 F. The parent of an OK PEAK student shall notify the Agency
11 within five (5) days of the student re-enrolling in a public school
12 district, public charter school, or magnet school. Upon receipt of
13 the notification required by this subsection, the Agency shall
14 suspend deposits into the student's OK PEAK Account. Any unused
15 funds remaining in the OK PEAK Account at the end of the applicable
16 calendar year shall be remitted to the General Revenue Fund.

17 G. 1. For each eligible student approved to participate in the
18 OK PEAK Account Program, the Agency shall notify the State
19 Department of Education and request calculation of the amount of
20 State Aid for which the student is eligible. Within ten (10)
21 business days of receiving the request, the State Department of
22 Education shall notify the Agency of the calculated amount, which
23 shall be equivalent to the total State Aid factors including pupil
24 category weights for the applicable school year multiplied by the

1 grade weight generated by the student for the applicable school
2 year.

3 2. The State Department of Education on a monthly basis shall
4 transfer to the Agency for deposit into the OK PEAK Account
5 Revolving Fund created pursuant to Section 5 of this act an amount
6 equal to one-twelfth (1/12) of the total amount necessary to fund
7 all OK PEAK Accounts requested for the applicable school year.
8 Within ten (10) business days of a deposit required by this
9 paragraph, the Office of the State Treasurer shall make funds
10 available in OK PEAK Accounts.

11 3. Prior to the monthly deposit required by this subsection,
12 the Agency shall notify the State Department of Education if changes
13 to the number of participating OK PEAK students will result in a
14 modification of the monthly deposit amount.

15 H. An education service provider shall not share, refund, or
16 rebate any amount of an OK PEAK Account with the parent or OK PEAK
17 student. A refund or rebate for goods or services purchased with an
18 OK PEAK Account shall be credited to the OK PEAK Account.

19 I. Parents shall be prohibited from making personal deposits
20 into an OK PEAK Account. However, no parent shall be restricted
21 from making payments for educational goods and services not covered
22 by funds in a student's OK PEAK Account.

1 J. Monies received pursuant to the OK PEAK Account Program
2 shall not constitute taxable income to the parent or OK PEAK
3 student.

4 K. Funds deposited into an OK PEAK Account but unused shall
5 accrue from month to month and from year to year unless the account
6 is closed pursuant to the provisions of subsection E of this
7 section.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 28-102 of Title 70, unless there
10 is created a duplication in numbering, reads as follows:

11 A. To implement the provisions of the Oklahoma Parent
12 Empowerment Act for Kids, the Agency shall maintain and make
13 publicly available on its website an updated list of education
14 service providers.

15 B. The Agency shall provide parents of OK PEAK students a
16 written explanation of qualified expenses for which an OK PEAK
17 Account may be used, the responsibilities of parents, the duties of
18 the Agency, and the role of any private financial management firm or
19 other private organization with which the Agency may contract to
20 administer the Oklahoma Parent Empowerment Act for Kids.

21 C. The Agency shall provide parents of OK PEAK students with
22 disabilities notice that participation in the OK PEAK Account
23 Program shall have the same effect as a parental revocation of
24 consent pursuant to 20 U.S.C., Sections 1414(a)(1)(D) and 1414(C) of

1 the Individuals with Disabilities Education Act (IDEA) and an
2 explanation of the rights parents of OK PEAK students with
3 disabilities have under IDEA and any applicable state laws and
4 regulations.

5 D. The Agency may contract with a private financial management
6 firm or other private organization to administer in full or in part
7 the OK PEAK Account Program.

8 E. The Agency may withhold funding from deposits made pursuant
9 to subsection G of Section 2 of this act to administer the OK PEAK
10 Account Program in an amount not to exceed five percent (5%)
11 annually for the first two years after the effective date of this
12 act and three percent (3%) annually thereafter.

13 F. The Agency shall establish a commercially viable, cost-
14 effective, and parent-friendly system of payment for services from
15 OK PEAK Accounts to education service providers by electronic or
16 online funds transfer.

17 1. The system of payment established pursuant to this
18 subsection shall provide maximum flexibility for parents by
19 facilitating direct payments to education service providers whenever
20 possible, provide a parent-friendly system for requests for pre-
21 approval of qualified expenses, and timely reimbursement for
22 qualified expenses.

