

HOUSE BILL 240

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

INTRODUCED BY

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AN ACT

RELATING TO EDUCATION; ENACTING THE EDUCATION OPPORTUNITY ACCOUNT ACT; PROVIDING POWERS AND DUTIES; PROVIDING FOR EDUCATION OPPORTUNITY ACCOUNTS; PROVIDING ALLOWABLE USES; PROVIDING PROCEDURES AND APPLICATION REQUIREMENTS FOR PARENTS AND EDUCATION SERVICE PROVIDERS; CREATING A REVIEW COMMISSION; MAKING APPROPRIATIONS.

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 Opportunity Account Act"."

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

"[NEW MATERIAL] DEFINITIONS.--As used in the Education

Opportunity Account Act:

A. "curriculum" means a complete course of study for a particular elementary or secondary content area or grade level;

B. "education" means elementary or secondary education;

C. "education opportunity account" means the account into which money is deposited by the department to pay for qualifying education expenses of a participant in the program;

D. "education service provider" means a private school located in New Mexico that is qualified to provide educational goods and services to participants and that receives payments from education opportunity accounts; provided that "education service provider" does not mean an online school;

E. "eligible child" means a school-age person who is a resident of New Mexico, who has not received a high school diploma or a high school equivalency credential and who is eligible for enrollment or re-enrollment in a public school;

F. "participant" means a child who is participating in the program; and

G. "program" means the education opportunity account program."

SECTION 3. A new section of the Public School Code is

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1 enacted to read:

2 "[NEW MATERIAL] EDUCATION OPPORTUNITY ACCOUNT FUND--

3 CREATED.--

4 A. The "education opportunity account fund" is
5 created as a nonreverting fund in the state treasury. The fund
6 consists of money appropriated by the legislature, federal
7 money granted to the state for the purposes of the fund, income
8 from investment of the fund and money otherwise accruing to the
9 fund. The department shall administer the fund, and money in
10 the fund is appropriated to the department to carry out the
11 purposes of the Education Opportunity Account Act.

12 B. Money in the fund shall be disbursed on warrants
13 signed by the secretary of the department pursuant to vouchers
14 signed by the secretary or the secretary's authorized
15 representative."

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

18 "[NEW MATERIAL] EDUCATION OPPORTUNITY ACCOUNT PROGRAM--
19 CREATED--FUNDING USES.--

20 A. The "education opportunity account program" is
21 created in the department to allow the department, in contract
22 with a parent of a participant in the program, to pay for that
23 participant's qualified education expenses as provided in
24 Subsection B of this section through "education opportunity
25 accounts". The department:

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(1) shall establish an education opportunity account for a participant of the program;

(2) shall determine the amount each participant is eligible to receive, which amount is equal to the average amount spent by school districts and charter schools on public school students in the same grade, weighted by special education and at-risk program units, if applicable; provided that a participant shall not receive more than that participant's qualifying education expenses;

(3) shall make monthly deposits into each education opportunity account; and

(4) may contract for financial management services for education opportunity accounts.

B. Money in a participant's education opportunity account shall be used by the department, in contract with a parent of the participant, only in accordance with the provisions of the Education Opportunity Account Act and only for the participant's following qualifying education expenses:

(1) tuition and fees at a private elementary or secondary school that teaches, among other courses, reading, language arts, mathematics, science and social studies appropriate for the grade level of the participant;

(2) tutoring services provided by a qualified person;

(3) textbooks and other instructional

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1 materials, including computer hardware and software, required
2 by the education service provider to deliver education to the
3 participant;

4 (4) fees for nationally standardized
5 assessments, advanced placement examination fees and other
6 assessments required by the education service provider;

7 (5) tuition or fees for summer and after-
8 school elementary or secondary programs;

9 (6) public transportation to and from school;
10 and

11 (7) other educational charges approved by the
12 department.

13 C. The department and the parent of a participant
14 shall enter into an annual contract that specifies what
15 qualifying education expenses will be purchased each semester
16 or other term, the cost of the educational services to be
17 provided and by whom the educational services will be provided.
18 The department shall not deposit into an education opportunity
19 account more than the combined cost of educational services
20 provided to the participant in that year. A parent shall not
21 pay more for educational services than the parent of a
22 similarly situated school-age person pays. Money in an
23 education opportunity account shall not be refunded, rebated or
24 shared with a parent or participant in any manner. A refund or
25 rebate for educational services purchased through an education

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opportunity account shall be credited directly to that account. A parent may make payments for the cost of educational services not covered by an education opportunity account, but in no case shall a parent deposit personal funds into a participant's account.

