ALABAMA DEPARTMENT OF REVENUE
ADMINISTRATIVE CODE

CHAPTER 810-28-1
THE CHOOSE ACT PROGRAM

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810-28-1-.01 The CHOOSE Act Program Definitions.

The Creating Hope and Opportunity for our Students' Education Act of 2024 (hereinafter The CHOOSE Act) makes refundable income tax credits called education savings accounts (ESAs) available to support the success of every K-12 student in Alabama which may be used by parents of participating students to cover tuition, fees, and other qualified education expenses at approved education service providers (ESPs) in Alabama. The following are program definitions:

1. Academic Year – The 12-month period beginning on July 1 and ending on the following June 30.

2. Active-Duty Service Member – A person on active duty as defined in 10 U.S.C 101(d)(1).

3. Department – The Alabama Department of Revenue.

4. Education Savings Account (ESA) – An account in which funds are deposited by the department for the parent of a participating student to pay qualifying expenses to an education service provider.

5. Education Service Provider (ESP) – A school, including a participating school, organization, vendor, or individual other than the parent of the eligible student, approved by the department to provide educational goods and services, including goods and services designed for use by homeschool students, to eligible students.

6. Eligible Student – A child that:

a. Is aged 5 to 19 years who resides in this state and who has not graduated high school.

b. Is aged 5 to 21 years who resides in this state and qualifies for services under the Individuals with Disabilities Education Act (IDEA) of 1975 or Section 504 of the Rehabilitation Act of 1973.

c. The term does not include the following:

i. A student receiving scholarship funds or a tax credit under the Alabama Accountability Act of 2013, Chapter 6D of Title 16, Code of Ala. 1975.

ii. A child who is enrolled in a private school as defined in Section 16-28-1 that is not a participating school.

iii. A child who is not lawfully present in the United States.

7. Federal Poverty Level - The federal poverty income guidelines as determined annually by the United States Department of Health and Human Services and updated periodically in the Federal Register by that Department under the authority of 42 U.S.C. 9902(2).

8. Parent – A resident of Alabama who is the parent, guardian, custodian, or other individual with authority to act on behalf of an eligible student. The term does not include an individual who is not lawfully present in the United States.

9. Participating School – A state of Alabama education service provider that is an accredited public K-12 school or an accredited private school, including church, parochial, or religious schools, that provides education to K-12 students and that is approved by the department. The school must be accredited, or in the process of obtaining accreditation as determined by the department, by one of the six regional accrediting agencies and/or the National Council for Private School Accreditation, Cognia, the American Association of Christian Schools, the Alabama Christian Education Association, the Alabama Independent School Association, or one of their partner accrediting agencies.

10. Participating Student – An eligible student who is approved by the department to participate in the program and receives services from an education service provider. The term includes an eligible student attending a participating school. The term includes a homeschool student, even if enrolled in a church school, homeschool co-op, or similar entity, provided that the homeschool student is an eligible student.

11. Platform – The official CHOOSE Act online service that enables users to apply for and facilitate The CHOOSE Act program transactions and reports.

12. Priority School – Defined in Section 16-6D-4 as a public K-12 school that is either of the following:

a. Is designated as a priority school by the State Superintendent of Education.

b. Does not exclusively serve a special population of students and has received a D or an F on the most recent state report card.

13. Program – The Creating Hope and Opportunity for Our Students' Education (CHOOSE) Act Tax Credit program established by Act 2024-21.

14. Qualifying Educational Expenses – Expenses incurred by a parent of an eligible student in one or more of the following categories: tuition and fees at a participating school; textbooks; fees for after-school or summer education programs provided by a

participating school; private tutoring; curricula or instructional materials; tuition and fees for nonpublic online learning programs; educational software and applications; fees for standardized and nationally recognized assessments, including college admissions tests and advanced placement examinations and related preparatory courses; education services for students with disabilities from a licensed or accredited practitioner or education service provider; contracted services provided by a public school district including specific classroom instruction.

15. Resident School District – The public school district in which an eligible student resides.

16. Sibling – A child who shares at least one parent of an eligible student, by birth, by adoption, by a parent's current marriage, by guardianship, and whom the same parent can claim as a dependent.

