

Virginia Department of Education

Guidelines for the Education Improvement Scholarships Tax Credits Program

February 7, 2020

Background

Legislation (Chapters 731 and 842) enacted by the 2012 General Assembly authorized the *Education Improvement Scholarships Tax Credits Program* and required the Virginia Department of Education (the “Department”) to develop guidelines implementing the provisions of Sections 58.1-439.25 through 58.1-439.28 (i.e., Article 13.3 of Title 58.1) of the *Code of Virginia*. The program provides state tax credits for persons or businesses making monetary or marketable securities donations to approved scholarship foundations that provide scholarships to eligible children for qualified educational expenses incurred in attending eligible nonpublic schools and eligible nonpublic pre-kindergarten programs. Under the legislation, the guidelines are exempt from the provisions of the Virginia Administrative Process Act.

These guidelines are issued by the Department to provide guidance to scholarship foundations, nonpublic schools, nonpublic pre-kindergarten programs, individuals and businesses regarding the *Education Improvement Scholarships Tax Credits Program*. These guidelines supersede the Guidelines for the Education Improvement Scholarships Tax Credits Program adopted by the Department on October 16, 2018. These guidelines will be published and posted on the Department’s website at:

http://www.doe.virginia.gov/school_finance/scholarships_tax_credits/index.shtml.

Definitions

“At-risk-four-year-old” means a four-year-old whose family (a) does not have an annual household income in excess of 300 percent of the current poverty guidelines or 400 percent of such guidelines in cases in which an individualized education program has been written and finalized for the child in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (b) is homeless as defined in 42 U.S.C. § 11302; or (c) includes a parent or guardian of the child who did not graduate from high school.

“Department” means the Virginia Department of Education.

“Donor” means a person or business entity that has made an eligible donation to an approved scholarship foundation.

“Eligible donation” means a donation to a scholarship foundation by a donor in the form of cash, check, credit card, or other monetary gift or marketable securities, but not goods, services, or property. For individuals, the minimum value of any donation eligible for a tax credit is \$500 in a taxable year, and the maximum value of any donations eligible for tax credits is \$125,000 in a taxable year. Such limitations on the maximum and minimum of donations eligible for tax credits in a taxable year do not apply to donations made by any business entity, including a sole proprietorship.

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"Eligible pre-kindergarten child" means a child who is (i) a resident of Virginia; (ii) an at-risk four-year-old unable to obtain services through Head Start or Virginia Preschool Initiative Programs; and (iii) enrolled in, eligible to attend, or attending a nonpublic pre-kindergarten program and whose family (a) does not have an annual household income in excess of 300 percent of the current poverty guidelines or 400 percent of such guidelines in cases in which an individualized education program has been written and finalized for the child in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education; (b) is homeless as defined in 42 U.S.C. § 11302; or (c) includes a parent or guardian of the child who did not graduate from high school and whose parent or guardian certifies to the scholarship foundation that the child was unable to obtain services through the Virginia Preschool Initiative in the public school division in which the child resides.

"Eligible student with a disability" means a child who is a resident of Virginia for whom an Individualized Education Plan (IEP) has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education. For purposes of these guidelines, effective July 1, 2019, an eligible student with a disability does not need to meet the definition of "Student" in this section.

"IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with Code of Federal Regulations §§ 300.320 through 300.324 and Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VA20-81). Only a public school can write and finalize an IEP. Section 58.1-439.25 of the Code of Virginia requires that an IEP has been written and finalized for the child, but does not require that an IEP be in effect at the time of the scholarship award. A child who has never had an IEP written and finalized by a public school does not qualify as an "eligible student with a disability" or meet requirement (iii)(a) in the definition of "eligible pre-kindergarten child" if the child's family has an annual household income in excess of 300 percent of the current poverty guidelines. A child who, at one point, had an IEP written and finalized by a public school qualifies as an "eligible student with a disability," even though the IEP became void once the child entered a private school. A child who, at one point, had an IEP written and finalized by a public school meets requirement (iii)(a) in the definition of "eligible pre-kindergarten child," if the child's family does not have an annual household income in excess of 400 percent of the current poverty guidelines.

"Marketable securities" means an equity or debt instrument that is readily salable and can be converted into cash, or exchanged with ease.

"Nonpublic pre-kindergarten program" means a pre-kindergarten program that is not operated, directly or indirectly, by a federal, state, or local government entity and that is (i) a preschool program designed for child development and kindergarten preparation that complies with nonpublic school accreditation requirements administered by the Virginia Council for Private Education pursuant to § 22.1-19; (ii) participating in Virginia Quality with a current designation of at least Level 3 under such quality rating system; or (iii) a child day center, as defined in § 63.2-100, that is licensed by the Department of Social Services pursuant to Subtitle IV (§ 63.2-1700 et seq.) of Title 63.2 and implements a curriculum, professional development program, and

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coaching model developed and endorsed by a baccalaureate public institution of higher education, as defined in § 23.1-100.

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Program year" means the annual period from July 1 to June 30.

