

I_135_2176-1

135th General Assembly
Regular Session
2023-2024

Sub. H. B. No. 440

A BILL

To amend sections 3310.41, 3310.52, and 3310.58 of 1
the Revised Code regarding remote services and 2
credentialed professionals who provide services 3
under special needs scholarship programs. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3310.41, 3310.52, and 3310.58 of 5
the Revised Code be amended to read as follows: 6

Sec. 3310.41. (A) As used in this section: 7

(1) "Alternative public provider" means either of the 8
following providers that agrees to enroll a child in the 9
provider's special education program to implement the child's 10
individualized education program or an education plan developed 11
by the school district under division (G) of this section and to 12
which the child's parent owes fees for the services provided to 13
the child: 14

(a) A school district that is not the school district in 15
which the child is entitled to attend school; 16



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(b) A public entity other than a school district.	17
(2) "Entitled to attend school" means entitled to attend school in a school district under section 3313.64 or 3313.65 of the Revised Code.	18 19 20
(3) "Formula ADM" has the same meaning as in section 3317.02 of the Revised Code.	21 22
(4) "Preschool child with a disability" and "individualized education program" have the same meanings as in section 3323.01 of the Revised Code.	23 24 25
(5) "Parent" has the same meaning as in section 3313.64 of the Revised Code, except that "parent" does not mean a parent whose custodial rights have been terminated. "Parent" also includes the custodian of a qualified special education child, when a court has granted temporary, legal, or permanent custody of the child to an individual other than either of the natural or adoptive parents of the child or to a government agency.	26 27 28 29 30 31 32
(6) "Qualified special education child" is a child who either was enrolled in the school district in which the child is entitled to attend school in any grade from preschool through twelve in the school year prior to the year in which a scholarship under this section is first sought for the child or is eligible to enter school in any grade preschool through twelve in the school district in which the child is entitled to attend school in the school year in which a scholarship under this section is first sought for the child and for whom any of the following conditions apply:	33 34 35 36 37 38 39 40 41 42
(a) The school district in which the child is entitled to attend school has identified the child as autistic. A child who has been identified as having a "pervasive developmental	43 44 45

disorder - not otherwise specified (PPD-NOS)" shall be 46
considered to be an autistic child for purposes of this section. 47

(b) The school district in which the child is entitled to 48
attend school has developed an individualized education program 49
under Chapter 3323. of the Revised Code for the child that 50
includes services related to autism. 51

(c) The child has been diagnosed as autistic by a 52
physician or psychologist. 53

(7) "Registered private provider" means a nonpublic school 54
or other nonpublic entity that has been approved by the 55
department and workforce to participate in the program 56
established under this section. 57

(8) "Special education program" means a school or facility 58
that provides special education and related services to children 59
with disabilities. 60

(B) There is hereby established the autism scholarship 61
program. Under the program, the department shall pay a 62
scholarship under section 3317.022 of the Revised Code to the 63
parent of each qualified special education child upon 64
application of that parent pursuant to procedures and deadlines 65
established by rule of the department. Each scholarship shall be 66
used only to pay tuition for the child on whose behalf the 67
scholarship is awarded to attend a special education program 68
that implements the child's individualized education program or 69
education plan and that is operated by an alternative public 70
provider or by a registered private provider, and to pay for 71
other services agreed to by the provider and the parent of a 72
qualified special education child that are not included in the 73
individualized education program or education plan but are 74

associated with educating the child. Upon agreement with the parent of a qualified special education child, the alternative public provider or the registered private provider may modify the services provided to the child. The purpose of the scholarship is to permit the parent of a qualified special education child the choice to send the child to a special education program, instead of the one operated by or for the school district in which the child is entitled to attend school, to receive the services prescribed in the child's individualized education program or education plan once the individualized education program or education plan is finalized and any other services agreed to by the provider and the parent of a qualified special education child. The services provided under the scholarship shall include an educational component or services designed to assist the child to benefit from the child's education.