17. Special-Needs Student - A student who qualifies for services under the Individuals with Disabilities Education Act (IDEA) of 1975 or Section 504 of the Rehabilitation Act of 1973.
Author: Arleen Alexander, Meagan Barrett, and Cameran Clark
Statutory Authority: Code of Ala. 1975, Title 16, Chapter 6J and §40-2A-7(a)(5).
History: **New Rule:** Published November 27, 2024; effective January 11, 2025.

810-28-1-.02 Program Overview and Fund Allocation.

The department is responsible for the allocation of the refundable income tax credit subject to the availability of monies in The CHOOSE Act Fund. The refundable income tax credit, in the form of an ESA, is available to the parent of an eligible student as follows:

1. For the years beginning on January 1, 2025, and January 1, 2026, the refundable income tax credit shall be available to the parent of an eligible student whose family had an adjusted gross income not exceeding 300 percent of the federal poverty level for the preceding tax year.

2. For the years beginning on or after January 1, 2027, the refundable income tax credit shall be available to any parent of an eligible student.

3. The priority of the allocation of the refundable income tax credit must be awarded as follows:

a. The department shall reserve the first 500 tax credits for the parent of an eligible student who is a special-needs student.

b. Remaining tax credits must be awarded first to participating students and siblings of participating students, then to participating students who are dependents of active duty service members enrolled in or assigned to a priority school as defined in Section 16-6D-4, and then based on the family's adjusted gross income as a percentage of the federal poverty level.

Author: Arleen Alexander, Meagan Barrett, and Cameran Clark
Statutory Authority: Code of Ala. 1975, Title 16, Chapter 6J and §40-2A-7(a)(5).
History: **New Rule:** Published November 27, 2024; effective January 11, 2025.

810-28-1-.03 Program Eligibility Guidelines and Verification Requirements.

In order for a parent of an eligible student to validate ESA eligibility requirements to the department, complete and accurate information is required on the application. The parent completing the application must be a parent with whom the eligible student resides. The following is needed for the application:

1. Verification of income. Documentation includes but is not limited to the most recent federal or state tax return records, Forms W-2 or 1099, social security statements, Temporary Assistance for Needy Families (TANF) or Supplemental Nutrition Assistance Program (SNAP) benefit statements, etc. If you are not required to file a tax return, other information sufficient to verify income is required.

2. Verification of residency. Current documentation that matches the physical address listed on the application. Examples include but are not limited to a tax return, state driver's license, state-issued ID, utility bill, voter registration card, mortgage statement, rental or lease agreement, etc.

3. Verification of guardianship. Documentation includes but is not limited to recent federal or state tax return records, birth certificates, adoption records, guardianship petitions, etc.

It is the responsibility of the parent to keep the department advised of any address changes within 30 days.

4. Required Documentation for Certain Priority Applicant Status.

a. Special-Needs Student – Verification includes but is not limited to:

i. Current documentation from the parent that verifies the student has qualified for services under the Individuals with Disabilities Education Act (IDEA) of 1975 or Section 504 of the Rehabilitation Act of 1973.

ii. A copy of a current Individualized Education Program (IEP), Individualized Service Plan (ISP), or 504 Plan.

b. Active-Duty Service Member – A parent who is an active-duty service member must:

i. Attest that the eligible student is enrolled in or assigned to a priority school.

ii. Provide a copy of a current military issued ID or a copy of military orders establishing that the parent has been or will be stationed in the State of Alabama on active duty for a period of

more than 30 days during the academic year for which the parent will receive a tax credit.
Author: Arleen Alexander, Meagan Barrett, and Cameran Clark
Statutory Authority: Code of Ala. 1975, Title 16, Chapter 6J and §40-2A-7(a)(5).
History: **New Rule:** Published November 27, 2024; effective January 11, 2025.

810-28-1-.04 Requirements of the Parent of an Eligible or Participating Student.