"Qualified educational expenses" means school or pre-kindergarten program tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school or pre-kindergarten program work.

"Scholarship foundation" means a nonstock, nonprofit corporation that is (i) exempt from taxation under Section 501(c) (3) of the Internal Revenue Code of 1954, as amended or renumbered; (ii) approved by the Department in accordance with the provisions of Section 58.1-439.27 of the Code of Virginia; and (iii) established to provide financial aid for the education of students, eligible students with a disability, and/or eligible pre-kindergarten children residing in the Commonwealth.

"School year" means the period of time between the opening day of school in the fall and the closing day of school for that school term. Generally, a school year consists of 180 teaching days or 990 teaching hours. For purposes of these guidelines, a year-round nonpublic pre-kindergarten "school year" begins on July 1 and ends on June 30.

"Student" means a child who is a resident of Virginia and (i) in the current school year has enrolled and attended a public school in the Commonwealth for at least one-half of the year, (ii) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was enrolled and attended a public school in the Commonwealth for at least one-half of the year, (iii) is a prior recipient of a scholarship foundation scholarship, (iv) is eligible to enter kindergarten or eligible to enter first grade, or (v) for the school year that immediately preceded his receipt of a scholarship foundation scholarship was domiciled in a state other than the Commonwealth and did not attend a nonpublic school in the Commonwealth for more than one-half of the school year. "Student" does not include an eligible pre-kindergarten child.

"Virginia Quality" means a quality rating and improvement system for early childhood programs administered in partnership between the Virginia Early Childhood Foundation and the Office of Early Childhood Development of the Department of Social Services.

Scholarship foundation eligibility

A nonstock, nonprofit entity may qualify as a scholarship foundation if the entity:

1. Is a corporation established in Virginia or another state;
2. Complies with Section 57-48 et seq. of the *Code of Virginia*;

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3. Meets applicable provisions of Article 13.3 of Title 58.1 (i.e., Sections 58.1-439.25 through 58.1-439.28) of the *Code of Virginia*; and,
4. Has a purpose of providing financial aid for the education of students, eligible students with a disability, and/or eligible pre-kindergarten children residing in the Commonwealth specifically stated in the entity's articles of incorporation or equivalent documents, or its governing rules, such as its bylaws. An existing nonprofit entity that meets all other eligibility requirements, but was previously established for any other charitable purpose, will be considered to have met this requirement if its articles of incorporation or equivalent documents, or its governing rules, such as its bylaws, have been legally and validly amended to also specifically state that another of its purposes is to provide financial aid for the education of students, eligible students with a disability, and/or eligible pre-kindergarten children residing in the Commonwealth.

Any nonprofit entity that has qualified as a scholarship foundation under these guidelines, and which later learns that the Internal Revenue Service (IRS) has decided to revoke its tax-exempt status will immediately cease to be qualified to receive and administer tax credit-derived scholarship funds. Such entity must immediately notify the Department of this change in status and the Department will remove such entity from the approved list of eligible scholarship foundations. Scholarship foundations subject to removal from the list due to failure to meet this requirement will be notified by the Department of such action by U.S. Mail.

A nonprofit entity that qualifies as a scholarship foundation under these guidelines may perform other charitable purposes in addition to providing financial aid for the education of students, eligible students with a disability, or eligible pre-kindergarten children residing in the Commonwealth.

A neighborhood organization that receives an allocation of tax credits under the Neighborhood Assistance Act Tax Credit Program for Education may also be eligible to receive and administer tax credit through the Education Improvement Scholarships Tax Credits Program so long as it meets eligibility requirements contained in these guidelines.

No single donation may be used to qualify for state tax credits under more than one state tax credit program unless otherwise authorized by the *Code of Virginia*.

Scholarship foundation application process

An applicant may submit an application and the required documentation, via U.S. Mail, at any time during the year to become a qualified scholarship foundation. The Department will notify the applicant by U.S. Mail within 30 calendar days of receipt of the application that such application is either complete or incomplete, and what additional information, if any, is required. Within 60 calendar days after receipt of its complete application, the Department will notify an applicant by U.S. Mail that its application has either been approved or denied, including the reasons for denial. Applications will be reviewed in the order received by the Department.

The following information must be submitted to the Department by applicants seeking to qualify as a scholarship foundation to receive and administer tax credit-derived scholarship funds:

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1. A general application form in a format determined by the Department and made available on the Department website, that includes each guideline requirement for receiving donations, requesting tax credits, awarding scholarships, other uses of tax-credit derived funds, and data collection and reporting, and requires an officer of the applicant scholarship foundation to certify compliance with same.
2. A copy of the original Determination Letter or Group Ruling issued by the Internal Revenue Service (IRS) granting the applicant scholarship foundation federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.
3. A copy of the articles of incorporation or equivalent documents, or the governing rules, such as the bylaws, of the applicant scholarship foundation.
4. A copy of the organization's current letter from the Virginia Department of Agriculture and Consumer Affairs (VDACS) certifying that the organization complies with Section 57-48 et seq. of the *Code of Virginia*.
5. A copy of an audit or review for the foundation's most recent fiscal year ended performed by an independent certified public accountant, or, if the scholarship foundation's total revenues (including the value of all donations) were \$100,000 or less for the most recent fiscal year ended, a compilation for such year performed by an independent certified public accountant of the foundation's donations received in such year for which tax credits were issued.

