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HOUSE BILL 292

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Zachary J. Cook and Rebecca Dow

AN ACT

RELATING TO EDUCATION; ENACTING THE EDUCATION FREEDOM ACCOUNT ACT; PROVIDING FOR EDUCATION FREEDOM ACCOUNTS; ESTABLISHING PERMITTED USES; PROVIDING PROCEDURES AND APPLICATION REQUIREMENTS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Education Freedom Account Act"."

SECTION 2. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Education Freedom Account Act:

A. "curriculum" means a complete course of study

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1 for a particular content area or grade level;

2 B. "education freedom account" means the account to
3 which funds are allocated by the department to the parent of a
4 participating student in order to pay for qualifying education
5 expenses to educate the participating student pursuant to the
6 requirements and conditions of the Education Freedom Account
7 Act;

8 C. "education service provider" means a person or
9 organization that receives payments from education freedom
10 accounts to provide educational goods and services to a
11 participating student;

12 D. "eligible student" means a school-aged person
13 who is eligible for the education freedom account program; and

14 E. "participating student" means an eligible
15 student who is participating in the education freedom account
16 program."

17 SECTION 3. A new section of the Public School Code is
18 enacted to read:

19 "[NEW MATERIAL] EDUCATION FREEDOM ACCOUNT PROGRAM--
20 CREATION--FUNDING USES.--

21 A. The department shall create an "education
22 freedom account program". The program shall consist of the
23 department maintaining and funding education freedom accounts
24 for participating students. Money in an education freedom
25 account shall be administered by the parent of the

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1 participating student subject to the provisions of the
2 Education Freedom Account Act. For each education freedom
3 account, the department shall make deposits into the account,
4 in quarterly installments, in the amount determined by the
5 department to be equal to the average amount spent by the state
6 and school districts on public school students. If a
7 participating student has a disability or is an English
8 language learner, a homeless student, a low-income student, an
9 at-risk student or a special education student, the amount
10 deposited to that student's education freedom account shall
11 include any weighted funding that would have been provided to a
12 public school for a similar public school student.

13 B. The parent of a participating student shall
14 agree to use the funds deposited in that student's education
15 freedom account only for the following qualifying expenses to
16 educate the participating student:

- 17 (1) tuition or fees at a private school;
- 18 (2) tuition or fees for nonpublic online
19 learning programs;
- 20 (3) tutoring services provided by an
21 individual or a tutoring facility;
- 22 (4) services contracted for and provided by a
23 public school or magnet school, including individual classes
24 and extracurricular activities and programs;
- 25 (5) textbooks, curricula or other

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1 instructional materials, including any supplemental materials
2 or associated online instruction required by either a
3 curriculum or an education service provider;

4 (6) computer hardware or other technological
5 devices that are primarily used to help meet a participating
6 student's educational needs;

7 (7) educational software and applications;

8 (8) school uniforms;

9 (9) fees for nationally standardized
10 assessments, advanced placement examination fees, examination
11 fees related to college or university admission or tuition or
12 fees for preparatory courses for any of the examinations
13 provided in this paragraph;

14 (10) tuition or fees for summer education
15 programs and specialized after-school education programs;
16 provided that the tuition or fees are not used for after-school
17 child care;

18 (11) tuition, fees, instructional materials
19 and examination fees at a career or technical school;

20 (12) educational services and therapies,
21 including occupational, behavioral, physical, speech-language
22 and audiology therapies;

23 (13) tuition and fees at an institution of
24 higher education;

25 (14) fees for transportation paid to a

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1 fee-for-service transportation provider for the student to
2 travel to and from an education service provider; or

3 (15) any other educational expense approved by
4 the department.

5 C. The funds in an education freedom account shall
6 only be used for educational purposes in accordance with
7 Subsection B of this section and shall not be refunded, rebated
8 or shared with a parent or participating student in any manner.
9 Any refund or rebate for goods or services purchased with
10 education freedom account funds shall be credited directly to
11 the student's education freedom account. If an education
12 service provider requires partial payment of tuition or fees
13 prior to the start of the academic year to reserve space for a
14 participating student admitted to the education service
15 provider, such partial payment may be paid by the department
16 prior to the start of the school year in which the education
17 freedom account is awarded and deducted in an equitable manner
18 from subsequent quarterly education freedom account deposits to
19 ensure that adequate funds remain available throughout the
20 school year; provided that if the participating student does
21 not attend the education service provider to which partial
22 payment was made, the partial payment shall be returned to the
23 department by the education service provider and credited to
24 the student's education freedom account.

25 D. Parents may make personal payments for the costs

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1 of educational goods and services not covered by the education
2 freedom account funds; however, personal deposits into an
3 education freedom account shall not be permitted.

4 E. Funds deposited in an education freedom account
5 shall not constitute taxable income of the parent or the
6 participating student.