1. General Requirements. A parent of an eligible student must do all of the following:

a. Submit to the department complete and accurate information as required on the application form.

b. Agree to claim the refundable income tax credit only for qualified expenses to provide an education for an eligible student.

c. Agree that, to the best of the parent's knowledge, no other person is claiming a refundable income tax credit for the eligible student.

d. Agree not to claim the refundable income tax credit for an eligible student who enrolls as a full time student in a public school district unless the public school is a participating school within the meaning of this act and the public school charges tuition for the participating student.

e. Agree to assume the full financial responsibility for the education of the participating student, including the balance of any expense incurred with an education service provider.

f. Agree to comply with the rules adopted by the department for the administration of the program.

g. Acknowledge and agree that the department may disclose student records to the limited extent necessary for implementation of the program. Such disclosures will include release of student educational records to any other school, including a public school, in which the student subsequently enrolls. Such disclosures will also include notice to a participating student's resident school district that the participating student has been approved for participation in the program or is no longer participating in the program.

h. Renew the participating student's ESA as specified in the platform for each academic year for which the parent is entitled to the credit.

i. Fulfillment of the agreements made pursuant to the provisions of the act and this rule is a requirement of continuing approval as a participating student. Failure to fulfill the agreements made shall constitute grounds for the department, in its discretion, to revoke, recover, suspend, or deny the refundable income tax credit otherwise made available.

Author: Arleen Alexander, Meagan Barrett, and Cameran Clark
Statutory Authority: Code of Ala. 1975, Title 16, Chapter 6J and §40-2A-7(a)(5).

History: New Rule: Published November 27, 2024; effective January 11, 2025.

810-28-1-.05 Requirements for Education Service Providers.

1. General Requirements for Approval and Participation. An ESP must do all of the following:

a. Submit to the department any information required by the department for implementation of the program, including its address, contact information, and a summary of each program or service it proposes to provide to participating students.

b. Agree not to refund, rebate, reimburse, or share any portion of program funds with a parent or student in any manner. Program funds may only be used for qualifying expenses.

c. Agree to submit annual reports to the department concerning implementation of the program, including the number of students participating, services provided, and other similar information requested by the department.

d. Agree not to discriminate based on grounds of race, color, or national origin in the provision of its services.

e. Agree to document amounts received for all qualifying expenses in a manner prescribed by the department.

f. Agree to comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

g. Agree not to discriminate against participating students in setting tuition or fees.

2. Additional Requirements for Certain Education Service Providers: In addition to all other requirements, additional documentation and attestation may be required based on the services provided by the ESP.

a. *Private Tutors.* A private tutor must:

i. Submit proof of a Bachelor's degree, or certification by the state, or accreditation by a regional or national accrediting organization in order to provide tutoring services.

ii. Agree to conduct criminal history background information checks as required by the Alabama Child Protection Act of 1999, Ala. Code §§ 16-22A-1 et seq, as if the education service provider were a nonpublic school.

b. *Education Service Therapists.* An education service therapist must:

i. Submit a valid license for the therapy he or she provides. See administrative rule 810-28-1-.06 for program approved therapies.

ii. Agree to conduct criminal history background information checks as required by the Alabama Child Protection Act of 1999, Ala. Code §§ 16-22A-1 et seq, as if the education service provider were a nonpublic school.

c. *Participating Schools.* Participating schools must do the following:

i. Agree to comply with all applicable health and safety laws or codes.

ii. Hold a valid occupancy permit if required by the municipality where the school is located.

iii. Agree to comply with the Alabama Child Protection Act of 1999, Chapter 22A of Title 16, Code of Ala. 1975.

iv. Agree to release educational records of participating students to any other school, including a public school, in which the student subsequently enrolls.

v. Provide financial statements that demonstrate, to the satisfaction of the department, the school's ability to adequately provide for participating students' continued receipt of educational services in the event the school suffers a financial failure. Alternatively, the school may file with the department a surety bond payable in an amount equal to the aggregate amount of the program funds expected to be paid during the academic year from participating students enrolled at the participating school.

vi. Submit to the department information required on the application form, including:

(a) Verification of school's accreditation or proof of the process of obtaining accreditation. A school may demonstrate that it is in the process of obtaining accreditation by submitting a letter, on the letterhead of the accrediting agency and signed by the agency's executive officer, or authorized signatory that certifies the school is in the process of obtaining accreditation.