The applicant foundation's audit, review or compilation must not contain significant financial or operating risk, or areas of concern, that could prevent the applicant from providing education expenses scholarships to eligible children in Virginia.

6. A copy of the organization's most recent Federal Form 990, *Return of Organization Exempt From Income Tax*, including all applicable schedules and sections.

Annual requirements for scholarship foundations

No later than May 30 each year qualified scholarship foundations must submit:

- 1) A copy of an audit or review for the foundation's most recent year ended performed by an independent certified public accountant, or, if the scholarship foundation's total revenues (including the value of all donations) were \$100,000 or less for the most recent year ended, a compilation for such year performed by an independent certified public accountant. Foundations that have been qualified scholarship foundations for less than twelve months as of May 30 do not need to submit a copy of an audit or review if a new audit or review has not been completed since the time of the initial application
- 2) A copy of the organization's most recent Federal Form 990, *Return of Organization Exempt From Income Tax* including all applicable schedules and sections. Foundations that have been qualified scholarship foundations for less than twelve months as of May

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30 do not need to submit a copy of the Federal Form 990 if a new Federal Form 990 has not been completed since the time of the initial application.

Foundations that are also applying for the Neighborhood Assistance Program for Education may meet the above requirements as part of their Neighborhood Assistance Program for Education application.

If during the program year an approved scholarship foundation's VDACS registration expires, the scholarship foundation must abstain from accepting donations until proof that the VDACS registration has been renewed, or proof that VDACS has acknowledged receipt of the request for renewal, is received by the Department. Because VDACS registrations by charitable organizations are effective upon receipt by the VDACS Commissioner, but incomplete registration forms and registration forms lacking required accompanying documents are not effective until completed or until the required accompanying documents are received by the Commissioner, scholarship foundations must notify the Department immediately if notified by VDACS that their renewal application was not complete.

The Department may remove a scholarship foundation from its annual list of qualified scholarship foundations 1) because the scholarship foundation has not submitted any eligible donations for a period of five years or more, or 2) based on a finding of program abuse including, but not limited to, activities non-compliant with applicable *Code of Virginia* provisions and these guidelines, fraudulent valuation or reporting of contributions, material deviations from the approved application, failure to maintain a current registration with VDACS or other actions that are inconsistent with the purpose of the program. The Department will contact the foundation in writing prior to taking such action.

List of qualified scholarship foundations

The Department will publish on its website a list of each scholarship foundation qualified under the program. The list will be updated on a continual basis as additional scholarship foundations are approved. Once a foundation has been qualified by the Department, it remains qualified until the foundation requests to be removed from the list or the scholarship foundation is removed from the list by the Department.

The Department is required to submit a list of all scholarship foundations that received donations for which tax credits were issued and the scholarships disbursed during the 12-month period ending on the immediately preceding June 30, to the Chairmen of the House and Senate Finance Committees by December 1 each year.

Protection of Sensitive Data

"Sensitive Data" includes, but is not necessarily limited to Personally Identifiable Information. To ensure compliance with the Department of Taxation's requirements for tax credit information so that tax credits issued by the Department are valid, the Department of Education collects each donor name, address, and social security number. To ensure compliance with the provisions of Section 58.1-439.28 of the *Code of Virginia*, which requires disbursement of at least 90 percent of donations in the form of scholarships awarded to eligible children attending eligible schools or

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pre-kindergarten programs, and limits the aggregate amount of each scholarship award, the Department collects each scholarship recipient's name, birthdate (i.e. month, day, and year of birth), and required demographic data. For each kindergarten through grade 12 scholarship recipient, the Department must also collect the results of any national norm-referenced achievement test administered.

The Department of Education administers numerous programs that involve the collection and analysis of Sensitive Data. The Department carefully safeguards the security of such Sensitive Data restricting its use to authorized personnel and purposes. Disclosure of such Sensitive Data is permitted only under strict control in accordance with federal and state laws and regulations, including the [Family Educational Rights and Privacy Act \(FERPA\)](#).

All personally identifiable information will be transmitted to and from schools, pre-kindergarten programs, scholarship foundations, and the Department via the Department's secure Web-based system. The Department of Education will not share personally identifiable student information with any outside systems, including the Virginia Longitudinal Data System (VLDS), without the permission of the applicable nonpublic school or pre-kindergarten program.

In publishing achievement test results on the Department website pursuant to Section 58.1-439.28 D of the Code of Virginia, 'aggregate form' means reporting the test data by the eligible student classifications across all eligible students for which testing data is submitted; it does not mean reporting by individual eligible school or by individual eligible student. The Department will not publish the aggregate test results for any reporting category that consists of less than 10 students to protect personally identifiable information.

