

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 822

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO THE EDUCATION SAVINGS ACCOUNT ACT; AMENDING TITLE 33, IDAHO
2 CODE, BY THE ADDITION OF A NEW CHAPTER 65, TITLE 33, IDAHO CODE, TO PRO-
3 VIDE A SHORT TITLE, TO DEFINE TERMS, TO ESTABLISH PROVISIONS REGARDING
4 THE EDUCATION SAVINGS ACCOUNT PROGRAM, TO PROVIDE FOR AN APPLICATION
5 PROCESS, TO PROVIDE FOR DUTIES AND RESPONSIBILITIES OF THE STATE BOARD
6 OF EDUCATION, TO ESTABLISH A PARENT REVIEW COMMITTEE, TO PROVIDE FOR THE
7 DUTIES OF CERTAIN SERVICE PROVIDERS, TO PROVIDE FOR THE INDEPENDENCE
8 OF CERTAIN PROVIDERS, TO PROVIDE FOR THE DUTIES OF PUBLIC SCHOOLS AND
9 SCHOOL DISTRICTS, AND TO PROVIDE FOR CERTAIN LEGAL PROCEEDINGS; AND
10 DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
11

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

13 SECTION 1. That Title 33, Idaho Code, be, and the same is hereby amended
14 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
15 ter 65, Title 33, Idaho Code, and to read as follows:

16 CHAPTER 65

17 THE EDUCATION SAVINGS ACCOUNT ACT

18 33-6501. SHORT TITLE. This chapter shall be known and may be cited as
19 the "Education Savings Account Act" or "ESA Act."

20 33-6502. DEFINITIONS. For purposes of this chapter:

21 (1) "Curriculum" means a complete course of study for a particular con-
22 tent area or grade level.

23 (2) "Education savings account" or "ESA" means the account to which
24 funds are allocated by the state board of education to the parent of an ESA
25 student to pay for qualifying education expenses to educate the ESA student
26 pursuant to the requirements and conditions of this chapter.

27 (3) "Education service provider" means a person or organization that
28 receives payments from education savings accounts to provide educational
29 goods and services to ESA students.

30 (4) "Eligible student" means a resident of this state who is eligible to
31 enroll in a public elementary or secondary school.

32 (5) "ESA student" means an eligible student who is participating in the
33 ESA program.

34 (6) "Parent" means a biological or adoptive parent, legal guardian,
35 custodian, or other person with legal authority to act on behalf of an eligi-
36 ble or ESA student.

37 33-6503. EDUCATION SAVINGS ACCOUNT PROGRAM. (1) The total amount the
38 state board of education shall deposit into an ESA, in quarterly install-
39 ments, shall be equal to ninety percent (90%) of the average amount spent by

1 the state and local school districts on public school students, except for
2 eligible students with disabilities, English language learners, students
3 who are homeless, or students who are low-income whose amount shall include
4 any weighted funding that would have been provided to a public school for
5 that eligible student.

6 (2) Parents of an ESA student shall agree to use the funds deposited in
7 their student's ESA only for the following qualifying expenses to educate
8 the ESA student:

9 (a) Tuition and fees at a private school;

10 (b) Tuition and fees for nonpublic online learning programs;

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

12 (d) Services contracted for and provided by a school district, charter,
13 or magnet school, including but not limited to individual classes and
14 extracurricular activities and programs;

15 (e) Textbooks, curriculum, or other instructional materials, includ-
16 ing but not limited to any supplemental materials or associated online
17 instruction required by either a curriculum or an education service
18 provider;

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

21 (g) Educational software and applications;

22 (h) School uniforms;

23 (i) Fees for nationally standardized assessments, advanced placement
24 examinations, examinations related to college or university admission,
25 and tuition and fees for preparatory courses for the exams;

26 (j) Tuition or fees for summer education programs and specialized af-
27 ter-school education programs, but not after-school childcare;

28 (k) Tuition, fees, instructional materials, and examination fees at a
29 career or technical school;

30 (l) Educational services and therapies, including but not limited to
31 occupational, behavioral, physical, speech-language, and audiology
32 therapies;

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

34 (n) Fees for transportation paid to a fee-for-service transportation
35 provider for the student to travel to and from an education service
36 provider; and

37 (o) Any other educational expense approved by the state board of educa-
38 tion.

39 (3) The funds in an ESA may be used only for educational purposes in ac-
40 cordance with this chapter.

41 (4) ESA funds shall not be refunded, rebated, or shared with a parent or
42 ESA student in any manner. Any refund or rebate for goods or services pur-
43 chased with ESA funds shall be credited directly to the student's ESA.