(b) The maximum number of students who can enroll in the school and grades served.

(c) The school's academic calendar.

(d) The school's tuition and fee schedule.

vii. Notify the department, within 10 business days of a participating student's graduation, withdrawal, or other event that occurs, in which the participating student is no longer enrolled in the participating school.

viii. Provide the parents of each participating student who was tested with a copy of the results of the tests on an annual basis, beginning with the first year of testing.

ix. Provide the department with school-level test results for participating students, provided that no party shall disaggregate data to a level that could identify that academic level of individual students.

(a) At least once annually, participating students must take a standardized assessment aligned to the curricula of the participating school, a nationally norm-referenced assessment, or a nationally recognized aptitude assessment of the participating school's choice, which may include the ACT, the SAT, the Stanford Achievement Test, the Wechsler Individual Achievement Test, the Otis-Lennon School Ability Test, the Armed Services Vocational Aptitude Battery, the Iowa Test of Basic Skills, the Classic Learning Test, TerraNova, among others.

(b) Special-needs students for whom standardized testing is not appropriate are exempt from the testing requirement.

(c) If a participating school chooses not to remain in the program, the required testing must be submitted to the department within 30 days of the close of the academic year.

(d) For purposes of protecting student privacy under Section 16-6J-5(b)(5)c., a participating school shall not report school-level test results to the department if fewer than 20 participating students are enrolled at the participating school.

(e) School-level test results provided to the department under Section 16-6J-5(b)(5)c. shall be treated as a public record, and available for inspection, pursuant to Section 36-12-40 et seq.

3. Invoicing and Payment Requirements for Education Service Providers:

a. Parents can only direct payments from an ESA account to an ESP through the platform.

b. Payment for services can be made prior to the service or paid after the service has been rendered. However, invoices will be approved only for services provided within an academic year for which a tax credit has been awarded.

c. Invoices must include the following: date issued, due date, provider/company name and address, student name, amount due, and a description of the service provided. Invoices can include charges for multiple students. However, such charges must be separately stated and identifiable for each student.

d. The invoice must be for the original charge. Statement of accounts will not be accepted. Handwritten invoices are not allowed.

f. The parent of an eligible student cannot receive payment for services or products provided to such student in their capacity as an education service provider.

g. No payment or refund shall be provided directly to a participating student or his or her parent. All payments, reimbursement or refunds must be returned to the ESA.

4. Failure to Adhere to Requirements. Fulfillment of the agreements made pursuant to the provisions of the act and this rule is a requirement of continuing approval as an education service provider. Failure to fulfill the agreements shall constitute grounds for the department, in its discretion, to suspend or disqualify the participating school from receiving program funds.

Author: Arleen Alexander, Meagan Barrett, and Cameran Clark
Statutory Authority: Code of Ala. 1975, Title 16, Chapter 6J and §40-2A-7(a)(5).
History: **New Rule:** Published November 27, 2024; effective January 11, 2025.

810-28-1-.06 Qualifying Educational Expenses.

1. Parents may direct payment from the ESA for any, or any combination of, the following qualifying educational expenses purchased from an ESP:

a. Tuition and fees at a participating school. Includes enrollment and registration fees, student fees, activity fees, school fee, security fee, programming fee, administration fee, technology fees, supply fees, and tuition. This does not include athletic fees, missed session/cancellation fees, late fees, capital or building fees, commitment fees, transportation fees, food, field trip fees, child-care fees, and uniforms.

b. Textbooks. For K-12, in the following subject areas: Mathematics, English Language Arts (including Phonics, Grammar, Reading, and Writing), Science (including Computer Science and Engineering), Social Studies (including History, Civics, and Character Education), Religion, Art, Music, Foreign Languages and other electives.

c. Fees for after-school or summer education programs provided by a participating school.

d. Private tutoring. This includes in-person or online tutoring for K-12 in the following subjects: Mathematics, English Language Arts (including Phonics, Grammar, Reading, and Writing), Science (including Computer Science and Engineering), Social Studies (including History, Civics, and Character Education), Religion, Art, Music (including voice or musical instrument lessons), Foreign Languages, and other electives.

e. Curricula or instructional materials. Resources available for individual student use only, and includes: reference books, curriculum, workbooks, flashcards, charts and supplemental reading materials that are associated with approved textbook subjects; markers (including dry erase and highlighters); notebooks (including composition notebooks); paper (lined, copy, and graph); binders; pencils; pens; rulers; folders; glue; colored pencils; crayons; erasers; scissors; and calculators (including graphing); computers and technological aids. The bulk purchase of such products is not allowed.

