

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 253

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO THE EDUCATION SAVINGS ACCOUNT ACT; AMENDING TITLE 33, IDAHO  
2 CODE, BY THE ADDITION OF A NEW CHAPTER 61, TITLE 33, IDAHO CODE, TO PRO-  
3 VIDE A SHORT TITLE AND TO ESTABLISH THE EDUCATION SAVINGS ACCOUNT PRO-  
4 GRAM, TO DEFINE TERMS, TO ESTABLISH PROVISIONS REGARDING THE EDUCATION  
5 SAVINGS ACCOUNT PROGRAM, TO ESTABLISH PROVISIONS REGARDING PROGRAM  
6 APPLICATIONS, TO ESTABLISH PROVISIONS REGARDING CERTAIN AUTHORITY AND  
7 RESPONSIBILITIES, TO PROVIDE FOR A PARENT REVIEW COMMITTEE, TO ESTAB-  
8 LISH PROVISIONS REGARDING EDUCATION SERVICE PROVIDERS, TO PROVIDE FOR  
9 RELEASE OF CERTAIN STUDENT RECORDS, TO ESTABLISH PROVISIONS REGARDING  
10 LEGAL PROCEEDINGS AND SEVERABILITY, TO ESTABLISH PROVISIONS REGARDING  
11 THE INDEPENDENCE OF EDUCATION SERVICE PROVIDERS, AND TO ESTABLISH PRO-  
12 VISIONS REGARDING PROGRAM ENROLLMENT RESTRICTIONS.  
13

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

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

18 CHAPTER 61  
19 EDUCATION SAVINGS ACCOUNT ACT

20 33-6101. SHORT TITLE -- PROGRAM ESTABLISHED. (1) This chapter shall  
21 be known and may be cited as the "Education Savings Account Act" or the "ESA  
22 Act."

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

25 33-6102. DEFINITIONS. As used in this chapter:

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

27 (2) "Contractor" means an organization that the agency has contracted  
28 with to carry out any or all portions of this chapter pursuant to section  
29 33-6104, Idaho Code.

30 (3) "Curriculum" means a complete course of study for a particular con-  
31 tent area or grade level, including any supplemental materials required by  
32 the curriculum.

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

37 (5) "Education savings account program," "ESA program," or "program"  
38 means the program established by this chapter.

1 (6) "Education service provider" means a person or an organization that  
2 receives payments from an education savings account to provide educational  
3 goods and services to an ESA student.

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

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

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

17 33-6103. EDUCATION SAVINGS ACCOUNT PROGRAM. (1) The parent of an  
18 eligible student may establish an education savings account pursuant to  
19 section 33-6104, Idaho Code, for the purposes provided in subsection (2) of  
20 this section. If such an account is established, the agency or contractor  
21 shall deposit into the account an amount equal to ninety percent (90%) of the  
22 statewide average of general fund moneys that are allocated for an individ-  
23 ual student based on the funding formula provided in chapter 10, title 33,  
24 Idaho Code. For ESA students who have disabilities or are English language  
25 learners, homeless, or low-income, the amount shall be equal to one hundred  
26 percent (100%) of the statewide average of general fund moneys allocated for  
27 an individual student and shall include any weighted funding that would have  
28 been provided to a public school for such student.

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

31 (a) Tuition or fees at a private school;

32 (b) Tuition or fees for nonpublic online learning programs;

33 (c) Tutoring services provided by an individual or a tutoring facility;

34 (d) Services contracted for and provided by a public school district or  
35 charter school including, without limitation, individual classes and  
36 extracurricular activities and programs;

37 (e) Textbooks, curriculum, or other instructional materials includ-  
38 ing, without limitation, any supplemental materials or associated on-  
39 line instruction required by either a curriculum or an education ser-  
40 vice provider;

41 (f) Computer hardware or other technological devices that are primar-  
42 ily used to help meet an ESA student's educational needs;

43 (g) Educational software and applications;

44 (h) School uniforms;

45 (i) Fees for national standardized assessments, advanced placement ex-  
46 aminations, examinations related to college or university admission,  
47 and tuition or fees for preparatory courses for any such assessments or  
48 examinations;

