

**141.504 Uniform process for education opportunity account allocation -- Qualifying expenses -- Provision for eligible student in county with population of 90,000 or more -- Duration of education opportunity account -- Prioritization of funding -- Restrictions. (See LRC Note below)**

- (1) Each AGO shall create a uniform process for determining the amount allocated to each eligible student's EOA with the following limitations:
  - (a) For eligible students that intend to use the funds in the EOA to pay tuition at a nonpublic school or tuition as described in KRS 158.120(2), the EOA funds shall not exceed the lesser of:
    1. Their parents' demonstrated financial need as determined by an independent financial analysis performed by an organization that is:
      - a. Experienced in evaluating a student's need for financial aid; and
      - b. Included on the department's list of approved organizations as required by KRS 141.514(2)(a); or
    2. The actual amount of tuition and required fees charged by the school to students who do not receive assistance under this program;
  - (b) For all other eligible students, the EOA funds shall not exceed the lesser of:
    1. The expected cost of educational services to be provided during the succeeding school year; or
    2. The Commonwealth's guaranteed SEEK base amount for the immediately preceding school year reduced by the percentage equal to one-fourth (1/4) of the percentage by which the applicant's household income exceeds the applicable federal reduced lunch household income threshold; and
  - (c) For students in the foster care system, the AGO shall assume that the student's parents have no income or ability to pay for educational services for the purposes of prioritizing the students and determining the amount of assistance provided under this program.
- (2) (a) The funds in an EOA shall not be used for athletics or any associated fees and shall only be used to pay for the tuition and fee expenses permitted by paragraph (b) of this subsection and the following qualifying expenses if covered by the AGO and incurred for the purpose of educating an EOA student:
  1. Tuition or fees to attend a prekindergarten to grade twelve (12) public school;
  2. Tuition or fees for online learning programs;
  3. Tutoring services provided by an individual or a tutoring facility;
  4. Services contracted for and provided by a public school, including but not limited to individual classes and extracurricular activities and programs;
  5. Textbooks, curriculum, or other instructional materials, including but not limited to any supplemental materials or associated online instruction required by either a curriculum or an education service

provider;

6. Computer hardware or other technological devices that are primarily used to help meet an EOA student's educational needs;
  7. Educational software and applications;
  8. School uniforms;
  9. Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission, and tuition or fees for preparatory courses for these;
  10. Tuition or fees for summer education programs and specialized after-school education programs, excluding after-school childcare;
  11. Tuition, fees, instructional materials, and examination fees at a career or technical school;
  12. Educational services and therapies, including but not limited to occupational, behavioral, physical, speech-language, and audiology therapies provided by a licensed professional;
  13. Tuition and fees at an institution of higher education for dual credit courses; and
  14. Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider.
- (b) In addition to the variety of education-related expenses for public and nonpublic schools in the Commonwealth as provided by paragraph (a) of this subsection, EOA students that are residents of counties with a population of ninety thousand (90,000) or more, as determined by the 2010 decennial report of the United States Census Bureau, shall be permitted to use funds received through the EOA program for tuition and fees to attend nonpublic schools, because students in these counties have access to substantial existing nonpublic school infrastructure and there is capacity in these counties to either grow existing tuition assistance programs or form new nonprofits from existing networks that can provide tuition assistance to students over the course of the pilot program. Pursuant to KRS 141.524, the General Assembly shall assess whether the purposes of the EOA program are being fulfilled.
- (3) EOA funds shall not be refunded, rebated, or shared with a parent or EOA student in any manner. Any refund or rebate for materials or services purchased with EOA funds shall be credited directly to the student's EOA.
  - (4) Parents may make payments for the costs of educational materials and services not covered by the funds in their student's EOA, but personal deposits into an EOA shall not be permitted.
  - (5) Funds allocated to an EOA shall not constitute taxable income to the parent or the EOA student.
  - (6) (a) An EOA shall remain in force, unless the EOA is closed because of a substantial misuse of funds, and any unused funds shall roll over from quarter to quarter and from year to year until:
    1. The parent withdraws the EOA student from the EOA program;

2. The EOA student receives a high school diploma or equivalency certificate; or
  3. The end of the school year in which the student reaches twenty-one (21) years of age;
- whichever occurs first.
- (b) When an EOA is closed, any unused funds shall revert to the AGO that granted the EOA and be allocated by that AGO to fund other EOAs. If the AGO that granted the EOA is no longer operating, the funds shall be transferred to another AGO operating in good standing with the Commonwealth.
- (7) An AGO shall first prioritize funding EOAs for students, their siblings, and foster children living in the same household who received an EOA in the previous academic year and then to first-time applicants in accordance with subsection (8) of this section.
  - (8) For first-time applicants, an AGO shall prioritize awarding EOAs to the applicants as follows:
    - (a) A majority of funds available for first-time applicants shall be reserved for students whose household income does not exceed that necessary to establish eligibility for reduced-price meals based on size of household as determined annually by the United States Department of Agriculture applicable to the Commonwealth, pursuant to 42 U.S.C. secs. 1751 to 1789. Within in this group of applicants, the funds shall be further prioritized to fund EOAs in the order of the applicants with the most demonstrated financial need; and
    - (b) The remaining unfunded first-time applicants shall be selected for funding based on a random lottery until all remaining funds are allocated to EOAs.
  - (9) An AGO may define and limit the services that the EOA funds may cover.
  - (10) An AGO shall not accept a contribution from an eligible taxpayer if the eligible taxpayer designates that the contribution shall be used to award an EOA to a particular student.
  - (11) Dependents of the AGO's board of directors, its staff, and its donors are ineligible to receive an EOA.

**Effective:** June 29, 2021

**History:** Created 2021 Ky. Acts ch. 167, sec. 7, effective June 29, 2021.

**Legislative Research Commission Note** (12/15/2022). On December 15, 2022, the Kentucky Supreme Court ruled that the Education Opportunity Account Act, KRS 141.500 to 141.528, as enacted in 2021 HB 563 (2021 Ky. Acts ch. 167), "violates the proscription in Section 184 of the Kentucky Constitution on the raising or collecting of 'sums[s]' for 'education other than in common schools.'" *Commonwealth ex rel. Cameron v. Johnson, et al.*, 2021-SC-0518-TG.