23 2. The Agency may contract with private entities to develop the
24 payment system.

1 G. The Agency shall implement a commercially viable, cost-
2 effective, and parent-friendly system for parents to publicly rate,
3 review, and share information about education service providers.

4 H. If an education service provider requires partial payment of
5 tuition or fees to reserve a place for an OK PEAK student prior to
6 the start of the school year, the partial payment may be paid by the
7 Agency prior to the start of the school year in which the OK PEAK
8 Account is opened and deducted in equal amounts from monthly
9 deposits into OK PEAK Accounts. If the parent of an OK PEAK student
10 chooses not to use the education service provider, the partial
11 reservation payment shall be remitted to the Agency within fifteen
12 (15) business days of notification of the decision and credited to
13 the OK PEAK student's OK PEAK Account.

14 I. The Agency shall have the authority to conduct an audit or
15 contract for the auditing of OK PEAK Accounts and shall conduct
16 random audits of ten percent (10%) of OK PEAK Accounts on an annual
17 basis.

18 J. The Agency shall have the authority to remove any parent or
19 OK PEAK student from eligibility for an OK PEAK Account in the event
20 of intentional and substantial misuse of OK PEAK Account funds.

21 1. The Agency shall create procedures to ensure a fair process
22 to determine whether an intentional and substantial misuse of OK
23 PEAK Account funds has occurred. If misuse by a parent is
24 established but the OK PEAK student is determined to be free from

1 personal misconduct, he or she shall be eligible for an OK PEAK
2 Account in the future if placed with a different parent, guardian,
3 or other person with legal authority to act on behalf of the
4 student.

5 2. The Agency shall have the authority to refer suspected cases
6 of intentional and substantial misuse of OK PEAK Account funds to
7 the Attorney General for investigation if evidence of fraudulent use
8 of funds is obtained.

9 3. A parent or OK PEAK student may, pursuant to the
10 Administrative Procedures Act, appeal the Agency's decision to
11 remove the parent or student from eligibility for an OK PEAK
12 Account.

13 K. The Agency may cease payments to an education service
14 provider from OK PEAK Accounts if the Agency determines the
15 education service provider has:

16 1. Intentionally and substantially misrepresented information
17 or failed to refund any overpayments in a timely manner; or

18 2. Routinely failed to provide OK PEAK students with promised
19 educational goods or services.

20 L. The Agency shall create procedures to ensure a fair process
21 to determine whether an education service provider should be
22 prohibited from receiving payments from OK PEAK Accounts.

23 1. If the Agency prohibits an education service provider from
24 receiving payments pursuant to this subsection, the Agency shall

1 notify parents and OK PEAK students of its decision within ten (10)
2 days.

3 2. Education service providers may, pursuant to the
4 Administrative Procedures Act, appeal the Agency's decision to
5 prohibit them from receiving OK PEAK Account payments.

6 M. The Agency may accept gifts and grants from any source to
7 support administration of the OK PEAK Account Program, to inform the
8 public about the OK PEAK Account Program, and to fund additional OK
9 PEAK Accounts.

10 N. The Agency may promulgate rules to implement the provisions
11 of this act, which shall include but not be limited to:

12 1. Establishing or contracting for the establishment of an
13 online anonymous fraud reporting service;

14 2. Establishing an anonymous telephone hotline for fraud
15 reporting;

16 3. Requiring a surety bond for education service providers
17 receiving more than One Hundred Thousand Dollars (\$100,000.00) in OK
18 PEAK Account funds; and

19 4. Refunding payments from education service providers back to
20 OK PEAK Accounts.

21 SECTION 4. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 28-103 of Title 70, unless there
23 is created a duplication in numbering, reads as follows:

1 A. The Agency may approve education service providers on its
2 own initiative, at the request of parents, or at the request of a
3 prospective education service provider.

4 B. A prospective education service provider seeking to
5 participate in the OK PEAK Account Program shall:

6 1. Submit notice to the Agency that it wishes to participate
7 and receive OK PEAK Account funds designated by parents for payment
8 of educational goods and services; and

9 2. Agree not to refund, rebate, or share OK PEAK Account funds
10 with parents or OK PEAK students in any manner, except that funds
11 may be remitted or refunded to an OK PEAK Account.

