LEGISLATURE OF THE STATE OF IDAHO
Sixty-fifth Legislature First Regular Session - 2019

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 253

BY EDUCATION COMMITTEE

AN ACT

RELATING TO THE EDUCATION SAVINGS ACCOUNT ACT; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 61, TITLE 33, IDAHO CODE, TO PROVIDE A SHORT TITLE AND TO ESTABLISH THE EDUCATION SAVINGS ACCOUNT PROGRAM, TO DEFINE TERMS, TO ESTABLISH PROVISIONS REGARDING THE EDUCATION SAVINGS ACCOUNT PROGRAM, TO ESTABLISH PROVISIONS REGARDING PROGRAM APPLICATIONS, TO ESTABLISH PROVISIONS REGARDING CERTAIN AUTHORITY AND RESPONSIBILITIES, TO PROVIDE FOR A PARENT REVIEW COMMITTEE, TO ESTABLISH PROVISIONS REGARDING EDUCATION SERVICE PROVIDERS, TO PROVIDE FOR RELEASE OF CERTAIN STUDENT RECORDS, TO ESTABLISH PROVISIONS REGARDING LEGAL PROCEEDINGS AND SEVERABILITY, TO ESTABLISH PROVISIONS REGARDING THE INDEPENDENCE OF EDUCATION SERVICE PROVIDERS, AND TO ESTABLISH PROVISIONS REGARDING PROGRAM ENROLLMENT RESTRICTIONS.

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
EDUCATION SAVINGS ACCOUNT ACT

33-6101. SHORT TITLE -- PROGRAM ESTABLISHED. (1) This chapter shall be known and may be cited as the "Education Savings Account Act" or the "ESA Act."

(2) There is hereby established the education savings account program as provided in this chapter.

33-6102. DEFINITIONS. As used in this chapter:

(1) "Agency" means the office of the state treasurer.

(2) "Contractor" means an organization that the agency has contracted with to carry out any or all portions of this chapter pursuant to section 33-6104, Idaho Code.

(3) "Curriculum" means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum.

(4) "Education savings account," "ESA," or "account" means the account to which funds are allocated by the agency to the parent of an ESA student in order to pay for qualifying education expenses to educate the ESA student pursuant to the requirements and conditions of this chapter.

(5) "Education savings account program," "ESA program," or "program" means the program established by this chapter.
(6) "Education service provider" means a person or an organization that receives payments from an education savings account to provide educational goods and services to an ESA student.

(7) "Eligible student" means a resident of this state who is eligible to enroll in a public elementary or secondary school and who has been enrolled as a full-time student in a public, private, or parochial school or enrolled as a student in an institution of higher education or other postsecondary education or training program for at least six (6) months in the preceding calendar year or who will become eligible to enroll in a public elementary school upon attaining the minimum age required to enroll.

(8) "ESA student" means an eligible student who is participating in the program.

(9) "Parent" means a biological or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student. The term "parent" may include one (1) or more than one (1) parent.

33-6103. EDUCATION SAVINGS ACCOUNT PROGRAM. (1) The parent of an eligible student may establish an education savings account pursuant to section 33-6104, Idaho Code, for the purposes provided in subsection (2) of this section. If such an account is established, the agency or contractor shall deposit into the account an amount equal to ninety percent (90%) of the statewide average of general fund moneys that are allocated for an individual student based on the funding formula provided in chapter 10, title 33, Idaho Code. For ESA students who have disabilities or are English language learners, homeless, or low-income, the amount shall be equal to one hundred percent (100%) of the statewide average of general fund moneys allocated for an individual student and shall include any weighted funding that would have been provided to a public school for such student.

(2) The parent of an ESA student shall agree to use the moneys deposited in the student's account for the following qualifying expenses only:

(a) Tuition or fees at a private school;
(b) Tuition or fees for nonpublic online learning programs;
(c) Tutoring services provided by an individual or a tutoring facility;
(d) Services contracted for and provided by a public school district or charter school including, without limitation, individual classes and extracurricular activities and programs;
(e) Textbooks, curriculum, or other instructional materials including, without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;
(f) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;
(g) Educational software and applications;
(h) School uniforms;
(i) Fees for national standardized assessments, advanced placement examinations, examinations related to college or university admission, and tuition or fees for preparatory courses for any such assessments or examinations;
(j) Fees for summer education programs and specialized after-school education programs, but not after-school child care;
(k) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;
(l) Educational services and therapies including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;
(m) Tuition and fees at an institution of higher education;
(n) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or
(o) Any other educational expense approved by the agency or contractor.
(3) The moneys in an ESA may be used only for educational purposes in accordance with subsection (2) of this section.
(4) ESA funds shall not be refunded, rebated, or shared with a parent or an ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.
(5) Parents may make payments for the costs of educational goods and services not covered by the moneys in a student's ESA. However, personal deposits into an ESA shall not be permitted.
(6) Moneys deposited in an ESA do not constitute taxable income attributable to the parent or the ESA student.
(7) An ESA shall remain active, and any unused funds shall roll over from quarter to quarter and from year to year, until the parent withdraws the ESA student from the program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of account moneys. However, if an ESA student has not enrolled in a postsecondary institution within four (4) years after graduating from high school, or if an ESA student turns twenty-six (26) years of age, whichever occurs first, the ESA shall be closed, and any unused funds shall revert to the agency and be allocated to fund other ESAs.
(8) Nothing in this chapter shall be construed to require that an ESA student must be enrolled, full or part time, in either a private school or a nonpublic online school.

33-6104. APPLICATION FOR AN ACCOUNT. (1) The agency shall contract with a private, nonprofit contractor to administer the program or specific functions of the program, which contractor shall:
(a) Create a standard form application that parents may submit to establish their student's eligibility for the ESA program;
(b) Ensure that the application is readily available and may be submitted through various sources, including online; and
(c) Accept and approve applications year-round and establish procedures for approving applications for accounts in an expeditious manner.
(2) The contractor shall approve an application for an ESA if:
(a) The parent submits an application for an ESA in accordance with any application procedures established by the contractor;
(b) The student on whose behalf the parent is applying is an eligible student;
(c) Funds are available for the ESA; and
(d) The parent signs an agreement with the contractor promising:
   (i) To provide an education for the eligible student in subjects as required by section 33-202, Idaho Code;
   (ii) Not to enroll the eligible student as a full-time student in a public school while participating in the ESA program;
   (iii) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA program; and
   (iv) To comply with the rules and requirements of the ESA program.

(3) The signed agreement between the parent and the contractor shall satisfy the compulsory school attendance requirements of section 33-202, Idaho Code.

(4) The contractor shall annually renew a student's ESA if funds are available.

(5) Upon notice to the contractor, an ESA student may choose to stop receiving ESA funding and enroll full time in a public school.

   (a) Enrolling as a full-time student in a public school shall result in the immediate suspension of deposits into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from moneys remaining in the ESA. When or if no moneys remain in the student's ESA, the agency may close the ESA.
   (b) If an eligible student decides to return to the ESA program, deposits into the student's existing ESA may resume if the ESA is still open and active. A new ESA may be established if that student's ESA was closed.
   (c) The contractor may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full time in a public school.

33-6105. AUTHORITY AND RESPONSIBILITIES. (1) In addition to the contractor's duties, obligations, and authority established elsewhere in this chapter, the contractor shall:

   (a) Maintain an updated list of education service providers and ensure that the list is publicly available through various sources, including online.
   (b) Provide parents with a written explanation of the allowable uses of ESA moneys, the responsibilities of parents, the duties of the contractor, and the role of any private financial management firms or other private organizations that the agency may contract with to administer the ESA program or any aspect of the ESA program.
   (c) Ensure that parents of students with a disability receive notice that participation in the ESA program is a parental placement under 20 U.S.C. 1412, along with an explanation of the rights that parentally placed students possess under the federal individuals with disabilities education act, public law 101-476, and any applicable state laws and regulations.
   (d) Deduct an amount from accounts to cover the costs of administering the program, up to a maximum of five percent (5%) annually in the first
two (2) years of the ESA program, and up to a maximum of three percent
(3%) annually thereafter.
(e) Implement a commercially viable, cost-effective, and parent-
friendy system for payment for services from ESAs to education
service providers by electronic or online funds transfer.
   (i) The contractor shall not adopt a system that relies exclu-
sively on requiring parents to be reimbursed for out-of-pocket
expenses, but rather shall provide maximum flexibility to parents
by facilitating direct payments to education service providers
as well as requests for preapproval of and reimbursements for
qualifying expenses, including expenses pursuant to section
33-6103(2)(o), Idaho Code; and
   (ii) The agency shall contract with a private nonprofit institu-
tion to develop the payment system.
(f) Implement a commercially viable, cost-effective, and parent-
friendy system for publicly rating, reviewing, and sharing infor-
mation about education service providers, ideally as part of the same
system required by paragraph (e) of this subsection.
(g) Pay any partial payment for tuition or fees required by an ed-
ucation service provider prior to the start of the academic year if
necessary to reserve space for an ESA student admitted to the education
service provider, and deduct in an equitable manner from subsequent
ESA deposits to ensure adequate funds remain available throughout the
school year. If an ESA student decides not to use the education ser-
vice provider, the partial reservation payment must be returned to the
contractor by such education service provider and credited to the stu-
dent's ESA.
(h) Make deposits into a student's ESA until:
   (i) The contractor determines that the ESA student is no longer an
eligible student;
   (ii) The contractor determines that there was substantial misuse
of the moneys in the ESA;
   (iii) The parent or ESA student withdraws from the ESA program;
   (iv) The ESA student enrolls full time in a public school; or
   (v) The ESA student graduates from high school.
(i) Determine that an ESA student is ineligible for the ESA program due
to intentional and substantial misuse of ESA moneys.
   (i) The contractor shall create procedures to ensure that a fair
process exists to determine whether an intentional and substan-
tial misuse of ESA moneys has occurred;
   (ii) The contractor shall have the authority to refer suspected
cases of intentional and substantial misuse of ESA funds to the
state attorney general for investigation if evidence of fraudu-
 lent use of ESA moneys is found; and
   (iii) A parent or ESA student may appeal to the parent review
committee established by section 33-6106, Idaho Code, the con-
tractor's determination that the student is ineligible for the ESA
program.
(j) Bar an education service provider from accepting payments from ESAs
if the contractor determines that the education service provider has:
(i) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or
(ii) Routinely failed to provide students with promised educational goods or services.
(k) Create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.
   (i) If the contractor bars an education service provider from receiving payments from ESAs, the contractor shall notify parents and ESA students of its decision as soon as possible.
   (ii) An education service provider may appeal to the parent review committee established by section 33-6106, Idaho Code, the contractor's decision to bar the provider from receiving payments from ESAs.
(2) The contractor may:
   (a) Accept gifts and grants from any source to cover administrative costs, inform the public about the ESA program, or fund additional ESAs; and
   (b) Adopt rules and policies that are not inconsistent with this chapter and that are necessary for the administration of this chapter, including:
      (i) Establishing or contracting for the establishment of an online anonymous fraud reporting service;
      (ii) Establishing an anonymous telephone hotline for fraud reporting;
      (iii) Policies that require a surety bond for education service providers receiving more than one hundred thousand dollars ($100,000) in ESA moneys;
      (iv) Procedures for refunding payments from education service providers back to ESAs; and
      (v) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this chapter.
(3) Any rules or policies adopted by the contractor pursuant to this chapter should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on reducing the administrative burden and encouraging educational service providers to provide parents and ESA students with a broad array of educational options.
(4) The agency shall have the authority to conduct or contract for the auditing of individual ESAs and shall at a minimum conduct random audits of ESAs on an annual basis.
(5) The agency may contract with more than one (1) contractor to administer the provisions of this chapter, provided that each contract shall specify the particular duties, authority, and obligations under this chapter assigned to that contractor.

33-6106. PARENT REVIEW COMMITTEE. (1) There is hereby established in the agency a parent review committee to assist the contractor in determining whether questionable expenditures meet the requirements to be considered
qualifying expenses to educate the student pursuant to section 33-6103(2), Idaho Code, and to provide recommendations to the contractor about how to implement, administer, and improve the ESA program.

(2) The parent review committee shall consist of seven (7) members who shall be parents of ESA students and represent no fewer than four (4) counties in the state. The members shall be appointed by the contractor's chief executive officer for a term of one (1) calendar year and serve at such officer's pleasure. Members may be reappointed to the committee. The chief executive officer or a designee of such officer shall serve as a nonvoting chair of the committee.

(3) The contractor may request the committee to meet, in person or remotely by telephone, video conference, or another method, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to section 33-6103(2), Idaho Code. The committee may deny or approve questionable expenditures by a majority vote.