Tax credits for donations; minimum donation; maximum tax credits

Donors making a donation to an approved scholarship foundation may request a tax credit in an amount equal to 65 percent of the value of the donation as detailed in the following section. The credit is allowed to be claimed for the taxable year in which the donation is made. Any credit not used may be carried over for the next five succeeding taxable years or until the total amount of the credit has been taken, whichever is first.

After an individual donor meets or exceeds the required \$500 minimum donation amount to a scholarship foundation, the individual donor can receive additional tax credits for donations to the same scholarship foundation that are each less than \$500, provided that the donations are all made within the same taxable year and do not exceed the aggregate maximum value. For purposes of these guidelines, a donation consists of all contributions made to a qualified scholarship foundation in a taxable year by a donor who has been preauthorized for tax credits by the Department, as provided in the next section of these guidelines.

If a donor is unable to use all of the credits in the five taxable years following the year that the donation was made, the donor is not permitted to transfer the unused credits to another person.

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Preauthorization of tax credits

Donations must be made within 180 calendar days of the preauthorization approval date. Preauthorization Notices not acted upon by the donor within 180 calendar days of issuance are void. The voided amount will be added back to the total amount of tax credits that may be preauthorized during the program year.

Prior to making a donation, a donor seeking to receive tax credits for a monetary or marketable securities donation to an eligible scholarship foundation must receive approval for a specified amount from the Department.

The Department will preauthorize tax credits up to \$25 million for each program year (i.e., state fiscal year) on a first-come, first-served basis. First-come, first-served is determined based on the date and time stamp recorded in the secure web-based system when the scholarship foundation submits the preauthorization request.

The Department will approve the request and issue a Preauthorization Notice for the amount of tax credits requested, as long as the request meets the minimum and maximum donation criteria, and tax credits are available to preauthorize. When the \$25 million program year limit is reached, donors will be notified that they have been placed on a waiting list.

Donations that exceed the amount specified on the Preauthorization Notice will only receive tax credits based on the donation amount specified on the Preauthorization Notice. If a donation is less than the amount specified on the Preauthorization Notice, the donor may make additional donations up to the amount specified on the Preauthorization Notice as long as a copy of the Preauthorization Notice accompanies the donation. Preauthorization Notices become void 180 calendar days from the initial Preauthorization Notice approval date regardless of the number of donations applied to the Preauthorization Notice. The voided amount will be added back to the total amount of tax credits that may be preauthorized during the program year.

At the beginning of each new program year, any preauthorized tax credits from the previous program year that have not been acted upon but are still valid will be carried over to the new program year and deducted from the \$25 million program year tax credit limitation. If the preauthorized tax credits are not acted upon by the donor by making an eligible donation before the expiration of the 180 calendar days, the unused preauthorized tax credits will be added back to the total amount of tax credits that may be allocated during the program year.

Certification by scholarship foundation; required supporting documentation for donations; value and date of donation

The Preauthorization Notice must accompany the eligible donation from the donor to the scholarship foundation. The scholarship foundation must, within 40 calendar days from the date of the donation, submit to the Department, via a secure Web-based system contained on the Department website, a completed Preauthorization Notice certifying the donor, the value and type of the donation, and the date it was received from the donor, along with documentation that supports the date, amount, and type of donation.

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The date and value of a donation used to calculate the preauthorized tax credit amount is the same as the date and value of a donation used for federal income tax purposes, based on the laws and regulations of the United States related to federal income taxes. The date of donation for a check is either the date the donation was hand delivered or the date it was mailed. However, if a post-dated check is hand delivered or mailed, the date of donation shall be considered the date of the check, not the date of delivery. For credit card transactions and payroll deductions, the date of donation is the date the charge or deduction is made. For marketable securities, the date of donation is the date of donation per IRS regulations, not the date on the check for the proceeds from the sale of the marketable securities.

For monetary donations, supporting documentation provided by the scholarship foundation to the Department must include a copy of the check(s), charge card transaction(s), or payroll deduction record(s). For electronic funds transfers, a statement or donor acknowledgement letter must accompany the bank check or receipt in order to verify the name of the donor.

Provided that the scholarship foundation can provide supporting documentation (receipt, financial statement, etc.) with the following information: donor's name, the amount of the donation, the date of the donation, and the name of the scholarship foundation receiving the donation, an online donation made to an approved scholarship foundation using a third-party payment processor or social media is permitted. A donation made from a Deferred Charitable Contribution Plan does not constitute a donation made directly to an approved scholarship foundation and, therefore, is not eligible for a tax credit.

