LEGISLATURE OF THE STATE OF IDAHO

Sixty-seventh Legislature First Regular Session - 2023

IN THE SENATE

SENATE BILL NO. 1038

BY EDUCATION COMMITTEE

AN ACT
RELATING TO EDUCATION; AMENDING TITLE 33, IDAHO CODE, BY THE ADDITION OF A
NEW CHAPTER 66, TITLE 33, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR THE
FUNDING OF EDUCATION SAVINGS ACCOUNTS, TO PROVIDE FOR ADMINISTRATION
OF EDUCATION SAVINGS ACCOUNTS, TO PROHIBIT STATE CONTROL OVER NONPUBLIC
SCHOOLS, AND TO PROVIDE FOR A PARENT OVERSIGHT COMMITTEE; AND DECLAREING
AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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
66, Title 33, Idaho Code, and to read as follows:

CHAPTER 66
FREEDOM IN EDUCATION SAVINGS ACCOUNTS

33-6601. DEFINITIONS. For purposes of this chapter:
(1) "Curriculum" means a course of study for content areas or grade lev-
els, including any supplemental materials required or recommended for the
curriculum, approved by the department.
(2) "Department" means the department of education.
(3) "Eligible postsecondary institution" means a community college or
university under the jurisdiction of the Idaho board of regents or an accred-
ited private postsecondary institution.
(4) "Parent" means a resident of this state who is the parent, steppar-
ent, or legal guardian of a qualified student.
(5) "Qualified school" means a nongovernmental primary or secondary
school that is located in this state.
(6) "Qualified student" means a resident of this state who is eligible
to enroll in a public school in this state in any of the following:
(a) A kindergarten program; or
(b) Any grade 1 through 12.
(7) "Treasurer" means the office of the state treasurer.

33-6602. FUNDING. (1) Freedom in education savings accounts are
hereby established to provide options for the education of students in this
state.
(2) To enroll a qualified student for a freedom in education savings ac-
count, the parent of the qualified student must sign an agreement to do all of
the following:
(a) To use a portion of the freedom in education savings account mon-
ey allocated annually to provide an education for the qualified stu-
dent in at least the subjects of reading, grammar, mathematics, social
studies, and science, unless the freedom in education savings account
is allocated moneys according to a transfer schedule other than quarterly transfers pursuant to this section;

(b) To not enroll the qualified student in a school district or charter school and to release the school district from all obligations to educate the qualified student. This paragraph does not:

(i) Require a qualified student to withdraw from a school district or charter school before enrolling in the freedom in education savings account as long as the qualified student withdraws from the school district or charter school before receiving any moneys in the qualified student's freedom in education savings account; or

(ii) Prevent a qualified student from applying in advance for a freedom in education savings account to be funded beginning the following school year; and

(c) To use moneys deposited in the qualified student's freedom in education savings account for only the following expenses of the qualified student:

(i) Tuition or fees at a qualified school;

(ii) Textbooks required by a qualified school;

(iii) Educational therapies from a licensed or accredited practitioner or provider;

(iv) Tuition for vocational and life skills education approved by the department;

(v) Associated goods and services that include educational and psychological evaluations, assistive technology rentals, and braille translation goods and services approved by the department;

(vi) Tutoring or teaching services provided by an individual or facility;

(vii) Curricula and supplementary materials;

(viii) Tuition or fees for a nonpublic online learning program;

(ix) Fees for a nationally standardized norm-referenced achievement test, an advanced placement examination, or any exams related to college or university admission;

(x) Tuition or fees at an eligible postsecondary institution;

(xi) Textbooks required by an eligible postsecondary institution;

(xii) Fees to manage the freedom in education savings account;

(xiii) Services provided by a public school, including individual classes and extracurricular programs;

(xiv) Uniforms purchased from or through a qualified school;

(xv) Public transportation services in this state between the qualified student's residence and a qualified school in which the qualified student is enrolled; and

(xvi) Computer hardware and technological devices primarily used for an educational purpose. For the purposes of this subparagraph, "computer hardware and technological devices":

1. Includes calculators, personal computers, laptops, tablet devices, microscopes, telescopes, and printers; and
2. Does not include entertainment and other primarily noneducational devices, including televisions, telephones, video game consoles and accessories, and home theater and audio equipment.

(3) After a parent has signed the agreement, the department shall transfer from the moneys that would otherwise be allocated to a recipient's prior school district, or if the child is currently eligible to attend a kindergarten program or any grade 1 through 12, the moneys that the department determines would otherwise be allocated to a recipient's expected school district of attendance, to the treasurer for deposit into a freedom in education savings account an amount that is equivalent to eighty percent (80%) of the most current available statewide average general maintenance and operations fund expenditures per full-term average daily attendance as calculated by the department.

