

Amendment - 1st Reading-white - Requested by: Daniel Emrich - (S) Education and Cultural Resources

- 2023

68th Legislature 2023

Drafter: Pad McCracken, 406-444-3595

SB0390.001.002

1 SENATE BILL NO. 390
2 INTRODUCED BY D. EMRICH, J. WINDY BOY, S. KERNS, C. KNUDSEN, K. ZOLNIKOV, S. ESSMANN, B.
3 MITCHELL, P. FIELDER, S. VINTON, L. SHELDON-GALLOWAY, T. MOORE, L. BREWSTER, B. MERCER, J.
4 HINKLE, B. LER, A. REGIER, K. SEEKINS-CROWE, C. HINKLE, J. READ, M. HOPKINS, J. GILLETTE, G.
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7 GLIMM, K. BOGNER, P. GREEN, T. FALK, D. ZOLNIKOV, J. ETCHART, R. MINER, J. TREBAS, B. PHALEN,
8 B. BEARD, L. DEMING, L. HELLEGAARD, T. SMITH, T. VERMEIRE, N. DURAM, R. KNUDSEN, N.

9 HASTINGS
10
11 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EQUALITY OF EDUCATIONAL
12 OPPORTUNITY ACT AND THE MONTANA EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION
13 SAVINGS ACCOUNT PROGRAM; PROVIDING LEGISLATIVE FINDINGS AND PURPOSES; PROVIDING
14 DEFINITIONS; ESTABLISHING REQUIREMENTS FOR ELIGIBILITY AND ALLOWABLE EXPENSES;
15 PROVIDING RESPONSIBILITIES FOR PARENTS, SCHOOL DISTRICTS, AND THE SUPERINTENDENT OF
16 PUBLIC INSTRUCTION; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE AUTONOMY OF
17 NONPUBLIC SCHOOLS ~~AND HOME SCHOOLS~~ UNDER THE ACT; PROVIDING FOR FUNDING OF
18 EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION SAVINGS ACCOUNTS; ESTABLISHING THE
19 EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION SAVINGS TRUST; AMENDING SECTION 20-5-
20 102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
21

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
23

24 NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Equality of
25 Educational Opportunity Act".
26

27 NEW SECTION. Section 2. Montana equality of educational opportunity education savings

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1 **account program -- findings and purposes.** (1) There is a Montana equality of educational opportunity
2 education savings account program provided by the legislature as a desirable educational program pursuant to
3 Article X, section 1(3), of the Montana constitution, which gives authority to the legislature to provide for
4 educational programs and institutions in addition to a basic system of public schools that will fulfill the goal of
5 the people to have an overall system of education that offers equal opportunity to each person in the state to
6 reach each person's full educational potential.

7 (2) The legislature finds that expanding educational opportunities and empowering parental choice
8 within the state is a valid public purpose to ensure equal educational opportunity for all children.

9 (3) The purposes of [sections 1 through 10] pursuant to Article X, section 1(1), of the Montana
10 constitution are to ensure that Montana children have access to educational opportunities that will develop each
11 child's full educational potential.

12
13 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], the following definitions
14 apply:

15 (1) "Eligible postsecondary institution" means an accredited postsecondary institution located in
16 the state.

17 (2) "ESA student amount" means the sum of:

18 (a) the data-for-achievement payment rate under 20-9-306;

19 (b) the Indian education for all payment rate under 20-9-306;

20 (c) 140% of the per-ANB amounts of the special education instructional block grant and the special
21 education-related services block grant under 20-9-321; and

22 (d) the applicable per-ANB maximum rate established in 20-9-306 for the student multiplied by the
23 ratio of adopted general fund budget to maximum general fund budget in the prior year, rounded to the nearest
24 one hundredth and not to exceed 1.00, in the district in which the student is included for ANB purposes under
25 the program.

26 (3) "Montana equality of educational opportunity education savings account" or "account" means
27 an account within the trust established in [section 10] in which a payment under [section 9] is deposited on

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1 behalf of a qualified student for the purpose of reimbursement for the purchase of allowable educational
2 resources pursuant to [section 4] for qualified students.