44 (5) Parents will be allowed to make payments for the costs of educa-
45 tional goods and services not covered by the funds in their student's ESA.
46 Personal deposits into an ESA shall not be permitted.

47 (6) Funds deposited in an ESA do not constitute taxable income to the
48 parent or the ESA student.

49 (7) An ESA shall remain in force and any unused funds shall roll over
50 from quarter to quarter and from year to year until the parent withdraws the

1 ESA student from the ESA program or until the ESA student graduates from col-
2 lege with a bachelor's degree, unless the ESA is closed because of a substan-
3 tial misuse of funds. However, if an ESA student has not enrolled in a post-
4 secondary institution within four (4) years of graduating from high school,
5 or if an ESA student turns twenty-six (26) years of age, whichever occurs
6 first, the ESA shall be closed, and any unused funds shall revert to the state
7 board of education and be allocated to fund other ESAs.

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

11 33-6504. APPLICATION FOR AN EDUCATION SAVINGS ACCOUNT. (1) A parent
12 may apply to the state board of education to establish an ESA for an eligible
13 student. The state board of education shall accept and approve applications
14 year-round and shall establish procedures for approving applications in an
15 expeditious manner.

16 (2) The state board of education shall create a standard form that par-
17 ents can submit to establish their student's eligibility for the ESA program
18 and shall ensure that the application is publicly available and may be sub-
19 mitted through various sources, including the internet.

20 (3) The state board of education shall approve an application for an ESA
21 if:

22 (a) The parent submits an application for an ESA in accordance with any
23 application procedures established by the state board of education;

24 (b) The student on whose behalf the parent is applying is an eligible
25 student;

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

27 (d) The parent signs an agreement with the state board of education
28 promising:

29 (i) To provide an education for the eligible student in at least
30 the subjects of reading, language, mathematics, science, and so-
31 cial studies;

32 (ii) Not to enroll the eligible student as a full-time student in a
33 public school while participating in the ESA program;

34 (iii) To use the funds in the ESA only for qualifying expenses to
35 educate the eligible student as established by the ESA program;
36 and

37 (iv) To comply with the rules and requirements of the ESA program.

38 (4) The signed agreement between the parent and the state board of ed-
39 ucation shall satisfy the compulsory school attendance requirements under
40 Idaho law.

41 (5) The state board of education shall annually renew a student's ESA if
42 funds are available.

43 (6) Upon notice to the state board of education, an ESA student may
44 choose to stop receiving ESA funding and enroll full-time in a public school.

45 (a) Enrolling as a full-time student in a public school shall result in
46 the immediate suspension of payments into the student's ESA, but if the
47 ESA has been open for at least one (1) full school year, the ESA shall re-
48 main open and active for the parent to make qualifying expenditures to
49 educate the student from funds remaining in the ESA. When no funds re-

1 main in the student's ESA, the state board of education may close the
2 ESA.

3 (b) If an eligible student decides to return to the ESA program, pay-
4 ments into the student's existing ESA may resume if the ESA is still
5 open and active. A new ESA may be established if the student's ESA was
6 closed.

7 (c) The state board of education may adopt rules and policies to provide
8 the least disruptive process for ESA students who desire to stop receiv-
9 ing ESA payments and enroll full-time in a public school.

10 33-6505. AUTHORITY AND RESPONSIBILITIES OF THE STATE BOARD OF EDUCA-
11 TION. In addition to the state board of education's duties, obligations, and
12 authority stated in this chapter, the state board of education shall have the
13 following additional duties, obligations, and authority:

14 (1) The state board of education shall maintain an updated list of ed-
15 ucation service providers and shall ensure that the list is publicly avail-
16 able through various sources, including the internet.

17 (2) The state board of education shall provide parents with a written
18 explanation of the allowable uses of ESA funds, the responsibilities of
19 parents, and the duties of the state board of education and the role of any
20 private financial management firms or other private organizations that the
21 state board of education may contract with to administer the ESA program or
22 any aspect of the ESA program.

23 (3) The state board of education shall ensure that parents of students
24 with disabilities receive notice that participation in the ESA program is a
25 parental placement under 20 U.S.C. 1412, individuals with disabilities ed-
26 ucation act (IDEA), along with an explanation of the rights that parentally
27 placed students possess under IDEA and any applicable state laws and regula-
28 tions.

29 (4) The state board of education may contract with private organiza-
30 tions to administer the ESA program and specific functions of the ESA pro-
31 gram. This includes but is not limited to contracting with private financial
32 management firms to manage ESAs.

33 (5) The state board of education may withhold from deposits or deduct
34 from ESAs an amount to cover the costs of administering the ESA program, up to
35 a maximum of five percent (5%) annually in the first two (2) years of the ESA
36 program and up to a maximum of three percent (3%) annually thereafter.