Services prescribed in the child's finalized individualized education program or education plan may be provided remotely by qualified, credentialed providers in the same manner that telehealth services are provided to patients in accordance with section 4743.09 of the Revised Code.

A scholarship under this section shall not be awarded to the parent of a child while the child's individualized education program is being developed by the school district in which the child is entitled to attend school, or while any administrative or judicial mediation or proceedings with respect to the content of the child's individualized education program are pending. A scholarship under this section shall not be used for a child to attend a public special education program that operates under a contract, compact, or other bilateral agreement between the school district in which the child is entitled to attend school

and another school district or other public provider, or for a 106
child to attend a community school established under Chapter 107
3314. of the Revised Code. However, nothing in this section or 108
in any rule adopted by the department shall prohibit a parent 109
whose child attends a public special education program under a 110
contract, compact, or other bilateral agreement, or a parent 111
whose child attends a community school, from applying for and 112
accepting a scholarship under this section so that the parent 113
may withdraw the child from that program or community school and 114
use the scholarship for the child to attend a special education 115
program for which the parent is required to pay for services for 116
the child. 117

Except for development of the child's individualized 118
education program or education plan, the school district in 119
which a qualified special education child is entitled to attend 120
school and the child's school district of residence, as defined 121
in section 3323.01 of the Revised Code, if different, are not 122
obligated to provide the child with a free appropriate public 123
education under Chapter 3323. of the Revised Code for as long as 124
the child continues to attend the special education program 125
operated by either an alternative public provider or a 126
registered private provider for which a scholarship is awarded 127
under the autism scholarship program. If at any time, the 128
eligible applicant for the child decides no longer to accept 129
scholarship payments and enrolls the child in the special 130
education program of the school district in which the child is 131
entitled to attend school, that district shall provide the child 132
with a free appropriate public education under Chapter 3323. of 133
the Revised Code. 134

A child attending a special education program with a 135
scholarship under this section shall continue to be entitled to 136

transportation to and from that program in the manner prescribed 137
by law. 138

(C) As prescribed in division (A) (2) (h) of section 3317.03 139
of the Revised Code, a child who is not a preschool child with a 140
disability for whom a scholarship is awarded under this section 141
shall be counted in the formula ADM of the district in which the 142
child is entitled to attend school and not in the formula ADM of 143
any other school district. 144

(D) A scholarship shall not be paid under section 3317.022 145
of the Revised Code to a parent for payment of tuition owed to a 146
nonpublic entity unless that entity is a registered private 147
provider. The department shall approve entities that meet the 148
standards established by rule of the department for the program 149
established under this section. 150

(E) The department shall adopt rules under Chapter 119. of 151
the Revised Code prescribing procedures necessary to implement 152
this section, including, but not limited to, procedures and 153
deadlines for parents to apply for scholarships, standards for 154
registered private providers, and procedures for approval of 155
entities as registered private providers. 156

The rules also shall specify that intervention services 157
under the autism scholarship program may be provided by a 158
qualified, credentialed provider, including, but not limited to, 159
all of the following: 160

(1) A behavior analyst certified by a nationally 161
recognized organization that certifies behavior analysts; 162

(2) A psychologist licensed to practice in this state 163
under Chapter 4732. of the Revised Code; 164

(3) An independent school psychologist or school 165

psychologist licensed to practice in this state under Chapter 166
4732. of the Revised Code; 167

(4) Any person employed by a licensed psychologist, 168
licensed independent school psychologist, or licensed school 169
psychologist, while carrying out specific tasks, under the 170
licensee's supervision, as an extension of the licensee's legal 171
and ethical authority as specified under Chapter 4732. of the 172
Revised Code who is ascribed as "psychology trainee," 173
"psychology assistant," "psychology intern," or other 174
appropriate term that clearly implies their supervised or 175
training status; 176

(5) Unlicensed persons holding a doctoral degree in 177
psychology or special education from a program approved by the 178
department; 179