1 (j) Fees for summer education programs and specialized after-school  
2 education programs, but not after-school child care;

3 (k) Tuition, fees, instructional materials, and examination fees at a  
4 career or technical school or education provider;

5 (l) Educational services and therapies including, but not limited to,  
6 occupational, behavioral, physical, speech-language, and audiology  
7 therapies;

8 (m) Tuition and fees at an institution of higher education;

9 (n) Fees for transportation paid to a fee-for-service transportation  
10 provider for the student to travel to and from an education service  
11 provider; or

12 (o) Any other educational expense approved by the agency or contractor.

13 (3) The moneys in an ESA may be used only for educational purposes in  
14 accordance with subsection (2) of this section.

15 (4) ESA funds shall not be refunded, rebated, or shared with a parent  
16 or an ESA student in any manner. Any refund or rebate for goods or services  
17 purchased with ESA funds shall be credited directly to the student's ESA.

18 (5) Parents may make payments for the costs of educational goods and  
19 services not covered by the moneys in a student's ESA. However, personal de-  
20 posits into an ESA shall not be permitted.

21 (6) Moneys deposited in an ESA do not constitute taxable income attrib-  
22 utable to the parent or the ESA student.

23 (7) An ESA shall remain active, and any unused funds shall roll over  
24 from quarter to quarter and from year to year, until the parent withdraws the  
25 ESA student from the program or until the ESA student graduates from college  
26 with a bachelor's degree, unless the ESA is closed because of a substantial  
27 misuse of account moneys. However, if an ESA student has not enrolled in a  
28 postsecondary institution within four (4) years after graduating from high  
29 school, or if an ESA student turns twenty-six (26) years of age, whichever  
30 occurs first, the ESA shall be closed, and any unused funds shall revert to  
31 the agency and be allocated to fund other ESAs.

32 (8) Nothing in this chapter shall be construed to require that an ESA  
33 student must be enrolled, full or part time, in either a private school or a  
34 nonpublic online school.

35 33-6104. APPLICATION FOR AN ACCOUNT. (1) The agency shall contract  
36 with a private, nonprofit contractor to administer the program or specific  
37 functions of the program, which contractor shall:

38 (a) Create a standard form application that parents may submit to es-  
39 tablish their student's eligibility for the ESA program;

40 (b) Ensure that the application is readily available and may be submit-  
41 ted through various sources, including online; and

42 (c) Accept and approve applications year-round and establish proce-  
43 dures for approving applications for accounts in an expeditious manner.

44 (2) The contractor shall approve an application for an ESA if:

45 (a) The parent submits an application for an ESA in accordance with any  
46 application procedures established by the contractor;

47 (b) The student on whose behalf the parent is applying is an eligible  
48 student;