3 (4) "Parent" means a biological parent, adoptive parent, legal guardian, custodian, or other person
4 with legal authority to act on behalf of a qualified student and whose parental rights have not been terminated.

5 (5) "Program" means the Montana equality of educational opportunity education savings account
6 program established in [section 2].

7 (6) "Qualified school" means a nonpublic school ~~or home school~~ serving any combination of
8 grades kindergarten through 12 that meets the requirements for Montana nonpublic schools under 20-5-109.

9 (7) "Qualified student" means a resident of the state who in the current school year is between the
10 ages of 5 and 19 on September 10 and who is not currently enrolled in a public school.

11 (8) "Resident school district" means the school district in which a student resides.

12

13 **NEW SECTION. Section 4. Use of Montana equality of educational opportunity education**

14 **savings account -- allowable educational resources.** (1) Money deposited in a Montana equality of
15 educational opportunity education savings account may be used for any of the following on behalf of the
16 participating qualified student:

17 (a) qualified school tuition, fees, textbooks, software, or other instructional materials or services;

18 (b) an educational program or course using electronic or offsite delivery methods, including but not
19 limited to tutoring, distance learning programs, online programs, and technology delivered learning programs;

20 (c) curriculum, including supplemental materials necessary for or in addition to the curriculum;

21 (d) tutoring;

22 (e) educational therapies or services, including but not limited to occupational, behavioral,
23 physical, speech-language, and audiology therapies from licensed or certified practitioners or providers,
24 including licensed or certified paraprofessionals or educational aides;

25 (f) state or nationally recognized assessment tests, advanced placement exams, entrance
26 examinations at an eligible postsecondary institution, or other assessment instruments;

27 (g) services provided by a public school in the state, including individual classes and

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1 extracurricular activities;

2 (h) eligible postsecondary institution tuition, books, online courses, or other fees;

3 (i) no more than \$500 annually in consumable education supplies, including but not limited to

4 paper, ink, pens, and markers;

5 (j) transportation required for another allowable educational service;

6 (k) fees paid to a cooperative educational program; and

7 (l) any other educational expense approved by the superintendent of public instruction.

8 (2) Account funds may not be refunded, rebated, or shared with a parent or participating student in
9 any manner.

10 (3) A parent may pay for educational services or costs not covered by account funds.

11 (4) Nothing in [sections 1 through 10] may be construed to require that a qualified student must be
12 enrolled full-time or part-time in either a private school or a nonpublic online school.

13 (5) The superintendent of public instruction shall ensure compliance with this section.

14
15 **NEW SECTION. Section 5. Parent responsibilities.** (1) In order for a qualified student to participate
16 in the Montana equality of educational opportunity education savings account program during the time periods
17 designated by the superintendent of public instruction pursuant to [section 6], the superintendent of public
18 instruction shall require parents of qualified students who wish to participate in the program to notify the
19 superintendent of public instruction and sign a contract with the superintendent of public instruction to do the
20 following:

21 (a) utilize account funds to procure allowable educational resources under [section 4] to develop
22 the qualified student's full educational potential;

23 (b) release the resident school district from all obligations to educate the qualified student for as
24 long as the student participates in the program, including any requirements that the district provide a free and
25 appropriate education to the qualified student or develop an individualized education program for the qualified
26 student; and

27 (c) if the qualified student is re-enrolled in a public school, immediately notify the superintendent of

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1 public instruction.

2 (2) If a qualified student re-enrolls full-time in a public school district, the superintendent of public
3 instruction shall terminate payments for the student to the Montana equality of educational opportunity
4 education savings account and direct those payments to the school district in which the student is enrolled.

5

6 NEW SECTION. **Section 6. Responsibilities of superintendent of public instruction --**

7 **rulemaking.** (1) The superintendent of public instruction shall make information about the program accessible
8 through printed informational materials and the office of public instruction website to parents, students, and
9 school districts.