Computers, as instructional materials, must be used primarily for a participating student's educational needs and approved by the department or required by a licensed physician and has a cost not exceeding $1,200. Such items include a laptop, desktop, or tablet computer. Product warranties included as part of the purchase are approved. The purchase of a computer as described is limited to $1,200 for one item within this category every two years for the participating student. Computers defined as or advertised as gaming computers will not be approved.

Technological aids, as instructional materials, must be used primarily for a participating student's educational needs and approved by the department or required by a licensed physician. Such items include printers and ink (3D printers are not approved), headphones, keyboards, mouse and mouse pad, protective cases for such technological aids, and assistive technology devices for special-needs. Technological aids are limited to $500 per academic year for the participating student.

f. Tuition or fees for nonpublic online learning programs. Classes or courses for K-12 in the following subjects: Mathematics, English Language Arts (including Phonics, Grammar, Reading, and Writing), Science (including Computer Science and Engineering), Social Studies (including History, Civics, and Character Education), Religion, Art, Music, Foreign Languages, and other electives.

g. Educational software and applications. Classes or courses for K-12 in the following subjects: Mathematics, English Language Arts (including Phonics, Grammar, Reading, and Writing), Science (including Computer Science and Engineering), Social Studies (including History, Civics, and Character Education), Religion, Art, Music, Foreign Languages, and other electives. Educational software and applications may also include software and applications for special-needs students such as dictation software, braille translation software, and other assistive software programs.

h. Fees for standardized and nationally recognized assessments, including college admissions tests and advanced placement examinations and related preparatory courses.

i. Education services for students with disabilities from a licensed or accredited practitioner or education service provider. Such educational services includes applied behavior analysis therapy, speech therapy, physical therapy, occupational therapy, vision therapy, dyslexia and dysgraphia therapy.

j. Contracted services provided by a public school district including specific classroom instruction.

2. All expenses are reviewed by the department to ensure compliance with the program. The department may reject any invoice for such expense that is not a qualifying educational expense, is suspected as fraudulent, or is otherwise legally impermissible.

Author: Arleen Alexander, Meagan Barrett, and Cameran Clark
Statutory Authority: Code of Ala. 1975, Title 16, Chapter 6J and §40-2A-7(a)(5).
History: **New Rule:** Published November 27, 2024; effective January 11, 2025.

810-28-1-.07 Fund Availability and Payment Process.

1. Education Savings Account Fund Availability. The full approved amount shall be available in the participating student's ESA for use on or after July 1 of the academic year. Participating student's ESAs that are approved after July 1 shall be funded based on program fund availability at the beginning of the month succeeding the approval date.

a. Each participating student's ESA will be treated as an individual ESA account whose funds shall not be intermingled with sibling ESA accounts.

b. Any funds left in the ESA at the end of the academic year will be returned to The CHOOSE Act Fund. If a participating student leaves the program, any unused funds will be returned to The CHOOSE Act Fund.

c. All payments and purchases using the ESA are made through the platform directly to an ESP.

d. There is no reimbursement or refund of any ESA funds directly to a parent or participating student. All reimbursement or refunds must be returned to the ESA.

e. Parents are responsible for any costs associated with an ESP invoice over and above the ESA balance.

2. Education Service Provider Payment Process. The department shall publish a payment schedule for each academic year when applications for eligible students open.

a. Payment to an ESP shall be made upon approval of the qualifying educational expense.

b. A participating student's enrollment in a participating school must be validated prior to the payment from an ESA fund to the participating school.

Author: Arleen Alexander, Meagan Barrett, and Cameran Clark
Statutory Authority: Code of Ala. 1975, Title 16, Chapter 6J and §40-2A-7(a)(5).
History: New Rule: Published November 27, 2024; effective January 11, 2025.