Supporting documentation for donations of marketable securities must include either a letter from the brokerage firm or a copy of a transaction report from the donor's stock portfolio that shows: the name of the foundation that received the donation, the number of units, and the value. The value is mean price per share on the transfer date for stocks, or the net asset value per unit at the close of the transfer date for mutual funds. For marketable securities owned by two or more owners, the brokerage firm must detail in its letter how the value of the donation was determined for each donor. Donors may not specify that part of a donation of marketable securities is a donation under the *Neighborhood Assistance Tax Credit Program for Education*. If a donor donates separate stocks or funds to organizations under both tax credit programs and uses the same supporting documentation, the brokerage firm letter must detail how the separate stocks or funds were donated under each program.

For donations of marketable securities, the scholarship foundation must sell such securities and convert them into cash no more than 21 calendar days after receipt of the donation. The scholarship foundation must submit additional supporting documentation to the Department that demonstrates it has satisfied this requirement within 40 calendar days from the date of the donation.

For individuals making multiple donations within the 180 day period that are each less than the required minimum donation amount but that in aggregate equal or exceed the minimum donation amount, the scholarship foundation must report the cumulative donations necessary to meet the minimum donation amount using the same Preauthorization Notice and attach all supporting documentation for each donation.

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Issuance of tax credits

Upon receipt and approval by the Department of the Preauthorization Notice with required supporting documentation and certification of the value and type of donation by the scholarship foundation, a tax credit certificate will be accessible to the applicable scholarship foundation via the Department's secure Web-based system. As soon as practicable, and in no case longer than 30 calendar days, the scholarship foundation must send the certificate to the donor. If the donor does not receive, or misplaces the tax credit certificate, the scholarship foundation that submitted the donation will be able to access the Department's secure Web-based system and provide a copy of the tax credit certificate.

When claiming the tax credit for the appropriate taxable year, an individual or business must attach this tax credit certificate to the applicable tax return, unless it is filed electronically. The credit will be allowed to be claimed beginning with the taxable year in which the monetary or marketable securities donation is made.

The Department may request the assistance of the Department of Taxation for purposes of determining whether or not donations for which tax credits are requested by a donor qualify for state tax credits.

Required disbursement of tax credit-derived donations for scholarships

An approved scholarship foundation must disburse tax credit-derived donations for scholarships as required in Section 58.1-439.28 A of the *Code of Virginia*. Disbursement means the date that the donated scholarship funds are paid by an approved scholarship foundation to an eligible school or eligible nonpublic pre-kindergarten program. Beginning with program year 2019 – 2020, all scholarship disbursements during a given program year must be for qualified education expenses during the concurrent school year. Scholarships shall not be awarded for future school years.

A scholarship foundation must disburse an amount at least equal to 90 percent of the value of the donations it receives (for which tax credits were issued) during the program year ending on June 30 by the immediately following June 30 for qualified education expenses through scholarships to students or eligible students or eligible students with a disability attending eligible schools; or to eligible pre-kindergarten children attending eligible nonpublic pre-kindergarten programs, as verified by the Department via the reports required by these guidelines. Tax credit-derived funds not used for such scholarships shall only be used for the administrative expenses of the program.

Pursuant to Section 58.1-439.28 A of the *Code of Virginia*, a scholarship foundation that fails to disburse at least 90 percent of the value of the donations it receives (for which tax credits were issued) by the end of the following program year will be subject to the following penalties:

1. For the first offense, the scholarship foundation will be required to pay a civil penalty equal to the difference between 90 percent of the tax credit derived donations it received in the applicable 12-month period and the amount that was actually disbursed. The scholarship foundation must remit the civil penalty to the Department within 30 calendar days after the end of the one-year period.

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2. For a second offense within a five-year period, the scholarship foundation will be removed from the list of approved scholarship foundations, prohibited from requesting a preauthorized amount of tax credits on behalf of the donor, and prohibited from receiving and administering additional tax credit-derived funds for two years. After two years, the scholarship foundation may reapply to the Department to become an approved scholarship foundation and receive and administer tax credit-derived funds. If a scholarship foundation is authorized by the Department to be added to the list of approved scholarship foundations, the applicant scholarship foundation will not be considered to have any previous offenses.

A scholarship foundation that fails to meet the above disbursement requirements will not be subject to the actions in Section 58.1-439.28 A of the *Code of Virginia* when such failure is due to an eligible student forfeiting a previously issued scholarship supported by such donation less than six months before the deadline for disbursement, if evidence is provided that attempts to provide the funds to other eligible children were not successful.

Requirements for awarding scholarships

Prior to awarding scholarships, the scholarship foundation must review the following section in these Guidelines, “Requirements for schools and nonpublic pre-kindergarten programs selected by scholarship students.”

In awarding scholarships from tax credit-derived funds, scholarship foundations must (i) provide scholarships for qualified educational expenses only to eligible students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines, eligible students with a disability whose family's annual household income is not in excess of 400 percent of the current poverty guidelines, or eligible pre-kindergarten children; (ii) not limit scholarships to one school or pre-kindergarten program; and (iii) comply with Title VI of the Civil Rights Act of 1964, as amended.