49 (c) Funds are available for the ESA; and

- 1 (d) The parent signs an agreement with the contractor promising:  
2 (i) To provide an education for the eligible student in subjects  
3 as required by section 33-202, Idaho Code;  
4 (ii) Not to enroll the eligible student as a full-time student in a  
5 public school while participating in the ESA program;  
6 (iii) To use the funds in the ESA only for qualifying expenses to  
7 educate the eligible student as established by the ESA program;  
8 and  
9 (iv) To comply with the rules and requirements of the ESA program.
- 10 (3) The signed agreement between the parent and the contractor shall  
11 satisfy the compulsory school attendance requirements of section 33-202,  
12 Idaho Code.
- 13 (4) The contractor shall annually renew a student's ESA if funds are  
14 available.
- 15 (5) Upon notice to the contractor, an ESA student may choose to stop re-  
16 ceiving ESA funding and enroll full time in a public school.
- 17 (a) Enrolling as a full-time student in a public school shall result in  
18 the immediate suspension of deposits into the student's ESA; however,  
19 the ESA shall remain open and active for the parent to make qualifying  
20 expenditures to educate the student from moneys remaining in the ESA.  
21 When or if no moneys remain in the student's ESA, the agency may close  
22 the ESA.
- 23 (b) If an eligible student decides to return to the ESA program, de-  
24 posits into the student's existing ESA may resume if the ESA is still  
25 open and active. A new ESA may be established if that student's ESA was  
26 closed.
- 27 (c) The contractor may adopt rules and policies to provide the least  
28 disruptive process for ESA students who desire to stop receiving ESA  
29 payments and enroll full time in a public school.
- 30 33-6105. AUTHORITY AND RESPONSIBILITIES. (1) In addition to the con-  
31 tractor's duties, obligations, and authority established elsewhere in this  
32 chapter, the contractor shall:
- 33 (a) Maintain an updated list of education service providers and ensure  
34 that the list is publicly available through various sources, including  
35 online.
- 36 (b) Provide parents with a written explanation of the allowable uses  
37 of ESA moneys, the responsibilities of parents, the duties of the con-  
38 tractor, and the role of any private financial management firms or other  
39 private organizations that the agency may contract with to administer  
40 the ESA program or any aspect of the ESA program.
- 41 (c) Ensure that parents of students with a disability receive notice  
42 that participation in the ESA program is a parental placement under 20  
43 U.S.C. 1412, along with an explanation of the rights that parentally  
44 placed students possess under the federal individuals with disabili-  
45 ties education act, public law 101-476, and any applicable state laws  
46 and regulations.
- 47 (d) Deduct an amount from accounts to cover the costs of administering  
48 the program, up to a maximum of five percent (5%) annually in the first

1 two (2) years of the ESA program, and up to a maximum of three percent  
2 (3%) annually thereafter.

3 (e) Implement a commercially viable, cost-effective, and par-  
4 ent-friendly system for payment for services from ESAs to education  
5 service providers by electronic or online funds transfer.

6 (i) The contractor shall not adopt a system that relies exclu-  
7 sively on requiring parents to be reimbursed for out-of-pocket  
8 expenses, but rather shall provide maximum flexibility to parents  
9 by facilitating direct payments to education service providers  
10 as well as requests for preapproval of and reimbursements for  
11 qualifying expenses, including expenses pursuant to section  
12 33-6103(2) (o), Idaho Code; and

13 (ii) The agency shall contract with a private nonprofit institu-  
14 tion to develop the payment system.

15 (f) Implement a commercially viable, cost-effective, and par-  
16 ent-friendly system for publicly rating, reviewing, and sharing infor-  
17 mation about education service providers, ideally as part of the same  
18 system required by paragraph (e) of this subsection.

19 (g) Pay any partial payment for tuition or fees required by an ed-  
20 ucation service provider prior to the start of the academic year if  
21 necessary to reserve space for an ESA student admitted to the education  
22 service provider, and deduct in an equitable manner from subsequent  
23 ESA deposits to ensure adequate funds remain available throughout the  
24 school year. If an ESA student decides not to use the education ser-  
25 vice provider, the partial reservation payment must be returned to the  
26 contractor by such education service provider and credited to the stu-  
27 dent's ESA.

28 (h) Make deposits into a student's ESA until:

29 (i) The contractor determines that the ESA student is no longer an  
30 eligible student;

31 (ii) The contractor determines that there was substantial misuse  
32 of the moneys in the ESA;

33 (iii) The parent or ESA student withdraws from the ESA program;

34 (iv) The ESA student enrolls full time in a public school; or

35 (v) The ESA student graduates from high school.

36 (i) Determine that an ESA student is ineligible for the ESA program due  
37 to intentional and substantial misuse of ESA moneys.

38 (i) The contractor shall create procedures to ensure that a fair  
39 process exists to determine whether an intentional and substan-  
40 tial misuse of ESA moneys has occurred;

41 (ii) The contractor shall have the authority to refer suspected  
42 cases of intentional and substantial misuse of ESA funds to the  
43 state attorney general for investigation if evidence of fraudu-  
44 lent use of ESA moneys is found; and

45 (iii) A parent or ESA student may appeal to the parent review  
46 committee established by section 33-6106, Idaho Code, the con-  
47 tractor's determination that the student is ineligible for the ESA  
48 program.