10 (2) The superintendent of public instruction shall ensure that parents of qualified students with
11 disabilities receive notice that participation in the program is a parental placement under the Individuals With
12 Disabilities Education Act, 20 U.S.C. 1412, along with an explanation of the rights that parentally placed
13 students possess under the Individuals With Disabilities Education Act and any applicable state laws and
14 regulations.

15 (3) The superintendent of public instruction may remove a qualified student from eligibility for an
16 account if the parent fails to comply with the terms of the contract signed pursuant to [section 5], knowingly
17 misuses account funds, or knowingly fails to comply with the terms of the contract with intent to defraud. If a
18 qualified student is removed from eligibility, the superintendent of public instruction shall suspend the qualified
19 student from the program and shall notify the parent in writing that the qualified student has been suspended
20 and that no further reimbursements from the account will be allowed. The notification must specify the reason
21 for the suspension and state that the parent has 10 business days to respond and take corrective action. If the
22 parent refuses or fails within the 10-day period to contact the superintendent of public instruction or provide
23 information or make a report that is required for reinstatement, the superintendent of public instruction may
24 remove the qualified student from the program pursuant to this subsection. A parent may appeal the
25 superintendent of public instruction's decision pursuant to Title 2, chapter 4, part 6.

26 (4) The superintendent of public instruction may refer cases of substantial misuse of account funds
27 to the attorney general for investigation if the superintendent of public instruction obtains evidence of fraudulent

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1 use of an account.

2 (5) The superintendent of public instruction shall establish rules necessary for administering the
3 program that are limited to the following:

4 (a) establishment of no fewer than two time periods each year during which a student's parent may
5 notify the superintendent of public instruction of the parent's desire for the student to participate in the program.
6 Each time period must be at least 1 month long. One time period must be between September 1 and January 1,
7 and the other time period must be between March 1 and June 1 based on the superintendent of public
8 instruction's determination of school district and parent needs.

9 (b) verification of student eligibility pursuant to [section 3];

10 (c) creation of a parent contract pursuant to [section 5];

11 (d) notification of the resident school district of the student's participation in the program;

12 (e) calculation of the amount of the ESA student amount;

13 (f) accounting guidance related to the money remitted by school districts under [section 9(2)]; and

14 (g) establishment of participation agreements to create a trust interest in the equality of

15 educational opportunity education savings trust established in [section 10] and provide for participation in the
16 program.

17

18 **NEW SECTION. Section 7. Responsibilities of public school districts -- student records.** A

19 public school or school district that previously enrolled a qualified student participating in the Montana equality
20 of educational opportunity education savings account program shall provide a qualified school that has enrolled
21 a participating student with a complete copy of the student's school records, while complying with the Family
22 Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

23

24 **NEW SECTION. Section 8. Qualified schools -- autonomy.** (1) A qualified school is not an agent of
25 the state or federal government.

26 (2) The superintendent of public instruction or any other state agency may not regulate the

27 educational program of a qualified school that enrolls a qualified student, except as provided under 20-5-109.

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1 (3) The creation of the Montana equality of educational opportunity education savings account
2 program does not expand the regulatory authority of the state, its officers, or a school district to impose
3 additional regulation on providers of educational services under the program beyond that reasonably necessary
4 to enforce the requirements of the Montana equality of educational opportunity education savings account
5 program.

6
7 NEW SECTION. **Section 9. Montana equality of educational opportunity education savings**
8 **account -- funding and administration.** (1) Following receipt of a signed contract pursuant to [section 5], the
9 superintendent of public instruction shall notify the resident school district of the qualifying student's
10 participation in the program and the amount calculated by dividing the student's ESA student amount by 10.

11 (2) Beginning with the next distribution of BASE aid payments pursuant to 20-9-344 for the months
12 of August through May, the resident school district shall remit to the office of public instruction the amount
13 calculated in subsection (1) for each participating student by no later than the 10th of the month following the
14 BASE aid distribution.