7 F. Any unused funds in an education freedom account
8 shall remain in the account until one of the following occurs,
9 at which time the department shall close the account and any
10 unused funds shall revert to the department:

11 (1) the parent withdraws the participating
12 student from the education freedom account program;

13 (2) the student:

14 (a) graduates from college with a
15 bachelor's degree;

16 (b) has not enrolled in a post-secondary
17 institution within four years after graduating from high
18 school; or

19 (c) turns twenty-six years of age; or

20 (3) the education freedom account is closed by
21 the department because of a substantial misuse of funds as
22 determined by the department.

23 G. Nothing in the Education Freedom Account Act
24 shall be construed to require that a participating student be
25 enrolled, full time or part time, in either a private school or

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1 nonpublic online school."

2 SECTION 4. A new section of the Public School Code is
3 enacted to read:

4 "[NEW MATERIAL] EDUCATION FREEDOM ACCOUNT--APPLICATION
5 PROCESS--RENEWAL--SUSPENSION.--

6 A. A parent may apply to the department to
7 establish an education freedom account for an eligible student.

8 B. The department shall accept and approve
9 applications year-round and shall establish procedures and
10 rules for approving applications in an expeditious manner.

11 C. The department shall create a standard form that
12 parents can submit to establish a student's eligibility for the
13 education freedom account program and shall ensure that the
14 application is publicly available and may be submitted through
15 various sources, including the internet.

16 D. The department shall approve an application for
17 an education freedom account if:

18 (1) the parent submits an application for an
19 education freedom account in accordance with the application
20 procedures established by the department;

21 (2) the student, on whose behalf the parent is
22 applying, is an eligible student;

23 (3) funds are available for the education
24 freedom account; and

25 (4) the parent signs, under oath, an agreement

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1 with the department agreeing:

2 (a) to provide an education for the
3 student in the subjects of reading, language, mathematics,
4 science and social studies;

5 (b) not to enroll the student as a
6 full-time student in a public school while participating in the
7 education freedom account program;

8 (c) to use the funds in the education
9 freedom account only for qualifying expenses to educate the
10 student as established by the education freedom account
11 program; and

12 (d) to comply with the rules and
13 requirements of the education freedom account program.

14 E. The signed agreement between the parent and the
15 department shall satisfy the school attendance requirements of
16 Section 22-12A-4 NMSA 1978.

17 F. The department shall annually renew a student's
18 education freedom account if funds are available.

19 G. Upon notice to the department, a participating
20 student may choose to stop receiving education freedom account
21 funding and enroll full time in a public school.

22 H. Enrolling as a full-time student in a public
23 school shall result in the immediate suspension of payment of
24 additional funds into the student's education freedom account;
25 provided that, for education freedom accounts that have been

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1 open for at least one full school year, the education freedom
2 account shall remain open and active for the parent to make
3 qualifying expenditures to educate the student from funds
4 remaining in the education freedom account. When no funds
5 remain in the student's education freedom account, the
6 department may close the education freedom account.

7 I. If an eligible student decides to return to the
8 education freedom account program, payments into the student's
9 existing education freedom account may resume if the education
10 freedom account is still open and active. A new education
11 freedom account may be established if the student's education
12 freedom account is closed.

13 J. The department may adopt rules and policies to
14 provide the least disruptive process for a participating
15 student who desires to stop receiving education freedom account
16 payments and enroll full time in a public school."

17 SECTION 5. A new section of the Public School Code is
18 enacted to read:

19 "[NEW MATERIAL] AUTHORITY AND RESPONSIBILITIES.--In
20 addition to the department's duties, obligations and authority
21 provided in the Education Freedom Account Act, the department
22 shall have the following additional duties, obligations and
23 authority:

24 A. the department shall:

25 (1) maintain an updated list of education

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1 service providers and ensure that the list is publicly
2 available through various sources, including the internet;

3 (2) provide parents with a written explanation
4 of the permitted uses of education freedom account funds, the
5 responsibilities of parents, the duties of the department and
6 the role of any private financial management firms or other
7 private organizations that the department may contract with to
8 administer the education freedom account program or any aspect
9 of the education freedom account program;

10 (3) ensure that parents of students with
11 disabilities receive notice that participation in the education
12 freedom account program is a parental placement pursuant to the
13 federal Individuals with Disabilities Education Act, along with
14 an explanation of the rights that parentally placed students
15 may possess under federal law and any applicable state laws and
16 rules;

17 (4) implement a commercially viable,
18 cost-effective and user-friendly system for processing payments
19 for services from an education freedom account to an education
20 service provider by electronic or online funds transfer;
21 provided that the department:

22 (a) shall not adopt a system that relies
23 exclusively on requiring parents to be reimbursed for out-of-
24 pocket expenses, but rather shall provide maximum flexibility
25 to parents by facilitating direct payments to education service

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1 providers as well as requests for preapproval of and
2 reimbursements for qualifying expenses; and

3 (b) may contract with private
4 institutions to develop the payment system;

5 (5) implement, as soon as practicable, a
6 commercially viable, cost-effective and user-friendly system,
7 as part of the same system that facilitates the electronic or
8 online funds transfers, for parents to publicly rate, review
9 and share information about education service providers;