(6) A "registered behavior technician" as described under 180
rule 5123-9-41 of the Administrative Code working under the 181
supervision and following the intervention plan of a certified 182
Ohio behavior analyst or a behavior analyst certified by a 183
nationally recognized organization that certifies behavior 184
analysts; 185

(7) A "certified Ohio behavior analyst" under Chapter 186
4783. of the Revised Code; 187

(8) A literacy intervention specialist certified through 188
pathways recognized by the Ohio dyslexia committee established 189
by section 3323.25 of the Revised Code. To the extent that 190
certification for any of the following positions is approved by 191
the Ohio dyslexia committee under section 3323.25 of the Revised 192
Code, literary intervention specialists may include: 193

(a) A structured literacy dyslexia interventionist; 194

<u>(b) A structured literacy dyslexia specialist;</u>	195
<u>(c) A certified academic language practitioner;</u>	196
<u>(d) A certified academic language therapist.</u>	197
<u>(9) Any other qualified individual as determined by the</u> department.	198 199
(F) The department shall provide reasonable notice to all parents of children receiving a scholarship under the autism scholarship program, alternative public providers, and registered private providers of any amendment to a rule governing, or change in the administration of, the autism scholarship program.	200 201 202 203 204 205
(G) If a child qualifies for the autism scholarship program pursuant to a diagnosis under division (A) (6) (c) of this section and does not have an individualized education program that includes services related to autism, the school district in which the child is entitled to attend school shall develop an education plan for the child.	206 207 208 209 210 211
(H) Not later than the thirtieth day of June each year, each alternative public provider and registered private provider enrolling students receiving autism scholarships shall submit to the department, in a form and manner prescribed by the department, the tuition rates charged by the provider for the following school year.	212 213 214 215 216 217
(I) The department shall not require the parent of a student who applies for or receives a scholarship under this section to complete any kind of income verification regarding the student's family income.	218 219 220 221
Sec. 3310.52. (A) The Jon Peterson special needs	222

scholarship program is hereby established. Under the program, 223
beginning with the 2012-2013 school year, subject to division 224
(B) of this section, the department of education and workforce 225
annually shall pay a scholarship under section 3317.022 of the 226
Revised Code to an eligible applicant for services provided by 227
an alternative public provider or a registered private provider 228
for a qualified special education child. The scholarship shall 229
be used only to pay all or part of the fees for the child to 230
attend the special education program operated by the alternative 231
public provider or registered private provider to implement the 232
child's individualized education program, in lieu of the child's 233
attending the special education program operated by the school 234
district in which the child is entitled to attend school, and 235
other services agreed to by the provider and eligible applicant 236
that are not included in the individualized education program 237
but are associated with educating the child. Beginning in the 238
2014-2015 school year, if the child is receiving special 239
education services for a disability specified in division (A) of 240
section 3317.013 of the Revised Code, the scholarship shall be 241
used only to pay for related services that are included in the 242
child's individualized education program. Upon agreement with 243
the eligible applicant, the alternative public provider or 244
registered private provider may modify the services provided to 245
the child. 246

Services prescribed in the child's finalized 247
individualized education program may be provided remotely by 248
qualified, credentialed providers in the same manner that 249
telehealth services are provided to patients in accordance with 250
section 4743.09 of the Revised Code. 251

(B) The number of scholarships awarded under the program 252
in any fiscal year shall not exceed five per cent of the total 253

number of students residing in the state identified as children 254
with disabilities during the previous fiscal year. 255

(C) The department shall pay a scholarship under section 256
3317.022 of the Revised Code to the parent of each qualified 257
special education child, unless the parent authorizes a direct 258
payment to the child's provider, upon application of that parent 259
in the manner prescribed by the department. However, the 260
department shall not adopt specific dates for application 261
deadlines for scholarships under the program. 262

(D) The department shall not require the parent of a 263
student who applies for or receives a scholarship under this 264
section to complete any kind of income verification regarding 265
the student's family income. 266

