

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 590

BY EDUCATION COMMITTEE

AN ACT

RELATING TO THE GUIDED EDUCATION MANAGEMENT ACT; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 61, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO ESTABLISH PROVISIONS REGARDING GUIDED EDUCATION MANAGEMENT SCHOLARSHIPS, TO DEFINE TERMS, TO PROVIDE ELIGIBILITY REQUIREMENTS FOR SCHOLARSHIPS, TO ESTABLISH PROVISIONS REGARDING SCHOLARSHIP GRANTING ORGANIZATIONS, TO ESTABLISH PROVISIONS REGARDING A CERTAIN FUND, TO PROVIDE QUALIFIED EDUCATION EXPENSES, TO ESTABLISH PROVISIONS REGARDING EDUCATION SERVICE PROVIDERS, TO ESTABLISH PROVISIONS REGARDING STUDENT RECORDS, TO PROVIDE SEVERABILITY AND TO PROVIDE THAT SCHOLARSHIP GRANTING ORGANIZATIONS AND THEIR BOARD MEMBERS AND STAFF ARE NOT LIABLE FOR CERTAIN ACTS, OMISSIONS, DEBTS OR OBLIGATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 61, Title 33, Idaho Code, and to read as follows:

CHAPTER 61
GUIDED EDUCATION MANAGEMENT ACT

33-6101. SHORT TITLE. This chapter shall be known and may be cited as the "Guided Education Management Act."

33-6102. GUIDED EDUCATION MANAGEMENT SCHOLARSHIPS. (1) Families of eligible students may apply to a scholarship granting organization to receive a guided education management (GEM) scholarship consisting of moneys from the organization's GEM fund to pay for qualified education expenses in accordance with the procedures and criteria set forth in this chapter.

(2) GEM scholarships shall be awarded by a scholarship granting organization to the families of eligible students on a first-come basis as long as funds are available in the GEM fund. No individual scholarship shall exceed the average state per-pupil funding in any given year, except that scholarships for particular recipients including, but not limited to, recipients with special needs, English language learners, homeless students and low-income students may include any additional weighted amounts that the state would have provided to a public school for such a student. Scholarships may be renewable or granted for multiple years as long as funds are available.

33-6103. DEFINITIONS. As used in this chapter:

(1) "Education service provider" means a provider of education services, which services are determined by a scholarship granting organization to be qualified education expenses and are made available to recipients of guided education management (GEM) scholarships.

1 (2) "Eligible student" means a child who meets the criteria set forth in
2 section 33-6104, Idaho Code.

3 (3) "Guided education management fund" or "GEM fund" means a fund
4 created pursuant to section 33-6106, Idaho Code, to provide moneys for GEM
5 scholarships.

6 (4) "Guided education management scholarship" or "GEM scholarship"
7 means moneys from the guided education management fund awarded by a scholar-
8 ship granting organization to an eligible student to be spent on qualified
9 education expenses pursuant to this chapter.

10 (5) "Qualified education expenses" means education services provided
11 by an education service provider or education goods approved for purchase
12 with GEM scholarship funds pursuant to section 33-6107, Idaho Code.

13 (6) "Scholarship granting organization" means a nonprofit corporation
14 designated by the state board of education to administer GEM scholarships
15 pursuant to section 33-6105, Idaho Code.

16 33-6104. ELIGIBILITY TO RECEIVE A GEM SCHOLARSHIP. (1) Families of
17 eligible students may apply to a scholarship granting organization to re-
18 ceive a GEM scholarship, comprised of moneys from the organization's GEM
19 fund, to pay for qualified education expenses pursuant to this chapter.