Documentation must be maintained by the scholarship foundation that demonstrates it does not limit scholarships to one school or nonpublic pre-kindergarten program. This may be in the form of a written policy of the scholarship foundation, an indication of such policy on its public website, or published on its public website, a list of eligible schools and/or pre-kindergarten programs that children awarded scholarships currently attend.

Donors may designate or limit their donations, and scholarship foundations may designate or limit their scholarship awards to a particular group of eligible schools or eligible nonpublic prekindergarten programs where scholarships may be used by eligible children, as long as the eligible child's parent or legal guardian selects the eligible school or nonpublic pre-kindergarten program where the scholarship will be used among those in the designated or limited group. In order to safeguard the 501(c)(3) status of approved scholarship foundations, with such status required under Section 58.1-439.25 A of the *Code of Virginia* to qualify as a scholarship foundation, a donor is not permitted to designate a specific child to be the recipient of a scholarship that is derived from the donor's monetary or marketable securities donation.

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Scholarship foundations are required to develop application procedures to award scholarships. A scholarship foundation must not award tax credit-derived funds to a school or nonpublic pre-kindergarten program without having awarded a scholarship to an eligible student or eligible pre-kindergarten child. In no case shall a nonpublic school or nonpublic pre-kindergarten program be responsible for determining the amount of a tax credit-derived scholarship awarded to an eligible student or eligible pre-kindergarten child.

A scholarship foundation must confirm and maintain written documentation that children to whom it awards scholarships meet the criteria contained in these guidelines for an ‘eligible student with a disability’, or an eligible student whose family annual household income does not exceed 300 percent of the current poverty guidelines, or an eligible pre-kindergarten child. A scholarship foundation must rely on the U.S. Census Bureau’s definition of income (which is used for computing poverty statistics), and the U.S. Census Bureau’s definition of household in order to determine if a child’s family household income is not in excess of 300 percent of the current federal poverty guidelines, or 400 percent of such guidelines in cases in which the foundation has documentation that an IEP has, at one point, been written and finalized for the child by a public school. Written documentation of eligibility for a pre-kindergarten child maintained by the scholarship foundation must also include certification from the child’s parent or guardian that the parent or guardian attempted to enroll the child in both Head Start and Virginia Preschool Initiative programs, but the child was unable to obtain services through Head Start or the Virginia Preschool Initiative in the locality in which the child resides. The Department does not require a specific certification form, but the form must include the child’s full legal name, birthdate (i.e. month, day, and year of birth), and the locality in which the child resides.

Payment of scholarships from tax credit-derived funds by eligible scholarship foundations must be by individual warrant or check made payable to and mailed to the eligible school or eligible nonpublic pre-kindergarten program that the parent or legal guardian of the student or eligible student with a disability indicates, notwithstanding the allowance for donors and scholarship foundations to designate or limit the use of scholarships at a particular group of eligible schools. In mailing such scholarship payments, the eligible scholarship foundation must include a written notice to the eligible school that the source of the scholarship was donations made by persons receiving tax credits for the same.

Pursuant to Section 58.1-439.28 F of the *Code of Virginia*, scholarship foundations must develop procedures for disbursing scholarships in quarterly or semester payments throughout the school year to ensure scholarships are portable. Portability means that an eligible student, eligible student with a disability, or eligible pre-kindergarten child, once awarded a scholarship amount, may use all or a portion of it at any eligible school or eligible pre-kindergarten program in the Commonwealth.

Requirements for schools and nonpublic pre-kindergarten programs selected by scholarship students

Scholarship foundations must ensure that schools selected by students or eligible students with a disability to which tax credit-derived funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy

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permit as required by the locality; (iii) comply with Title VI of the Civil Rights Act of 1964, as amended; and (iv) are (a) for students in kindergarten through grade 12, nonpublic schools that comply with nonpublic school accreditation requirements as set forth in Section 22.1-19 of the *Code of Virginia*, and administered by the Virginia Council for Private Education (VCPE) or nonpublic schools that maintain an assessment system that annually measures the progress of scholarship students or eligible students with a disability in reading and math using a national norm-referenced achievement test reviewed by the Department and posted to its website, and (b) for eligible pre-kindergarten children, nonpublic pre-kindergarten programs. Foundations or schools may submit the names of additional tests for the possible inclusion on the Department's website. Each nonpublic K – 12 school must annually administer a norm-referenced achievement test to all kindergarten through 12th grade students and eligible students with a disability that have received tax credit-derived scholarships, and submit the results (i.e. composite percentile rank scores), and additional required information (grade level, gender, number of years of participation in the scholarship program, number of years tested, race, full legal name, birthdate (i.e. month, day, and year of birth), and cost to educate the student) to the Department by the required annual reporting deadline.

Each program year, prior to making the first scholarship disbursement to a K – 12 nonpublic school for the concurrent school year, scholarship foundations must obtain an assurance statement signed by the Head of School in which the Head of School attests that the school meets the requirements above. The assurance statement and supporting documentation must be kept on file by the scholarship foundation for a period of three years.