12 C. A public school district, public charter school, or magnet
13 school in which an OK PEAK student was enrolled shall provide a
14 private school that is an education service provider and that has an
15 OK PEAK student enrolled with a complete copy of the OK PEAK
16 student's records within five (5) business days of receiving the
17 request for records. The provision of records pursuant to this
18 subsection shall be in accordance with the provisions of the Family
19 Educational Rights and Privacy Act of 1974 (FERPA).

20 D. Nothing in this act shall limit the independence or autonomy
21 of an education service provider or make the actions of an education
22 service provider the actions of state government. Education service
23 providers shall be given maximum freedom to provide for the
24 educational needs of OK PEAK students without governmental control.

1 1. An education service provider that accepts payment from an
2 OK PEAK Account as directed by parents pursuant to this act shall
3 not be considered an agent of the state or federal government.

4 2. An education service provider shall not be required to alter
5 its creed, practices, admissions policy, or curriculum to accept
6 payments as directed by parents from an OK PEAK Account.

7 E. Nothing in this act shall be construed to expand the
8 regulatory authority of the state, its officers, or any public
9 school to impose any additional regulation of education service
10 providers beyond those necessary to enforce the requirements of the
11 OK PEAK Account Program.

12 F. Upon a finding of noncompliance with the provisions of
13 subsections D and E of this section by the Attorney General, the
14 Agency shall receive a five percent (5%) reduction in state funding
15 for the fiscal year following the year of noncompliance.

16 G. A parent of an OK PEAK student shall have a cause of action
17 against the Agency for noncompliance with the provisions of
18 subsections D and E of this section.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 28-104 of Title 70, unless there
21 is created a duplication in numbering, reads as follows:

22 There is hereby created in the State Treasury a revolving fund
23 for the Office of the State Treasurer to be designated the "OK PEAK
24 Account Revolving Fund". The fund shall be a continuing fund, not
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1 subject to fiscal year limitations, and shall consist of all monies
2 received by the Office of the State Treasurer from appropriations,
3 gifts, grants, donations, and bequests. All monies accruing to the
4 credit of the fund are hereby appropriated and may be budgeted and
5 expended by the Office of the State Treasurer for the purpose of
6 implementing the provisions of the Oklahoma Parent Empowerment Act
7 for Kids. Expenditures from the fund shall be made upon warrants
8 issued by the State Treasurer against claims filed as prescribed by
9 law with the Director of the Office of Management and Enterprise
10 Services for approval and payment.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 28-105 of Title 70, unless there
13 is created a duplication in numbering, reads as follows:

14 A. In any legal proceeding challenging the application of the
15 Oklahoma Parent Empowerment Act for Kids to an education service
16 provider, the state bears the burden of establishing both that its
17 action is necessary and that it does not impose any undue burden on
18 the education service provider.

19 B. No liability shall arise on the part of the Agency, the
20 state, a public school district, a public charter school, or a
21 magnet school based on the award of or use of an OK PEAK Account
22 pursuant to this act.

23 C. If any part of the Oklahoma Parent Empowerment Act for Kids
24 is challenged in a state court as violating either the state or

1 federal constitutions, parents of eligible students and OK PEAK
2 students shall be permitted to intervene for the purposes of
3 defending the OK PEAK Account Program's constitutionality. However,
4 for the purposes of judicial administration, a court may require
5 that all parents of eligible students and OK PEAK students file a
6 joint brief so long as they are not required to join any brief filed
7 on behalf of any named state defendant.

8 D. The provisions of the Oklahoma Parent Empowerment Act for
9 Kids shall be severable, and if any provision of the Oklahoma Parent
10 Empowerment Act for Kids or the application thereof to any person or
11 circumstances is held invalid, such invalidity shall not affect the
12 other provisions or applications of this Act, which can be given
13 effect without the invalid provision or application.

14 SECTION 7. This act shall become effective July 1, 2023.

15 SECTION 8. It being immediately necessary for the preservation
16 of the public peace, health, or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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