20 (2) To be eligible, at the time of application, a student shall be under
21 the age of nineteen (19) years, and have been continually enrolled in Idaho
22 public schools for the duration of the prior school year, or entering kinder-
23 garden or first grade. An eligible student shall also meet one (1) or more of
24 the following criteria:

25 (a) Have an annual family income at or below one hundred eighty-five
26 percent (185%) of the federal poverty guideline;

27 (b) Be a child with a disability, as defined in section 33-2001, Idaho
28 Code;

29 (c) Be an at-risk youth, as defined in rule of the state board of educa-
30 tion in effect on January 1, 2018; or

31 (d) Have a parent who is a member of the military and is on active duty or
32 who was a member of the military and killed in the line of duty.

33 (3) If awarded a GEM scholarship, recipients may but are not required to
34 enroll full time in a private school. Recipients shall not enroll full time
35 in a public school.

36 (4) GEM scholarship recipients may choose to cease participation at any
37 time. A violation of the provisions of this chapter may result in loss of el-
38 igibility. Any unspent scholarship dollars shall remain in the GEM fund.

39 33-6105. SCHOLARSHIP GRANTING ORGANIZATIONS. (1) The state board of
40 education shall designate up to three (3) nonprofit corporations to serve
41 as scholarship granting organizations to administer GEM scholarships. At a
42 minimum, eligible nonprofit corporations shall meet the following require-
43 ments:

44 (a) Be a nonprofit corporation with corporate headquarters in Idaho;

45 (b) If an organization in operation for three (3) or more years, have a
46 minimum annual operating budget of one million dollars (\$1,000,000) and
47 three (3) years of audited financial statements with unqualified opin-
48 ions or, if an organization in operation for less than three (3) years,

1 have a minimum annual operating budget of one million five hundred thou-
2 sand dollars (\$1,500,000); and

3 (c) Have an educational mission as set forth in organizing documents
4 submitted to the Idaho secretary of state and qualify for an exemption
5 pursuant to 26 U.S.C. 501(c)(3).

6 (2) To administer the GEM scholarship program, a scholarship granting
7 organization shall:

8 (a) Develop and implement a marketing plan to raise awareness about GEM
9 scholarships among financial donors and families of eligible students;

10 (b) Develop an application process for families of eligible students to
11 apply to receive a GEM scholarship;

12 (c) Verify the eligibility of each applicant and award GEM scholarships
13 to eligible applicants on a first-come basis;

14 (d) Provide parents of GEM scholarship recipients with a written ex-
15 planation of the allowable uses of GEM scholarship moneys, the respon-
16 sibilities of parents, the duties of the scholarship granting organiza-
17 tion, and the role of any private financial management firms;

18 (e) Provide parents of GEM scholarship recipients with information
19 about qualified education expenses and, if requested, assist in se-
20 lecting one (1) or more goods or services to best meet the individual
21 recipient's needs;

22 (f) Implement a commercially viable, cost-effective, and par-
23 ent-friendly system for publicly rating, reviewing and sharing infor-
24 mation about education service providers;

25 (g) Annually renew a student's GEM scholarship if funds are available
26 and the student has complied with the scholarship granting organiza-
27 tion's rules and requirements. If insufficient funds are available to
28 renew all GEM scholarships, priority shall be given to students who have
29 been GEM scholarship recipients for the longest period of time; and

30 (h) Develop a transparent process for a GEM scholarship recipient to
31 cease participation at the recipient's choice or due to loss of eligi-
32 bility.

33 (3) A scholarship granting organization shall provide parents of stu-
34 dents with a disability with notice that participating in the GEM program is
35 a parental placement under 20 U.S.C. 1412, along with an explanation of the
36 rights that parentally placed students possess under the federal individu-
37 als with disabilities education act, P.L. 101-476, and any applicable state
38 laws and rules.

39 (4) A scholarship granting organization shall submit to an indepen-
40 dent annual audit of the organization or its relevant accounts and records
41 pertaining to tax-credit eligible donations, conducted by an independent
42 certified public accountant in accordance with generally accepted auditing
43 standards. The audit report shall include a report on financial statements
44 presented in accordance with generally accepted accounting principles.