In awarding scholarships to eligible pre-kindergarten children, scholarship foundations shall ensure that the nonpublic pre-kindergarten program (i) provides to the eligible pre-kindergarten child a curriculum that is aligned with Virginia's Foundation Blocks for Early Learning: Comprehensive Standards for Four-Year-Olds as published by the Department of Education, or any successor standards published by the Department of Education; (ii) has maximum class sizes of 20 students with a teacher-student ratio of not fewer than two teachers for every 20 students; (iii) provides at least half-day services and operate for at least the school year; (iv) agrees to submit the Nonpublic Pre-kindergarten report to the Department by the annual reporting deadline, including the full legal name, birthdate (i.e. month, day, and year of birth), and cost to educate each eligible pre-kindergarten child receiving a scholarship foundation scholarship; and ; (v) requires professional development of program teachers, which enables such teachers to engage in high-quality interactions with eligible pre-kindergarten children and provide high-quality instruction in accordance with the curriculum described under clause (i); and will place each scholarship recipient with a teacher who, at a minimum, has earned a certificate or degree from a nationally recognized early childhood education program including, but not limited to, any early childhood education program provided or sponsored by the Virginia Community College System. In awarding scholarships to eligible pre-kindergarten children, scholarship foundations shall award scholarships from tax-credit-derived funds only to such children who are enrolled in or attending nonpublic pre-kindergarten programs as defined by Section 58.1-439.25 and posted to the Department's website.

Each program year, prior to making the first scholarship disbursement to a nonpublic pre-kindergarten program for the concurrent school year, scholarship foundations must obtain an assurance statement from the head of the pre-kindergarten program in which the head of the pre-

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kindergarten program attests that the nonpublic pre-kindergarten program meets all the requirements in the preceding paragraph. The certification and assurance statement must be kept on file by the scholarship foundation for a period of three years.

Scholarships issued to a nonpublic school or non-public pre-kindergarten program that does not meet all of the requirements specified above, including any of the criteria provided in requirement (iv) above; will not be counted toward the scholarship foundation's disbursement for funds.

Annual foundation report to the Department

For each program year, each scholarship foundation shall provide detailed information concerning qualified educational expenses scholarships awarded from tax-credit-derived donations and disbursed by the scholarship foundation. All information received will be managed in compliance with FERPA and state laws and regulations protecting sensitive information.

No later than one month prior to the due date for a report, the Department will provide all scholarship foundations with a foundation report template. Each scholarship foundation shall complete the report and provide the required information including, for each scholarship recipient, the full legal name, birthdate (i.e. month, day, and year of birth), the applicable scholarship amount, date of disbursement, the family income level, school or prekindergarten program attended, and school division in which the student or child resides, via the Department's secure website by the due date.

Scholarship Foundations must review and certify their final report and submit it to the Department no later than September 30.

Pursuant to Section 58.1-439.28 B of the *Code of Virginia*, any scholarship foundation that fails to provide this certified report to the Department by September 30 each year will be subject to the following penalties:

1. For the first offense, the scholarship foundation will be required to pay a \$1,000 civil penalty. The civil penalty must be remitted to the Department by November 1 of the same year.
2. For a second offense within a five-year period, the scholarship foundation will be removed by the Department from its list of approved scholarship foundations and will not be permitted to request preauthorization for additional tax credits, nor will it be permitted to receive and administer additional tax credit-derived funds. After two years, the scholarship foundation may reapply to the Department to become an approved scholarship foundation and receive and administer tax credit-derived funds. If a scholarship foundation is authorized by the Department to be returned to the list of approved scholarship foundations, the applicant scholarship foundation will not be considered to have any previous offenses.

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Scholarship foundations subject to these actions due to failure to meet the September 30th reporting deadline will be notified by the Department of such actions in writing by U.S. Mail.

Annual reporting requirements for eligible schools and pre-kindergarten programs

By accepting EISTCP scholarship funds from a scholarship foundation, schools and nonpublic pre-kindergarten programs agree to comply with the Department's annual reporting requirements.

If a K – 12 school not included on the list available from VCPE ([Virginia Council for Private Education - SCHOOL LOCATOR](#)) fails to test a scholarship student, the scholarship issued to such student shall not be included in the scholarship foundation's final Foundation Report of scholarship disbursements unless the student withdrew from the school before a test could be administered. An eligible VCPE accredited school with an eligible student that has received a tax credit-derived scholarship but was not administered a national norm-referenced achievement test during the school year is still required to submit the report without such test information and indicate that a national norm-referenced achievement test was not administered.

No later than one month prior to the due date for a report, the Department will make K-12 Student Achievement Report templates and Pre-kindergarten Program reporting templates available to applicable schools and programs.

Reporting of eligible student race is based on the standard federal Office of Management and Budget racial/ethnic categories for purposes of this reporting requirement.