(4) The contractor may also request the committee to meet, in person or remotely by telephone, video conference, or another method, to review appeals provided for in this chapter and to provide recommendations on such appeals to the agency, which shall decide such appeals. Any appeal of an agency decision shall be conducted according the provisions of chapter 52, title 67, Idaho Code.

33-6107. EDUCATION SERVICE PROVIDERS. (1) To be eligible to accept payments from an ESA, an education service provider shall:
(a) Submit notice to the agency that the provider wishes to participate in the ESA program;
(b) Provide parents with a receipt for all qualifying educational expenses;
(c) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the agency or contractor;
(d) Certify that the provider will not discriminate based on race, color, ethnicity, or national origin; and
(e) Agree to submit any employee who will have contact with ESA students to a criminal background check.
(2) Nothing in the provisions of this chapter shall be deemed to limit the independence or autonomy of an education service provider or to qualify the actions of an education service provider as the actions of the state government.

(3) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.
(4) Nothing in this chapter shall be construed to expand the regulatory authority of the state, its officers, or any school district to impose additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

33-6108. STUDENT RECORDS. A public school or school district that previously enrolled an ESA student shall provide an education service provider that has enrolled an ESA student with a complete copy of the ESA student's
school records, while complying with the family educational rights and pri-


33-6109. LEGAL PROCEEDINGS -- SEVERABILITY. (1) In any legal proceed-
ing challenging the application of this chapter to an education service
provider, the state bears the burden of establishing that the law is neces-
sary and does not impose an undue burden on education service providers.
(2) No liability shall arise on the part of the agency or the state or
of any public school or school district based on the award of or use of an ESA
pursuant to this chapter.
(3) If any part of this chapter is challenged in a state court as vio-
lating either the state or federal constitution, parents of eligible or ESA
students shall be permitted to intervene as of right in such lawsuit for the
purposes of defending the ESA program's constitutionality. However, for the
purposes of judicial administration, a court may require that all parents
file a joint brief, as long as they are not required to join any brief filed on
behalf of any named state defendant.
(4) If any provision of this chapter or the application of this chapter
to any person or circumstance is held invalid, such invalidity shall not af-
flect other provisions or applications of this chapter, which shall be given
effect without the invalid provision or application, and to this end the pro-
visions of this chapter are declared to be severable.

33-6110. INDEPENDENCE OF EDUCATION SERVICE PROVIDERS. (1) This chap-
ter does not permit any government agency to exercise control or supervision
over any education service provider.
(2) An education service provider that accepts a payment from a parent
pursuant to this chapter is not an agent of the state or federal government.
(3) An education service provider shall not be required to alter its
creed, practices, admissions policy, or curriculum in order to accept stu-
dents whose parents pay tuition or fees from an ESA pursuant to this chapter
in order to participate as an education service provider.

33-6111. PROGRAM ENROLLMENT -- RESTRICTIONS. (1) Eligible students
may enroll in the program:
(a) In the 2019-2020 school year, if the student has not previously at-
tended school due to age;
(b) In the 2019-2020 school year, if the student has special needs;
(c) In the 2020-2021 school year, if the student is a member of a house-
hold with a total annual income not exceeding the amount equal to the
income standard used to qualify for a free or reduced-price lunch un-
der the national school lunch program established pursuant to 42 U.S.C.
1751 et seq.;
(d) In the 2021-2022 school year, if the student is enrolled in a public
institution;
(e) In the 2021-2022 school year, if the student attends private school
and is in grade 1, 6, or 9;
(f) In the 2022-2023 school year, if the student attends private school
and is in grade 1, 2, 6, 7, 9, or 10;
(g) In the 2023-2024 school year, if the student attends private school and is in grades 1 through 3 or 6 through 11; and
(h) In the 2024-2025 school year, if the student attends private school in any of grades 1 through 12.
(2) In the 2025-2026 school year and thereafter, there shall be no restrictions on which students may enroll in the program aside from the eligibility requirements provided in section 33-6102(7), Idaho Code.
(3) For purposes of this section, a student has special needs if the student:
   (a) Is identified as having a disability pursuant to 29 U.S.C. 794;
   (b) Is identified by a school district or an independent third party as a child with a disability; or
   (c) Is otherwise eligible to receive disability services from a school district.