37 (6) The state board of education shall implement a commercially viable,
38 cost-effective, and parent-friendly system for payment of services from
39 ESAs to education service providers by electronic or online funds transfer.

40 (a) The state board of education shall not adopt a system that relies
41 exclusively on requiring parents to be reimbursed for out-of-pocket
42 expenses, but rather shall provide maximum flexibility to parents by
43 facilitating direct payments to education service providers as well
44 as requests for pre-approval of and reimbursements for qualifying ex-
45 penses, including expenses pursuant to this chapter.

46 (b) The state board of education shall contract with private institu-
47 tions to develop the payment system.

48 (7) The state board of education shall also seek to implement a com-
49 mercially viable, cost-effective, and parent-friendly system for parents

1 to publicly rate, review, and share information about education service
2 providers, ideally as part of the same system that facilitates the elec-
3 tronic or online funds transfers to create a one-stop-shop for parents and
4 ESA students.

5 (8) If an education service provider requires partial payment of tu-
6 tion or fees prior to the start of the academic year to reserve space for an
7 ESA student admitted to the education service provider, such partial payment
8 may be paid by the state board of education prior to the start of the school
9 year in which the ESA is awarded and deducted in an equitable manner from
10 subsequent quarterly ESA deposits to ensure adequate funds remain available
11 throughout the school year, but if an ESA student decides not to use the edu-
12 cation service provider, the partial reservation payment must be returned to
13 the state board of education by such education service provider and credited
14 to the student's ESA.

15 (9) The state board of education shall continue making deposits into a
16 student's ESA until:

17 (a) The state board of education determines that the ESA student is no
18 longer an eligible student;

19 (b) The state board of education determines that there was substantial
20 misuse of the funds in the ESA;

21 (c) The parent or ESA student withdraws from the ESA program;

22 (d) The ESA student enrolls full-time in a public school; or

23 (e) The ESA student graduates from high school.

24 (10) The state board of education shall have the authority to conduct or
25 contract for the auditing of individual ESAs and shall at a minimum conduct
26 random audits of ESAs on an annual basis.

27 (11) The state board of education shall have the authority to make any
28 parent or ESA student ineligible for the ESA program in the event of inten-
29 tional and substantial misuse of ESA funds.

30 (a) The state board of education shall create procedures to ensure that
31 a fair process exists to determine whether an intentional and substan-
32 tial misuse of ESA funds has occurred. If an ESA student is free from
33 personal misconduct, that student shall be eligible for an ESA in the
34 future if placed with a new guardian or other person with the legal au-
35 thority to act on behalf of the student.

36 (b) The state board of education shall have the authority to refer sus-
37 pected cases of intentional and substantial misuse of ESA funds to the
38 attorney general for investigation if evidence of fraudulent use of ESA
39 funds is obtained.

40 (c) A parent or ESA student may appeal the state board of education's
41 decision to make a parent or ESA student ineligible for the ESA program.

42 (12) The state board of education may bar an education service provider
43 from accepting payments from ESAs if the state board of education determines
44 that the education service provider 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 promised educational
48 goods or services.

1 (13) The state board of education shall create procedures to ensure that
2 a fair process exists to determine whether an education service provider may
3 be barred from receiving payments from ESAs.

4 (a) If the state board of education bars an education service provider
5 from receiving payments from ESAs, it shall notify parents and ESA stu-
6 dents of its decision as quickly as possible.

7 (b) Education service providers may appeal the state board of educa-
8 tion's decision to bar them from receiving payments from ESAs.

9 (14) The state board of education may accept gifts and grants from any
10 source to cover administrative costs, to inform the public about the ESA pro-
11 gram, or to fund additional ESAs.

12 (15) The state board of education may adopt rules, policies, or proce-
13 dures that are not inconsistent with this chapter and that are necessary for
14 the administration of this chapter. This may include rules, policies, or
15 procedures:

16 (a) Establishing or contracting for the establishment of an online
17 anonymous fraud reporting service;

18 (b) Establishing an anonymous telephone hotline for fraud reporting;

19 (c) Requiring a surety bond for education service providers receiving
20 more than one hundred thousand dollars (\$100,000) in ESA funds; or

21 (d) Refunding payments from education service providers back to ESAs.

22 (16) Any rules, policies, or procedures adopted by the state board of
23 education should avoid excessive bureaucracy and overly prescriptive man-
24 dates and instead focus on easing parental involvement and encouraging edu-
25 cational service providers to provide parents and ESA students with a broad
26 array of educational options.