For schools that include scholarship recipients in grade 12, schools must submit the numerator (number of scholarship recipients that receive an exiting diploma from the school), and denominator ((total scholarship recipients entering 9th grade for the first time four years ago) + (additional scholarship recipients who transferred in after 9th grade) minus (scholarship recipients who transferred out in 9th grade or after)) for the graduation rate calculation

Reports must be submitted to the Department via the Department's secure Web-based "SSWS Dropbox." SSWS access requests must be submitted to tax.credits@doe.virginia.gov in advance of the reporting deadline.

All sensitive information will be managed in compliance with FERPA and state laws and regulations protecting sensitive information. In publishing achievement test results on the Department website pursuant to Section 58.1-439.28 D of the *Code of Virginia*, 'aggregate form' means reporting the test data by the eligible student classifications across all eligible students for which testing data is submitted; it does not mean reporting by individual eligible school or by individual eligible student. The Department will not publish the aggregate test results for any reporting category that consists of less than 10 students to protect personally identifiable information.

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Annual scholarship limits

In the case of eligible pre-kindergarten children, the aggregate amount of scholarships provided to each child for any single school year by all eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual qualified educational expenses of the child or (2) the state share of the grant per child under the Virginia Preschool Initiative for the locality in which the eligible pre-kindergarten child resides.

The aggregate amount of scholarships provided to each kindergarten through grade 12 student or eligible student with a disability for any single school year by all eligible scholarship foundations from eligible donations may not exceed the lesser of (i) the actual qualified educational expenses of the student or eligible student with a disability or (ii) 100 percent of the per pupil amount distributed to the school division (in which the student resides) as the state's share of the Standards of Quality (SOQ) costs using the composite index of ability to pay as defined in the state appropriation act.

However, the aggregate amount of scholarships provided to an eligible student with a disability may exceed 100 percent of the state's share of the Standards of Quality (SOQ) costs up to lesser of 300 percent of the state's share of the Standards of Quality (SOQ) or the actual qualified educational expenses of the student if the eligible student with a disability is attending a school for students with disabilities, as defined in Section 22.1-319 of the *Code of Virginia*, that:

1. Is licensed by the Department to serve students with disabilities,
2. Complies with the nonpublic school accreditation requirements of the Virginia Association of Independent Schools,
3. Is exempt from taxation as a 501(c)(3) nonprofit, and
4. Receives no public funds to supplement the cost of education of the eligible student with a disability.

The Department will publish on its website the state Standards of Quality per pupil funding amount for each school division and the per pupil state share of the grant per child under the Virginia Preschool Initiative for each locality for each program year. Final per pupil amounts that relate to the upcoming school year will be posted to the Department website as soon as possible following the signing of the final state budget into law by the Governor.

A scholarship foundation is permitted to award a scholarship after the school year begins, provided that such scholarship does not exceed the actual qualified education expenses for the remainder of the school year, or the applicable SOQ or VPI amount for the program year, whichever is less.

Example 1. A student enrolls in Private School A in November for the school year that begins in August. The educational expenses for the school year to educate a student at Private School A total \$12,000 (\$6,000 per semester or \$3,000 per quarter). The SOQ cost for the school district in which the student resides is \$4,000.

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The maximum scholarship amount for the school year that can be paid to Private School A on behalf of the student is \$4,000 since the SOQ amount would be less than the expenses for the remainder of the school year (\$9,000). Under this scenario, \$2,000 may be paid for the first semester and the remaining \$2,000 may be paid for the second semester. If the student decides to transfer to Private School B in Virginia, then the remaining \$2,000 would be paid to Private School B. If the student decides to transfer to a public school, the foundation must provide a \$2,000 scholarship to another eligible student within the requisite disbursement time period, unless the 90 percent disbursement requirement has already been met.

Example 2. The facts are the same as stated in Example 1, except the student enrolls in Private School A during the month of April. The maximum scholarship amount that could be awarded to the student would be \$3,000, which is the lesser of the expenses to attend Private School A for the last quarter of the school year or the SOQ amount for the school district in which the student resides.

If the student is enrolled in a nonpublic school but leaves to enroll in another eligible nonpublic school, any unpaid quarterly or semester payments must be disbursed to the nonpublic school to which the student transfers. In the event that a student enrolled in a nonpublic school leaves to enroll in a public school, any unpaid quarterly or semester payments may be used by the scholarship foundation to provide a scholarship to another eligible student attending an eligible nonpublic school.

Each school and nonpublic pre-kindergarten program must track the amount of tax credit-derived scholarship funds received for each eligible scholarship recipient for each school year from all scholarship foundations, and, in the event that excess scholarship funds beyond the maximum permitted in Section 58.1-439.28 E of the *Code of Virginia* are received for a child, the school must return the excess funds to the appropriate scholarship foundation within 30 calendar days.

Actions exempt from Administrative Process Act; decisions not subject to review or appeal

Actions of the Superintendent of Public Instruction or the Department relating to the issuing of tax credits and the qualification of scholarship foundations are exempt from the provisions of the Administrative Process Act (Section 2.2-4000 et seq. of the *Code of Virginia*). Decisions of the Superintendent of Public Instruction or the Department are final and not subject to review or appeal.