

Georgia State Law - Student Scholarship Organizations

20-2A-1. Definitions.

As used in this chapter, the term:

(1) "Eligible student" means a student who is a Georgia resident who, immediately prior to receiving a scholarship or tuition grant under Code Section 20-2A-2 and enrolling in a qualified school or program, was enrolled in and attended for at least six weeks a Georgia secondary or primary public school or who is eligible to enroll in a qualified first grade, kindergarten program, or pre-kindergarten program; provided, however, that if a student is deemed an eligible student pursuant to this paragraph, he or she shall continue to qualify as such until he or she graduates, reaches the age of 20, or returns to a public school, whichever occurs first; and provided, further, that the enrollment and six-week public school attendance requirements shall be waived in the case of a student who, based on the school attendance zone of his or her primary residence, is or would be assigned to a public school that the Office of Student Achievement determines to be a low-performing school, who is the subject of officially documented cases of school based physical violence or student related verbal abuse threatening physical harm, or who was enrolled in a home study program meeting the requirements of subsection (c) of Code Section 20-2-690 for at least one year immediately prior to receiving a scholarship or tuition grant under Code Section 20-2A-2.

(2) "Qualified school or program" means a nonpublic pre-kindergarten program, primary school, or secondary school that:

(A) Is accredited or in the process of becoming accredited by one or more entities listed in subparagraph (A) of paragraph (6) of Code Section 20-3-519; and

(B) Is located in this state, adheres to the provisions of the federal Civil Rights Act of 1964, and satisfies the requirements prescribed by law for private schools in this state.

(3) "Student scholarship organization" means a charitable organization in this state that:

(A) Is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code and obligates for scholarships or tuition grants at least 90 percent of its annual revenue received from donations for scholarships or tuition grants to allow students to attend any qualified school of their parents' choice; and

(B) Provides educational scholarships or tuition grants to eligible students without limiting availability to only students of one school.

20-2A-2. Requirements for student scholarship organizations.

Each student scholarship organization:

(1) With respect to the first \$1.5 million of its annual revenue received from donations for scholarships or tuition grants, including interest earned on deposits and investments of scholarship funds or tuition grants, shall obligate at least 92 percent of such revenue for scholarships or tuition grants; with respect to its annual revenue received from donations for scholarships or tuition grants in excess of \$1.5 million and up to and including \$10 million, including interest earned on deposits and investments of scholarship funds or tuition grants, shall obligate at least 94 percent of such revenue for scholarships or tuition grants; with respect to its annual revenue received from donations for scholarships or tuition grants in excess of \$10 million and up to and including \$20 million, including interest earned on deposits and investments of scholarship funds or tuition grants, shall obligate at least 95 percent of such revenue for scholarships or tuition grants; and, with respect to its annual revenue received from donations for scholarships or tuition grants in excess of \$20 million, including interest earned on deposits and investments of scholarship funds or tuition grants, shall obligate at least 96 percent of such revenue for scholarships or tuition grants. On or before the end of the calendar year following the calendar year in which a student scholarship organization receives revenues from donations and obligates them for the awarding of scholarships or tuition grants, the student scholarship organization shall designate the obligated revenues for specific student recipients. Once the student scholarship organization designates obligated revenues for specific student recipients, in the case of multiyear scholarships or tuition grants, the student scholarship organization may distribute the entire obligated and designated revenues to a qualified school or program to be held in accordance with Department of Revenue rules for distribution to the specified recipients during the years in which the recipients are projected in writing by the private school to be enrolled at the qualified school or program. In making a multiyear distribution to a qualified school or program, the student scholarship organization shall require that if the designated student becomes ineligible or for any other reason the qualified school or program elects not to continue disbursement of the multiyear scholarship or tuition grant to the designated student for all the projected years, then the qualified school or program shall immediately return the remaining funds to the student scholarship organization. Once the student scholarship organization designates obligated revenues for specific student recipients, in the case of multiyear scholarships or tuition grants for which the student scholarship organization distributes the obligated and designated revenues to a qualified school or program annually rather than the entire amount, if the designated student becomes ineligible or for any other reason the student scholarship organization elects not to continue disbursement for all years, then the student scholarship organization shall designate any remaining previously obligated revenues for a new specific student recipient on or before the end of the following calendar year. The maximum scholarship amount given by the student scholarship organization in any given year shall not exceed the average state and local expenditures per student in fall enrollment in public elementary and secondary education for this state. The Department of Education shall determine and publish such amount annually, no later than January 1;