15 (3) The money remitted under subsection (2):

- 16 (a) must be from the district's general fund;
- 17 (b) may not include revenue from the guarantee account described in 20-9-622; and
- 18 (c) must be accounted for under rules adopted by the superintendent of public instruction.

19 (4) The superintendent of public instruction shall account for the money remitted under subsection
20 (2) as follows:

21 (a) 98% of the money must be deposited in accounts within the equality of educational opportunity
22 education savings trust established in [section 10] to be used only for the purchase of allowable educational
23 resources pursuant to [section 4]; and

24 (b) 2% of the money must be deposited in the office of public instruction equality of educational
25 opportunity ESA administration account established in subsection (8).

26 (5) The superintendent of public instruction shall ensure that the participating student is included in
27 the resident school district's ANB calculation for funding purposes only pursuant to 20-9-311 in any year that

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1 the student remains otherwise eligible for inclusion and participates in the program. No other school district may
2 count the student for ANB purposes. The participating student is not considered to be enrolled in the resident
3 school district.

4 (6) The superintendent of public instruction shall administer the individual student accounts
5 pursuant to subsection (4)(a) so that:

6 (a) parents have the freedom to expend account funds for the purchase of allowable educational
7 resources for a participating student pursuant to [section 4]; and

8 (b) on a student's 24th birthday, the student's account is closed and any remaining funds in the
9 student's account are returned to the guarantee account described in 20-9-622. If a student is enrolled in a
10 postsecondary institution on the student's 24th birthday, the account must remain active until the student is no
11 longer enrolled in a postsecondary institution.

12 (7) The superintendent of public instruction may contract with private financial management firms
13 to manage the individual student accounts pursuant to subsection (4)(a) with the supervision of the
14 superintendent.

15 (8) There is an office of public instruction equality of educational opportunity ESA administration
16 account within the state special revenue fund created in 17-2-102 consisting of 2% of the money remitted to the
17 office of public instruction pursuant to subsection (2).

18
19 **NEW SECTION. Section 10. Equality of educational opportunity education savings trust.** There
20 is an equality of educational opportunity education savings trust that is an instrumentality of the state and that is
21 created for a public purpose. The trust consists of participating trusts with each participating trust corresponding
22 to an account. The assets of one participating trust may not be commingled with the assets of any other
23 participating trust. The assets and earnings of any participating trust may not be used to satisfy the obligations
24 of any other participating trust. Each participating trust account represents a trust interest in the trust and
25 includes interest and investment income earned by the trust account.

26

27

Section 11. Section 20-5-102, MCA, is amended to read:

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1 **"20-5-102. Compulsory enrollment and excuses.** (1) Except as provided in subsection (2), any
2 parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older
3 prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program
4 prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:
5 (a) the child's 16th birthday; or
6 (b) the date of completion of the work of the 8th grade.
7 (2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of
8 the district within the first week of the school term or when the parent, guardian, or person establishes
9 residence in the district unless the child is any of the following:
10 (a) enrolled in a school of another district or state under any of the tuition provisions of this title;
11 (b) provided with supervised correspondence study or supervised home study under the
12 transportation provisions of this title;
13 (c) excused from compulsory school attendance upon a determination by a district judge that
14 attendance is not in the best interest of the child;
15 (d) excused by the board of trustees upon a determination that attendance by a child who has
16 attained the age of 16 is not in the best interest of the child and the school; ~~or~~
17 (e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the
18 purposes of this subsection (2)(e), a home school is the instruction by a parent of the parent's child, stepchild,
19 or ward in the parent's residence and a nonpublic school includes a parochial, church, religious, or private
20 school.
21 (f) participating in the Montana equality of educational opportunity education savings account
22 program pursuant to [sections 1 through 10]."

23
24 NEW SECTION. Section 12. Transition. The legislature intends that this program be operational for
25 the 2023-2024 school year and that the office of public instruction promptly develop all necessary components
26 of the program to meet that intention.

27

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1 NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 10] are intended to be
2 codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1
3 through 10].
4

5 NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
7 the part remains in effect in all valid applications that are severable from the invalid applications.
8

9 NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.
10

- END -