49 (j) Bar an education service provider from accepting payments from ESAs  
50 if the contractor determines that the education service provider has:

1 (i) Intentionally and substantially misrepresented information  
 2 or failed to refund any overpayments in a timely manner; or  
 3 (ii) Routinely failed to provide students with promised educa-  
 4 tional goods or services.  
 5 (k) Create procedures to ensure that a fair process exists to determine  
 6 whether an education service provider may be barred from receiving pay-  
 7 ment from ESAs.

8 (i) If the contractor bars an education service provider from re-  
 9 ceiving payments from ESAs, the contractor shall notify parents  
 10 and ESA students of its decision as soon as possible.

11 (ii) An education service provider may appeal to the parent re-  
 12 view committee established by section 33-6106, Idaho Code, the  
 13 contractor's decision to bar the provider from receiving payments  
 14 from ESAs.

15 (2) The contractor may:

16 (a) Accept gifts and grants from any source to cover administrative  
 17 costs, inform the public about the ESA program, or fund additional ESAs;  
 18 and

19 (b) Adopt rules and policies that are not inconsistent with this chap-  
 20 ter and that are necessary for the administration of this chapter, in-  
 21 cluding:

22 (i) Establishing or contracting for the establishment of an on-  
 23 line anonymous fraud reporting service;

24 (ii) Establishing an anonymous telephone hotline for fraud re-  
 25 porting;

26 (iii) Policies that require a surety bond for education ser-  
 27 vice providers receiving more than one hundred thousand dollars  
 28 (\$100,000) in ESA moneys;

29 (iv) Procedures for refunding payments from education service  
 30 providers back to ESAs; and

31 (v) Procedures for entering into reciprocal agreements with  
 32 other state ESA agencies or entities, whether public or private,  
 33 to recognize and allow education service providers approved in  
 34 other states to receive payments from ESAs under this chapter.

35 (3) Any rules or policies adopted by the contractor pursuant to this  
 36 chapter should avoid excessive bureaucracy and overly prescriptive mandates  
 37 and instead focus on reducing the administrative burden and encouraging ed-  
 38 ucational service providers to provide parents and ESA students with a broad  
 39 array of educational options.

40 (4) The agency shall have the authority to conduct or contract for the  
 41 auditing of individual ESAs and shall at a minimum conduct random audits of  
 42 ESAs on an annual basis.

43 (5) The agency may contract with more than one (1) contractor to ad-  
 44 minister the provisions of this chapter, provided that each contract shall  
 45 specify the particular duties, authority, and obligations under this chap-  
 46 ter assigned to that contractor.

47 33-6106. PARENT REVIEW COMMITTEE. (1) There is hereby established in  
 48 the agency a parent review committee to assist the contractor in determining  
 49 whether questionable expenditures meet the requirements to be considered

1 qualifying expenses to educate the student pursuant to section 33-6103(2),  
2 Idaho Code, and to provide recommendations to the contractor about how to  
3 implement, administer, and improve the ESA program.

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

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

16 (4) The contractor may also request the committee to meet, in person or  
17 remotely by telephone, video conference, or another method, to review ap-  
18 peals provided for in this chapter and to provide recommendations on such ap-  
19 peals to the agency, which shall decide such appeals. Any appeal of an agency  
20 decision shall be conducted according the provisions of chapter 52, title  
21 67, Idaho Code.

22 33-6107. EDUCATION SERVICE PROVIDERS. (1) To be eligible to accept  
23 payments from an ESA, an education service provider shall:

24 (a) Submit notice to the agency that the provider wishes to participate  
25 in the ESA program;

26 (b) Provide parents with a receipt for all qualifying educational ex-  
27 penses;

28 (c) Agree not to refund, rebate, or share ESA funds with parents or ESA  
29 students in any manner, except that funds may be remitted or refunded to  
30 an ESA in accordance with procedures established by the agency or con-  
31 tractor;

32 (d) Certify that the provider will not discriminate based on race,  
33 color, ethnicity, or national origin; and

34 (e) Agree to submit any employee who will have contact with ESA students  
35 to a criminal background check.