Sec. 3310.58. No nonpublic school or entity shall receive 267
payments from an eligible applicant for services for a qualified 268
special education child under the Jon Peterson special needs 269
scholarship program until the school or entity registers with 270
the department of education and workforce. The department shall 271
register and designate as a registered private provider any 272
nonpublic school or entity that meets the following 273
requirements: 274

(A) The school or entity complies with the 275
antidiscrimination provisions of 42 U.S.C. 2000d, regardless of 276
whether the school or entity receives federal financial 277
assistance. 278

(B) If the school or entity is not chartered by the 279
director of education and workforce under section 3301.16 of the 280
Revised Code, the school or entity agrees to comply with 281
sections 3319.39, 3319.391, and 3319.392 of the Revised Code as 282

if it were a school district. 283

(C) The teaching and nonteaching professionals employed by 284
the school or entity, or employed by any subcontractors of the 285
school or entity, hold credentials determined by the state board 286
of education to be appropriate for the qualified special 287
education children enrolled in and the services provided through 288
the special education program it operates. In the list of 289
credentialed professionals determined to be appropriate to 290
provide services under a special education program, the state 291
board shall include all of the following: 292

(1) A behavior analyst certified by a nationally 293
recognized organization that certifies behavior analysts; 294

(2) A psychologist licensed to practice in this state 295
under Chapter 4732. of the Revised Code; 296

(3) An independent school psychologist or school 297
psychologist licensed to practice in this state under Chapter 298
4732. of the Revised Code; 299

(4) Any person employed by a licensed psychologist, 300
licensed independent school psychologist, or licensed school 301
psychologist, while carrying out specific tasks, under the 302
licensee's supervision, as an extension of the licensee's legal 303
and ethical authority as specified under Chapter 4732. of the 304
Revised Code who is ascribed as "psychology trainee," 305
"psychology assistant," "psychology intern," or other 306
appropriate term that clearly implies their supervised or 307
training status; 308

(5) An unlicensed person holding a doctoral degree in 309
psychology or special education from a program approved by the 310
department; 311

- (6) A registered behavior technician as described in rule 5123-9-41 of the Administrative Code working under the supervision and following the intervention plan of a certified Ohio behavior analyst or behavior analyst certified by a nationally recognized organization that certifies behavior analysts; 312
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- (7) A certified Ohio behavior analyst under Chapter 4783. of the Revised Code; 318
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- (8) An occupational therapist or physical therapist licensed to practice in this state under Chapter 4755. of the Revised Code; 320
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- (9) A speech-language pathologist licensed to practice in this state under Chapter 4753. of the Revised Code; 323
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- (10) An intervention specialist who holds a valid license issued by the state board; 325
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- (11) A literacy intervention specialist certified through pathways recognized by the Ohio dyslexia committee established by section 3323.25 of the Revised Code. To the extent that certification for any of the following positions is approved by the Ohio dyslexia committee under section 3323.25 of the Revised Code, literary intervention specialists may include: 327
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- (a) A structured literacy dyslexia interventionist; 333
- (b) A structured literacy dyslexia specialist; 334
- (c) A certified academic language practitioner; 335
- (d) A certified academic language therapist. 336
- (12) Any other qualified individual as determined by the department. 337
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(D) The school's or entity's educational program shall be approved by the department.	339 340
(E) The school or entity meets applicable health and safety standards established by law.	341 342
(F) The school or entity agrees to retain on file documentation as required by the department.	343 344
(G) The school or entity agrees to provide a record of the implementation of the individualized education program for each qualified special education child enrolled in the school's or entity's special education program, including evaluation of the child's progress, to the school district in which the child is entitled to attend school, in the form and manner prescribed by the department.	345 346 347 348 349 350 351
(H) The school or entity agrees that, if it declines to enroll a particular qualified special education child, it will notify in writing the eligible applicant of its reasons for declining to enroll the child.	352 353 354 355
Section 2. That existing sections 3310.41, 3310.52, and 3310.58 of the Revised Code are hereby repealed.	356 357