(4) The department of education freedom in education savings account fund is hereby established, consisting only of moneys appropriated by the legislature. The department shall administer the fund. Moneys in the fund are subject to legislative appropriation and shall be used for the department's costs in administering freedom in education savings accounts under this chapter. If the number of freedom in education savings accounts significantly increases after fiscal year 2024, the department may request an increase in the amount appropriated to the fund in any subsequent fiscal year in the budget estimate submitted. The department shall list moneys in the fund as a separate line item in its budget estimate.

(5) The state treasurer freedom in education savings accounts fund is hereby established, consisting only of moneys appropriated by the legislature. The state treasurer shall administer the fund. Moneys in the fund shall be used for the state treasurer's costs in administering the freedom in education savings accounts under this chapter. If the number of freedom in education savings accounts significantly increases after fiscal year 2024, the state treasurer may request an increase in the amount appropriated to the fund in any subsequent fiscal year in the budget estimate submitted. The state treasurer shall list moneys in the fund as a separate line item in its budget estimate.

(6) A parent must renew the qualified student's freedom in education savings account on an annual basis.

(7) A student who has previously qualified for a freedom in education savings account remains eligible to apply for renewal until the student finishes high school.

(8) If a parent does not renew the qualified student's freedom in education savings account for a period of three (3) academic years, the department shall notify the parent that the qualified student's account will be closed in sixty (60) calendar days. The notification must be sent through certified mail, email, and telephone, if applicable. The parent has sixty (60) calendar days to renew the qualified student's freedom in education savings account. If the parent chooses not to renew or does not respond in sixty (60) calendar days, the department shall close the account, and any remaining moneys shall be returned to the state.

(9) A signed agreement under this section satisfies compulsory school attendance requirements pursuant to section 33-202, Idaho Code.
(10) A qualified school or a provider of services pursuant to this section may not share, refund, or rebate any freedom in education savings account moneys with the parent or qualified student in any manner.

(11) On the qualified student’s graduation from a postsecondary institution or after any period of four (4) consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary institution, but not before this time as long as the account holder continues using a portion of account moneys for eligible expenses each year and is in good standing, the qualified student's freedom in education savings account shall be closed, and any remaining moneys shall be returned to the state.

(12) Moneys received pursuant to this section do not constitute taxable income to the parent of the qualified student.

33-6603. ADMINISTRATION. (1) The treasurer may contract with private management firms to manage freedom in education savings accounts.

(2) The department shall conduct or contract for annual audits of freedom in education savings accounts to ensure compliance with section 33-6602, Idaho Code. The department shall also conduct or contract for random, quarterly, and annual audits of freedom in education savings accounts as needed to ensure compliance.

(3) The department may remove any parent or qualified student from eligibility for a freedom in education savings account if the parent or qualified student fails to comply with the terms of the agreement or applicable laws, rules, or orders or knowingly misuses moneys or knowingly fails to comply with the terms of the agreement with intent to defraud. The department shall notify the treasurer to suspend the account of a parent or qualified student and shall notify the parent or qualified student in writing that the account has been suspended and that no further transactions will be allowed or disbursements made. The notification shall specify the reason for the suspension and state that the parent or qualified student has fifteen (15) business days to respond and take corrective action. If the parent or qualified student refuses or fails to contact the department, furnish any information, or make any report that may be required for reinstatement within the fifteen (15) day period, the department may remove the parent or qualified student from the program pursuant to this subsection.

(4) A parent may appeal to the department any administrative decision the department makes pursuant to this section, including determinations of allowable expenses, removal from the program, or enrollment eligibility. When the department notifies the parent of an administrative decision under this section, the department shall notify the parent in writing that the parent may appeal any administrative decision under this section and the process by which the parent may appeal. The department shall establish an appeals process, and the department shall post this information on the department's website in the same location as the policy handbook.

(5) A parent may represent himself or designate a representative, including but not limited to an attorney, before any appeals hearing held pursuant to this section. Any such designated representative who is not an attorney admitted to practice may not charge for any services rendered in connection with such a hearing. The fact that a representative participated in the hearing or assisted the parent is not grounds for reversing any adminis-
trative decision or order if the evidence supporting the decision or order is substantial, reliable, and probative.

(6) The department may refer cases of substantial misuse of moneys to the attorney general for the purpose of collection or for the purpose of a criminal investigation if the department obtains evidence of fraudulent use of an account.

(7) The department shall make quarterly transfers of the amount calculated pursuant to section 33-6602, Idaho Code, to the treasurer for deposit in the freedom in education savings account of each qualified student, except the department may make transfers according to another transfer schedule if the department determines a transfer schedule other than quarterly transfers is necessary to operate the freedom in education savings account.