10 (6) continue making deposits into a student's
11 education freedom account until the:

12 (a) department determines that the
13 student is no longer an eligible student;

14 (b) department determines that there was
15 substantial misuse of the funds in the education freedom
16 account;

17 (c) parent or student withdraws from the
18 education freedom account program;

19 (d) student enrolls full time in a
20 public school; or

21 (e) student graduates from high school;

22 (7) have the authority to:

23 (a) conduct or contract for the auditing
24 of individual education freedom accounts;

25 (b) make any parent or student

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1 ineligible for the education freedom account program in the
2 event of intentional and substantial misuse of education
3 freedom account funds; provided that if a parent is determined
4 to be ineligible for the education freedom account program and
5 the participating student is free from personal misconduct,
6 that student shall be eligible for an education freedom account
7 if placed with a new guardian or other person with the legal
8 authority to act on behalf of the student; and

9 (c) refer suspected cases of intentional
10 and substantial misuse of education freedom account funds to
11 the office of the attorney general for investigation if
12 evidence of fraudulent use of education freedom account funds
13 exists; provided that a parent or participating student may
14 appeal the department's decision to make a parent or student
15 ineligible for the education freedom account program;

16 (8) create procedures to ensure that a fair
17 process exists to determine whether an intentional and
18 substantial misuse of education freedom account funds has
19 occurred; and

20 (9) create procedures to ensure that a fair
21 process exists to determine whether an education service
22 provider may be barred from receiving payments from education
23 freedom accounts; provided that an education service provider
24 may appeal the department's decision to bar the education
25 service provider from receiving payments from education freedom

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1 accounts; and provided further that if the department bars an
2 education service provider from receiving payments from
3 education freedom accounts, the department shall notify parents
4 and participating students of the department's decision; and

5 B. the department may:

6 (1) contract with private organizations to
7 administer the education freedom account program or specific
8 functions of the education freedom account program, including
9 contracting with private financial management firms to manage
10 education freedom accounts;

11 (2) withhold from deposits or deduct from an
12 education freedom account an amount to cover the costs of
13 administering the education freedom account program, in an
14 amount up to a maximum of five percent annually in the first
15 two years of the education freedom account program and up to a
16 maximum of three percent annually thereafter;

17 (3) bar an education service provider from
18 accepting payments from education freedom accounts if the
19 department determines that the education service provider has:

20 (a) intentionally and substantially
21 misrepresented information or failed to refund any overpayments
22 in a timely manner; or

23 (b) routinely failed to provide students
24 with sufficient educational goods or services;

25 (4) accept gifts and grants from any source to

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1 cover administrative costs, to inform the public about the
2 education freedom account program or to fund additional
3 education freedom accounts; and

4 (5) adopt rules, policies or procedures that
5 are consistent with the Education Freedom Account Act and that
6 are necessary for the administration of that act, including
7 rules, policies or procedures:

8 (a) establishing or contracting for the
9 establishment of an online anonymous fraud reporting service;

10 (b) establishing an anonymous telephone
11 hotline for fraud reporting;

12 (c) requiring a surety bond for
13 education service providers receiving more than one hundred
14 thousand dollars (\$100,000) in education freedom account funds;
15 or

16 (d) for refunding payments from
17 education service providers to education freedom accounts."

18 SECTION 6. A new section of the Public School Code is
19 enacted to read:

20 "[NEW MATERIAL] PARENT REVIEW COMMISSION.--

21 A. The department shall create the "parent review
22 commission" to assist the department in determining what
23 expenditures meet the requirements to be considered qualifying
24 expenses to educate a participating student pursuant to
25 Subsection B of Section 3 of the Education Freedom Account Act

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1 and to provide recommendations to the department on how to
2 implement, administer and improve the education freedom account
3 program.

4 B. The commission shall consist of seven voting
5 members who shall be parents of participating students and
6 represent no fewer than four counties of the state.

7 C. The voting members shall be appointed by the
8 secretary and shall serve at the pleasure of the secretary for
9 one calendar year, starting from the date of appointment;
10 provided that a member may be reappointed.

11 D. The secretary, or the secretary's designee,
12 shall serve as the nonvoting chair of the commission.

13 E. The department may request that the commission
14 meet, in person or through a virtual or telephonic platform,
15 to:

16 (1) determine whether an expenditure of
17 education freedom account funds is or was a qualifying expense
18 to educate a participating student pursuant to Subsection B of
19 Section 3 of the Education Freedom Account Act; or

20 (2) review appeals of education service
21 provider denials pursuant to Section 5 of the Education Freedom
22 Account Act.

23 F. When requested pursuant to Subsection E of this
24 section, the commission shall, by majority vote, recommend to
25 the department whether:

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(1) a particular use of funds constitutes a
qualifying expense pursuant to Subsection B of Section 3 of the
Education Freedom Account Act; or

(2) an education service provider should be
allowed to receive, or continue receiving, payments from
education freedom accounts."

SECTION 7. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect immediately.