45 (5) A scholarship granting organization shall produce an annual re-
46 port, available on its website, demonstrating compliance with this chapter
47 and providing:

48 (a) The number and counties of GEM scholarship applicants;

49 (b) The number and dollar amounts of GEM scholarships awarded; and

1 (c) A list of the educational goods and services on which GEM scholar-
2 ship recipients spent their awarded funds.

3 (6) A scholarship granting organization shall submit the annual audit
4 described in subsection (4) of this section and the annual report described
5 in subsection (5) of this section to the state board of education no later
6 than one hundred eighty (180) days after the conclusion of each fiscal year.
7 For students using a GEM scholarship to pay for full-time tuition at an ac-
8 credited private school, the scholarship granting organization shall also
9 submit copies of the student's test score sheet on a nationally normative
10 test. The state board of education shall review all reports submitted pur-
11 suant to this subsection. The state board of education, in its sole discre-
12 tion, may discontinue a nonprofit corporation's designation as a scholar-
13 ship granting organization, which shall not be appealable. Administration
14 of any GEM scholarships administered by the discontinued scholarship grant-
15 ing organization shall be transferred to another scholarship granting or-
16 ganization. A minimum of one (1) scholarship granting organization shall be
17 designated at all times.

18 (7) Parents of GEM scholarship recipients shall sign an agreement with
19 the scholarship granting organization certifying that as long as the student
20 is the recipient of a GEM scholarship, the parent will:

21 (a) Provide the student with an education in subjects required pursuant
22 to section 33-202, Idaho Code;

23 (b) Abstain from enrolling the student full time in a public school; and

24 (c) Comply with the rules and requirements of the scholarship granting
25 organization.

26 The executed agreement shall satisfy the compulsory school attendance
27 requirements set forth in section 33-202, Idaho Code.

28 (8) The state board of education shall designate at least one (1) schol-
29 arship granting organization by January 1, 2019. The state board of educa-
30 tion may designate an additional two (2) scholarship granting organizations
31 at the same time or any time thereafter.

32 33-6106. GEM FUND. (1) Each scholarship granting organization shall
33 establish a separate fund, known as a GEM fund, used exclusively for the pur-
34 pose of funding GEM scholarships awarded by the scholarship granting organ-
35 ization. Moneys are payable into the fund from private contributions, gifts
36 and grants and any other sources permitted by law. An amount equal to no
37 more than five percent (5%) of total scholarships awarded by the scholarship
38 granting organizations annually may be used by the scholarship granting or-
39 ganization for the cost of administering the GEM scholarship program.

40 (2) A scholarship granting organization shall remain informed about
41 moneys existing in the GEM fund and ensure that scholarships are not awarded
42 in excess of available funds. The scholarship granting organization shall
43 develop a transparent process to allocate moneys from the GEM fund to educa-
44 tion service providers or toward the purchase of other qualified education
45 expenses for the benefit of GEM scholarship recipients.

46 (3) Any unused funds shall remain in or revert to the GEM fund to benefit
47 future GEM scholarships.

1 33-6107. QUALIFIED EDUCATION EXPENSES. (1) GEM scholarships shall be
2 used to provide eligible students with access to a variety of educational
3 opportunities. A scholarship granting organization shall use moneys from
4 the GEM fund to pay for qualified education expenses for eligible students.
5 Qualified education expenses include:

- 6 (a) Tuition, fees and uniforms at an accredited private school;
- 7 (b) Tuition and fees for a nonpublic online learning program;
- 8 (c) Tutoring or education support services provided by an individual or
9 a tutoring facility;
- 10 (d) Textbooks, curriculum or other instructional materials including,
11 without limitation, any supplemental materials or associated online
12 instruction required by either a curriculum or an education service
13 provider;
- 14 (e) Computers or other technology devices used primarily to meet the
15 student's educational needs;
- 16 (f) Fees for national standardized assessments, advanced placement ex-
17 aminations, examinations related to college or university admission,
18 and tuition and fees for preparatory courses for any such assessments or
19 examinations;
- 20 (g) Educational services and therapies from a licensed or accredited
21 practitioner or provider including, but not limited to, occupational,
22 behavioral, physical, speech-language and audiology therapies;
- 23 (h) Fees for summer education programs and specialized after-school
24 education programs, but not after-school child care;
- 25 (i) Reasonable fees for transportation, not to exceed ten percent (10%)
26 of the recipient's annual scholarship;
- 27 (j) Services contracted for and provided by a public school district or
28 public charter school including, but not limited to, individual classes
29 and extracurricular activities and programs;
- 30 (k) Tuition, fees, instructional materials and examination fees at a
31 career or technical school;
- 32 (l) Tuition and fees at an institution of higher education; and
- 33 (m) Any other educational expenses not described in paragraphs (a)
34 through (l) of this subsection, which expenses have been approved by a
35 scholarship granting organization and the state board of education.

36 (2) GEM scholarships may not inure to the benefit of the recipient's
37 parent or other immediate family member. Any refund for goods or services
38 purchased with GEM scholarships shall be returned to the GEM fund.

39 (3) A scholarship granting organization shall maintain an updated
40 list, available on its website, of education providers serving GEM scholar-
41 ship recipients.

42 (4) A scholarship granting organization may prohibit GEM scholarship
43 recipients from spending GEM funds on a good or service that the scholarship
44 granting organization determines has:

- 45 (a) Intentionally and substantially misrepresented information or
46 failed to refund any overpayments in a timely manner; or
- 47 (b) Routinely failed to provide students with high-quality educational
48 goods or services.

49 (5) There is no right to appeal a determination made pursuant to subsec-
50 tion (4) of this section.

1 33-6108. EDUCATION SERVICE PROVIDERS. (1) To be eligible to accept
2 payments from the GEM fund to provide education services to GEM scholarship
3 recipients, an education service provider shall:

4 (a) Submit notice to the scholarship granting organization that the
5 provider wishes to serve GEM scholarship recipients;

6 (b) Provide the scholarship granting organization with a receipt for
7 all qualifying educational expenses;

8 (c) Certify that the provider will not discriminate based on race,
9 color, ethnicity or national origin; and

10 (d) Agree to submit any employee who will have unsupervised contact
11 with GEM scholarship recipients to a criminal background check.

12 (2) Nothing in this chapter shall be deemed to limit the independence
13 or autonomy of an education service provider or to qualify the actions of an
14 education service provider as the actions of state government.

15 (3) Education service providers shall be given maximum freedom to pro-
16 vide for the educational needs of GEM scholarship recipients without govern-
17 mental control.

18 (4) Nothing in this chapter shall be construed to expand the regulatory
19 authority of the state, its officers, or any public school district to impose
20 additional regulation of education service providers beyond that necessary
21 to enforce the requirements of the GEM scholarship program.

22 (5) This chapter does not permit any government agency to exercise con-
23 trol or supervision over any education service provider.

24 (6) An education service provider that accepts a payment pursuant to
25 this chapter is not an agent of the state or federal government.

26 (7) An education service provider shall not be required to alter its
27 creed, practices, admissions policy or curriculum in order to accept GEM
28 scholarship recipients.

29 33-6109. STUDENT RECORDS. A public school or school district that pre-
30 viously enrolled a GEM scholarship recipient shall provide an education ser-
31 vice provider that has enrolled a GEM scholarship recipient with a complete
32 copy of the student's school records, while complying with the family educa-
33 tional rights and privacy act of 1974, 20 U.S.C. 1232g.

34 33-6110. SEVERABILITY -- LIABILITY. (1) If any provision of this chap-
35 ter, or the application thereof, is determined to be invalid by a court, such
36 invalidity shall not affect other provisions or applications of this chapter
37 that can be given effect without the invalid provision or application, and to
38 this end the provisions of this chapter are declared to be severable.

39 (2) A scholarship granting organization and its staff and board members
40 shall have no liability for the acts, omissions, debts or other obligations
41 of an education service provider or GEM scholarship recipient.