Office of the State Treasurer
Harry S. Truman State Office Building
PO Box 210
Jefferson City, MO 65102

Honorable Scott Fitzpatrick,

We, the undersigned, write to offer comments on the proposed rules 15 CSR 50-5.010 to 15 CSR 50-5.050 published in the March 1, 2022 (Vol. 47, No. 5) edition of the Missouri Register.

The proposed rules make reference in 15 CSR 50-5.050 (3)(C) to the students who qualify for a scholarship by referring to the criteria set out in §166.700(8) RSMo of the law. The law, as written, provides that students qualifying for the new MO Scholars program based on special needs must **have** "an approved IEP." Our concern, based upon how the law and regulations are written, is that students who **qualify** for an IEP, but do not have an IEP *per se* will likely not be deemed a qualified student under the law.

It is our belief that the legislature intended that all students who have been evaluated by a public school system and found to be eligible for an IEP under PL 94-142, the Individuals with Disabilities Education Act (IDEA), qualify to participate in the MO Scholars program, not just those with an approved IEP who attend public school. Under IDEA, Public Schools are required to conduct Child Find activities to identify all students who **qualify** for special education services. These counts of all students who **qualify** for an IEP are used to generate funds for special education services for public and private school students. Districts use a proportionate share of Federal funds to serve some private school students who **qualify** for an IEP.

If the LEA evaluates a private school student, determines that that student qualifies for an IEP, and provides services to that private school student, an ISP (Individualized Service Plan) is written. Because students enrolled in private schools by their parents give up their right to a Free and Appropriate Public Education (FAPE) and all individual rights to services, they do not have an IEP written for them, even if they qualify for one.

Many families have made extraordinary sacrifice to enroll their children with special needs in private schools. Currently, 8-12% of students enrolled in Missouri private schools are identified as having share. This saves local public school districts the cost of providing FAPE to these students. Many families must pay for outside therapies for their children to succeed. Should these children enroll in public school, they would be entitled to FAPE and would have an IEP written. If the MO Scholars program would allow private school students who **qualify** for an IEP to participate, the program would assist those families in paying for needed therapies that a public school might otherwise fund.

We respectfully request that the proposed rules follow the intent of the law to consider students with special needs differently than other scholarship applicants and clarify that to qualify for a scholarship a student need ONLY **qualify** for an "approved IEP" as stated in §166.700(8)(a) RSMo and NOT have a recent, current, or active IEP as implied by the guidance offered on the Treasurer's Office website. Alternatively, we request that §166.700(8) RSMo be revised to make that clarification.

By disregarding federally mandated Child Find requirements that identify all students who **qualify** for an IEP, the guidance is essentially reversing the legislature's intent to NOT require public school attendance for students with special needs to be able to qualify for this program, because in order for a student to have a recent, current, or active IEP instead of the "approved IEP" required by the law, a student must be enrolled in a public school.

This interpretation likely **disqualifies thousands of current private school students** who have been eagerly awaiting the chance to participate in the MO Scholars program. This is clearly not the intent of the law and needs to be clarified in the final rules that will govern this exciting new program.

Thank you for your consideration of our concerns and with the hopes that you will make this important change, we look forward to our families being able to utilize this program next school year.

Nicolette Gibson, Executive Director

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