(1.1) In awarding scholarships or tuition grants, shall consider financial needs of students based on all sources, including the federal adjusted gross income from the federal income tax return most recently filed by the parents or guardians of such students, as adjusted for family size. If the parents or guardians

Georgia State Law - Student Scholarship Organizations

of a student have not filed a federal income tax return in either of the two calendar years immediately preceding the year of application, the student scholarship organization shall consider the financial need of the student based on proof of employment income of the parents or guardians from the 30 consecutive days closest to when the applicant submitted the scholarship application and on any other sources of income, including, but not limited to, unemployment benefits, social security benefits, and child support benefits;

(2) Shall maintain separate accounts for scholarship funds and operating funds. Until obligated revenues are designated for specific student recipients, the student scholarship organization shall hold the obligated revenues in a bank or investment account owned by the student scholarship organization and over which it has complete control; provided, however, that interest earned on deposits and investments of scholarship funds and tuition grants shall be included in the calculation of the minimum obligations provided for in paragraph (1) of this Code section;

(3) Shall have an independent board of directors with at least three members;

(4) May transfer funds to another student scholarship organization;

(5) Within 120 days after the completion of the student scholarship organization's fiscal year, shall conduct an audit of its accounts by an independent certified public accountant in accordance with generally accepted auditing standards verifying that the student scholarship organization has complied with all requirements of this chapter, including, but not limited to, scholarship fund management requirements, operational fund management requirements, other financial requirements, student eligibility requirements, school qualification requirements, and other scholarship management requirements. Each student scholarship organization shall also submit with each such audit a signed declaration certifying that it has complied and is in compliance with all legal and regulatory requirements imposed by state or federal law. Within 60 days of completion of such audit, each student scholarship organization shall provide a copy of such audit to the Department of Revenue in accordance with Code Section 20-2A-3. Notwithstanding Code Sections 20-2A-7, 48-2-15, 48-7-60, and 48-7-61, if the copy of the audit submitted fails to verify that the student scholarship organization obligated its annual revenue received from donations for scholarships or tuition grants, including interest earned on deposits and investments of such funds, as required under paragraph (1) of this Code section; that obligated revenues were designated for specific student recipients within the time frame required by paragraph (1) of this Code section; and that all obligated and designated revenue distributed to a qualified school or program for the funding of multiyear scholarships or tuition grants complied with all applicable Department of Revenue rules, then the Department of Revenue shall post on its website the details of such failure to verify. Until any such noncompliant student scholarship organization submits an amended audit, which, to the satisfaction of the Department of Revenue, contains the verifications required under this Code section, the Department of Revenue shall not preapprove any contributions to the noncompliant student scholarship organization;

(5.1) In addition to the audit required by paragraph (5) of this Code section, in 2023, the state auditor shall issue an economic analysis report on the performance of this tax credit to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee. An economic analysis shall include, but not be limited to, a good faith estimate, on both a direct and indirect basis, as to the:

(A) Net change in state revenue;

Georgia State Law - Student Scholarship Organizations

- (B) Net change in state expenditures, which shall include, but not be limited to, costs of administering the tax credit;
- (C) Net change in economic activity; and
- (D) Net change in public benefit;
- (6) Shall annually submit notice to the Department of Education in accordance with department guidelines of its participation as a student scholarship organization under this chapter; provided, however, that the student scholarship organization shall immediately notify the Department of Education if the Department of Revenue has temporarily or permanently ceased preapproving contributions to the student scholarship organization in accordance with the provisions of paragraph (5) of this Code section;
- (7) Shall annually submit to the Department of Revenue a copy of its most recent Form 990 filed with the United States Internal Revenue Service; and
- (8) Shall be solely responsible for verifying the eligibility of students for participation in the program provided for in this chapter.

20-2A-2.1. Entities prohibited from being student scholarship organizations.

No entity which operates, owns, is affiliated with, or is a subsidiary of an association, organization, or other entity that provides accreditation of elementary or secondary schools shall be eligible to be a student scholarship organization pursuant to this chapter.