(8) The department may withhold from deposits or deduct from an account an amount to cover the costs of administering a freedom in education savings account, up to three percent (3%) annually in the first two (2) years of the freedom in education savings account and up to two percent (2%) annually thereafter.

(9) The department shall implement a commercially viable, cost-effective, and user-friendly system for payment of services from freedom in education savings account providers for qualified expenses by electronic or online funds transfer. The department shall contract with private institutions to develop the payment system.

(10) The department shall accept applications between July 1 and June 30 for each school year. The department shall enroll and issue an award letter to eligible applicants within thirty (30) days after receipt of a completed application and all required documentation. On or before January 1 of each year, the department shall furnish to the joint finance-appropriations committee an estimate of the amount required to fund freedom in education savings accounts for the following fiscal year. The department shall include in its budget request for the following fiscal year the amount estimated for each qualified student.

(11) The department may adopt rules and policies necessary to administer freedom in education savings accounts, including rules and policies for:
   (a) Establishing an appeals process;
   (b) Conducting or contracting for examinations of the use of account moneys;
   (c) Conducting or contracting for random, quarterly, and annual reviews of accounts;
   (d) Establishing or contracting for the establishment of an online anonymous fraud reporting service;
   (e) Establishing an anonymous telephone hotline for fraud reporting; and
   (f) Requiring a surety bond or insurance for account holders.

(12) On or before July 1 of each year, the department shall develop an applicant and participant handbook that includes information relating to policies and processes of freedom in education savings accounts. The policy handbook shall comply with the rules adopted by the department pursuant to this section. The department shall post the handbook on its website.

(13) Except for cases in which the attorney general determines that a parent or account holder has committed fraud, any expenditure from a free-
dom in education savings account for a purchase that is deemed ineligible and that is subsequently repaid by the parent or account holder shall be credited back to the freedom in education savings account balance within thirty (30) days after the receipt of payment.

(14) If, in response to an appeal of an administrative decision made by the department, the department issues a stay of a freedom in education savings account suspension pursuant to rules adopted by the department, the department may not withhold funding or contract renewal for the account holder on account of the appealed administrative decision during the stay.

33-6604. STATE CONTROL OVER NONPUBLIC SCHOOLS. (1) This chapter does not permit any government agency to exercise control or supervision over any nonpublic school or homeschooling.

(2) A qualified school that accepts a payment from a parent pursuant to this chapter is not an agent of the state or federal government.

(3) A qualified school shall not be required to alter its creed, practices, admissions policy, or curriculum in order to accept students whose parents pay tuition or fees from a freedom in education savings account pursuant to this chapter in order to participate as a qualified school.

(4) In any legal proceeding challenging the application of this chapter to a qualified school, the state bears the burden of establishing that the law is necessary and does not impose any undue burden on qualified schools.

33-6605. PARENT OVERSIGHT COMMITTEE. (1) The freedom in education savings accounts parent oversight committee is hereby established, consisting of six (6) members who are parents of qualified students who receive freedom in education savings account moneys under this chapter. The members shall be appointed as follows:

(a) One (1) member who is appointed by the senate president pro tempore;
(b) One (1) member who is appointed by the speaker of the house of representatives;
(c) One (1) member who is appointed by the minority leader of the senate;
(d) One (1) member who is appointed by the minority leader of the house of representatives; and
(e) Two (2) members who are appointed by the governor.

(2) At a minimum, the members appointed shall be parents of qualified students who both:

(a) Meet the criteria specified in section 33-6601(6), Idaho Code; and
(b) Use moneys deposited in the qualified student's freedom in education savings account for expenses as prescribed in section 33-6602, Idaho Code.

(3) The members of the committee shall annually elect a chairperson from among its members.

(4) The committee shall meet at least once each calendar quarter. A majority of the membership constitutes a quorum for the transaction of business.

(5) The committee shall collaborate and interact with the department, the attorney general and, as appropriate, the state controller to review all of the following:
(a) The implementation of policies and procedures relating to the freedom in education savings account program under this chapter and the program's effectiveness;
(b) The concerns of parents of qualified students who receive freedom in education savings account moneys under this chapter; and
(c) The work on complaints associated with administering the freedom in education savings account program.
(6) A parent may not serve on the committee if any of the following applies:
   (a) The parent is an employee of or the relative of an employee of the department;
   (b) The parent receives moneys or compensation from or is otherwise associated in any manner with a lobbyist organization, a school choice advocacy group, or a private financial management firm that manages freedom in education savings accounts pursuant to section 33-6603, Idaho Code; or
   (c) The parent provides goods or services to qualified students that are purchased pursuant to section 33-6602, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2023.