36 (2) Nothing in the provisions of this chapter shall be deemed to limit  
37 the independence or autonomy of an education service provider or to qualify  
38 the actions of an education service provider as the actions of the state gov-  
39 ernment.

40 (3) Education service providers shall be given maximum freedom to pro-  
41 vide for the educational needs of ESA students without governmental control.

42 (4) Nothing in this chapter shall be construed to expand the regulatory  
43 authority of the state, its officers, or any school district to impose addi-  
44 tional regulation of education service providers beyond those necessary to  
45 enforce the requirements of the program.

46 33-6108. STUDENT RECORDS. A public school or school district that pre-  
47 viously enrolled an ESA student shall provide an education service provider  
48 that has enrolled an ESA student with a complete copy of the ESA student's

1 school records, while complying with the family educational rights and pri-  
2 vacy act of 1974, 20 U.S.C. 1232g.

3 33-6109. LEGAL PROCEEDINGS -- SEVERABILITY. (1) In any legal proceed-  
4 ing challenging the application of this chapter to an education service  
5 provider, the state bears the burden of establishing that the law is neces-  
6 sary and does not impose an undue burden on education service providers.

7 (2) No liability shall arise on the part of the agency or the state or  
8 of any public school or school district based on the award of or use of an ESA  
9 pursuant to this chapter.

10 (3) If any part of this chapter is challenged in a state court as vio-  
11 lating either the state or federal constitution, parents of eligible or ESA  
12 students shall be permitted to intervene as of right in such lawsuit for the  
13 purposes of defending the ESA program's constitutionality. However, for the  
14 purposes of judicial administration, a court may require that all parents  
15 file a joint brief, as long as they are not required to join any brief filed on  
16 behalf of any named state defendant.

17 (4) If any provision of this chapter or the application of this chapter  
18 to any person or circumstance is held invalid, such invalidity shall not af-  
19 fect other provisions or applications of this chapter, which shall be given  
20 effect without the invalid provision or application, and to this end the pro-  
21 visions of this chapter are declared to be severable.

22 33-6110. INDEPENDENCE OF EDUCATION SERVICE PROVIDERS. (1) This chap-  
23 ter does not permit any government agency to exercise control or supervision  
24 over any education service provider.

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

27 (3) An education service provider shall not be required to alter its  
28 creed, practices, admissions policy, or curriculum in order to accept stu-  
29 dents whose parents pay tuition or fees from an ESA pursuant to this chapter  
30 in order to participate as an education service provider.

31 33-6111. PROGRAM ENROLLMENT -- RESTRICTIONS. (1) Eligible students  
32 may enroll in the program:

33 (a) In the 2019-2020 school year, if the student has not previously at-  
34 tended school due to age;

35 (b) In the 2019-2020 school year, if the student has special needs;

36 (c) In the 2020-2021 school year, if the student is a member of a house-  
37 hold with a total annual income not exceeding the amount equal to the  
38 income standard used to qualify for a free or reduced-price lunch un-  
39 der the national school lunch program established pursuant to 42 U.S.C.  
40 1751 et seq.;

41 (d) In the 2021-2022 school year, if the student is enrolled in a public  
42 institution;

43 (e) In the 2021-2022 school year, if the student attends private school  
44 and is in grade 1, 6, or 9;

45 (f) In the 2022-2023 school year, if the student attends private school  
46 and is in grade 1, 2, 6, 7, 9, or 10;



1 (g) In the 2023-2024 school year, if the student attends private school  
2 and is in grades 1 through 3 or 6 through 11; and

3 (h) In the 2024-2025 school year, if the student attends private school  
4 in any of grades 1 through 12.

5 (2) In the 2025-2026 school year and thereafter, there shall be no re-  
6 strictions on which students may enroll in the program aside from the eligi-  
7 bility requirements provided in section 33-6102(7), Idaho Code.

8 (3) For purposes of this section, a student has special needs if the  
9 student:

10 (a) Is identified as having a disability pursuant to 29 U.S.C. 794;

11 (b) Is identified by a school district or an independent third party as  
12 a child with a disability; or

13 (c) Is otherwise eligible to receive disability services from a school  
14 district.