20-2A-3. Taxation reporting requirements for student scholarship organizations.

- (a) Each student scholarship organization shall report annually to the Department of Revenue, on a date determined by the Department of Revenue, subject to the time limits provided for in paragraph (5) of Code Section 20-2A-2, and on a form provided by the Department of Revenue, the following information:
 - (1) The total number and dollar value of individual contributions and tax credits approved. Individual contributions shall include contributions made by those filing income tax returns as a single individual or head of household and those filing joint returns;
 - (2) The total number and dollar value of corporate contributions and tax credits approved;
 - (3) The total number and dollar value of scholarships awarded to eligible students;
 - (4) The total number of scholarship recipients whose family's adjusted gross income falls:
 - (A) Under 125 percent of the federal poverty level;
 - (B) Between 125 and 250 percent of the federal poverty level;
 - (C) Between 250 and 400 percent of the federal poverty level; and

Georgia State Law - Student Scholarship Organizations

(D) Above 400 percent of the federal poverty level;

(4.1) The total number of scholarship recipients and the average scholarship dollar amount by each county within which any scholarship recipient resides;

(5) The average scholarship dollar amount by adjusted gross income category as provided in paragraph (4) of this subsection; and

(6) A list of donors, including the dollar value of each donation and the dollar value of each approved tax credit.

Such report shall also include a copy of the audit conducted pursuant to paragraph (5) of Code Section 20-2A-2. The Department of Revenue shall post on its website the information received from each student scholarship organization pursuant to paragraphs (1) through (5) of this subsection and the report of the student scholarship organization's most recent audit conducted pursuant to paragraph (5) of Code Section 20-2A-2, except that no information of confidential taxpayer information contained in such audit report shall be posted or otherwise disclosed to the public by the Department of Revenue.

(b) Except for the allowable information included in the report of the audit conducted pursuant to paragraph (5) of Code Section 20-2A-2 and the information reported pursuant to paragraphs (1) through (5) of subsection (a) of this Code section, all information or reports provided by student scholarship organizations to the Department of Revenue shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the student scholarship organization.

20-2A-4. List of student scholarship organizations to be provided to the General Assembly.

The Department of Revenue shall provide a list of all student scholarship organizations receiving contributions from businesses and individuals granted a tax credit under Code Section 48-7-29.16 to the General Assembly by January 30 of each year.

20-2A-5. Parent or guardian endorsement of award required.

The parent or guardian to whom a scholarship award is granted must restrictively endorse the scholarship award to the private school for deposit into the account of the private school. The parent or guardian may not designate any entity or individual associated with the participating private school as the parent's attorney in fact to endorse a scholarship award. A participant who fails to comply with this Code section forfeits the scholarship.

20-2A-6. List of student scholarship organizations to be maintained on website.

The Department of Education shall maintain on its website a current list of all student scholarship organizations which have provided notice pursuant to paragraph (6) of Code Section 20-2A-2.

20-2A-7. Penalties for failure to comply with requirements of chapter; violations.

(a)

(1) Any student scholarship organization that fails to comply with any requirements under this chapter shall be given written notice by the Department of Revenue of such failure to comply by certified mail and shall have 90 days from the receipt of such notice to correct all deficiencies.

(2) Upon failure to correct all deficiencies within 90 days, such student scholarship organization shall:

(A) Be immediately removed from the Department of Education list provided for in Code Section 20-2A-6;

(B) Be required to cease all operations as a student scholarship organization and transfer all scholarship account funds to a properly operating student scholarship organization within 30 calendar days of receipt of notice from the Department of Revenue of removal from the approved list; and

(C) Have all applications for preapproval of tax credits under Code Section 48-7-29.16 rejected by the Department of Revenue on or after the date the Department of Education removes the student scholarship organization from its list provided for in Code Section 20-2A-6.

(b) Any student scholarship organization that:

(1) Awards or restricts the award of a scholarship to a specific eligible student at the request of a donor; or

(2) Encourages or facilitates taxpayers to engage in actions that are prohibited by law

shall be subject to paragraph (2) of subsection (a) of this Code section.

(c) Any officer or director of a student scholarship organization found to have actively participated in a student scholarship organization's intentional violation of its obligations under this chapter shall be guilty of a misdemeanor.