27 33-6506. PARENT REVIEW COMMITTEE. (1) There is hereby created the par-
28 ent review committee to assist the state board of education in determining
29 whether questionable expenditures meet the requirements to be consid-
30 ered qualifying expenses to educate the ESA student pursuant to section
31 33-6503(2), Idaho Code, and to provide recommendations to the state board of
32 education about how to implement, administer, and improve the ESA program.

33 (2) The parent review commission shall meet the following require-
34 ments:

35 (a) The commission shall consist of seven (7) members;

36 (b) The seven (7) members shall be parents of ESA students and represent
37 no fewer than four (4) counties in the state;

38 (c) The seven (7) members shall be appointed by the executive director
39 of the state board of education;

40 (d) The seven (7) members shall serve at the executive director of the
41 state board of education's pleasure for one (1) calendar year and may be
42 reappointed; and

43 (e) The executive director of the state board of education, or the ex-
44 ecutive director's designee, shall serve as the nonvoting chair of the
45 commission.

46 (3) The state board of education (3) may request the commission to meet, in
47 person or virtually, to determine whether an expenditure of ESA funds is or
48 was a qualifying expense to educate an ESA student pursuant to this chapter.
49 If the state board of education requests the commission to determine the va-

1 lidity of an ESA expenditure, the commission may by a majority vote recommend
2 to the state board of education that the questionable expenditure be denied
3 or approved.

4 (4) The state board of education may also request the commission
5 to meet, in person or virtually, to review appeals of education service
6 provider denials pursuant to section 33-6505(11)(b), Idaho Code, and to
7 provide a recommendation to the state board of education as to whether an ed-
8 ucation service provider should be allowed to receive or continue receiving
9 payments from ESAs.

10 33-6507. REQUIREMENTS FOR EDUCATION SERVICE PROVIDERS. (1) The state
11 board of education may approve education service providers on its own ini-
12 tiative, at the request of parents, or by notice to the state board of educa-
13 tion provided by prospective education service providers.

14 (2) A prospective education service provider that wishes to receive
15 payments from ESAs shall:

16 (a) Submit notice to the state board of education that it wishes to re-
17 ceive payments from ESAs; and

18 (b) Agree not to refund, rebate, or share ESA funds with parents or ESA
19 students in any manner, except that funds may be remitted or refunded to
20 an ESA in accordance with procedures established by the state board of
21 education.

22 33-6508. INDEPENDENCE OF EDUCATION SERVICE PROVIDERS. (1) Nothing in
23 the provisions of this chapter shall be deemed to limit the independence or
24 autonomy of an education service provider or to make the actions of an educa-
25 tion service provider the actions of the state government.

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

28 (3) Nothing in this chapter shall be construed to expand the regulatory
29 authority of the state, its officers, or any school district to impose any
30 additional regulation of education service providers beyond those necessary
31 to enforce the requirements of this chapter.

32 (4) An education service provider that accepts payment from an ESA pur-
33 suant to this chapter is not an agent of the state or federal government.

34 (5) An education service provider shall not be required to alter its
35 creed, practices, admissions policy, or curriculum to accept payments from
36 an ESA.

37 33-6509. RESPONSIBILITIES OF PUBLIC SCHOOLS AND SCHOOL DISTRICTS. A
38 public school or school district that previously enrolled an ESA student
39 shall provide a private school that is also an education service provider and
40 that has enrolled an ESA student with a complete copy of the ESA student's
41 school records, while complying with 20 U.S.C. 1232g, the family educational
42 rights and privacy act of 1974.

43 33-6510. LEGAL PROCEEDINGS. (1) In any legal proceeding challenging
44 the application of this chapter to an education service provider, the state
45 bears the burden of establishing that the law is necessary and does not im-
46 pose any undue burden on the education service provider.

1 (2) No liability shall arise on the part of the state board of education
2 or the state or of any public school or school district based on the award of
3 or use of an ESA pursuant to this chapter.

4 (3) If any part of this chapter is challenged in a state court as violat-
5 ing either the state or federal constitutions, parents of eligible and ESA
6 students shall be permitted to intervene as of right in such lawsuit for the
7 purposes of defending the ESA program's constitutionality. For the purposes
8 of judicial administration, a court may require that all parents file a joint
9 brief, as long as they are not required to join any brief filed on behalf of
10 any named state defendant.

11 (4) If any provision of this chapter, or the application thereof to any
12 person or circumstance, is held invalid, such invalidity shall not affect
13 other provisions or applications of this chapter that can be given effect
14 without the invalid provision or application, and to this end the provisions
15 of this chapter are declared to be severable.

16 SECTION 2. An emergency existing therefor, which emergency is hereby
17 declared to exist, this act shall be in full force and effect on and after
18 July 1, 2022.