D. Payments from a participant's education opportunity account shall be issued at the direction of the participant's parent to an education service provider, in the name and for the benefit of the participant.

E. If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for a participant admitted to the education service provider, such partial payment may be paid by the department prior to the start of the school year in which the education opportunity account is awarded and deducted in an equitable manner from subsequent monthly account deposits to ensure that adequate funds remain available throughout the school year; provided that if the participant does not attend the education service provider to which partial payment was made, the partial payment shall be returned in full to the department by the education service provider for credit to the account.

F. Funds deposited in an education opportunity account shall not constitute taxable income for state tax purposes of the parent or the participant.

G. Except as provided in Subsection H of this section, any unexpended balance in an education opportunity account may remain in the account until one of the following occurs, at which time the department shall close the account and the unexpended balance shall revert to the general fund:

(1) the parent withdraws the participant from the program;

(2) the participant graduates from high school; or

(3) the account is closed by the department because of misuse of funds as determined by the department.

H. The department shall revert unexpended balances every two years unless it waives the reversion of a specific education opportunity account for extenuating circumstances.

I. Nothing in the Education Opportunity Account Act shall be construed to require a participant to be enrolled only in a private school, but the participant must be in compliance with the Attendance for Success Act."

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

"NEW MATERIAL" EDUCATION OPPORTUNITY ACCOUNT--APPLICATION
PROCESS--RENEWAL--SUSPENSION.--

A. A parent may apply to the department to establish an education opportunity account for an eligible child.

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

C. The department shall create a standard application for an education opportunity account and procedures for submission of the application. A completed application shall be submitted by a parent to establish a child's eligibility for participation in the program. The department shall ensure that the applications and procedures are publicly available and an application may be submitted through various sources, including the department's website.

D. The department shall approve an application for an education opportunity account submitted by a parent if:

(1) the parent submits the application in accordance with the procedures established by the department;

(2) the child, on whose behalf the parent is applying, is eligible to participate in the program;

(3) funds are available for the program or the education opportunity account; and

(4) the parent signs a contract with the department agreeing:

(a) to provide an education for the child in at least the subjects of reading, language arts, mathematics, science and social studies;

(b) not to enroll the child as a

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1 full-time student in a public school while participating in the
2 program;

3 (c) to use the funds in the education
4 opportunity account only for qualifying education expenses to
5 educate the child; and

6 (d) to comply with the rules and
7 requirements of the program.

8 E. The department shall annually renew a
9 participant's education opportunity account if funds are
10 available.

11 F. Upon notice to the department, a participant may
12 choose to stop receiving education opportunity account funding
13 and enroll as a full-time student in a public school. A
14 participant's enrollment as a full-time student in a public
15 school shall result in the immediate suspension of payment of
16 additional funds into the participant's education opportunity
17 account; provided that, for an education opportunity account
18 that has been open for at least one full school year, the
19 department may allow the account to remain open and active for
20 the parent to pay qualifying education expenses to educate the
21 participant from money remaining in the account. The
22 department shall revert unexpended balances in a participant's
23 education opportunity account and close the account at the
24 beginning of the next school year if the participant is
25 enrolled in a public school.

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G. If a former participant who is an eligible child decides to return to the program, payments into the child's education opportunity account may resume if the account is still open and active. If the child's previous education opportunity account is closed, a new account may be established.

H. The department shall adopt rules to provide the least disruptive process for a participant who chooses to stop participating in the program and enroll full time in a public school."

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

"NEW MATERIAL] EDUCATION SERVICE PROVIDERS--
APPLICATIONS--AUTONOMY--NOT ACTING FOR THE STATE--DEPARTMENT
POWERS AND DUTIES.--

A. The department by rule shall provide the application process and procedures for prospective education service providers to apply for listing as an eligible education service provider. An application form signed by a prospective education service provider warrants that the education service provider:

(1) will not refund, rebate or share money from education opportunity accounts with parents or participants and shall return refunds to the department; and

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1 contained in the agreement entered into with a parent.

2 B. An education service provider is not an agent of
3 the state or federal government, a local school board or school
4 district or governing authority or charter school. No action
5 of an education service provider shall be construed as an
6 action by the state or any of its departments, institutions or
7 political subdivisions.

8 C. An education service provider shall not be
9 required to alter its creed, practices, admissions policy or
10 curriculum to accept payments pursuant to the Education
11 Opportunity Account Act except as provided in that act.

12 D. The department may:

13 (1) contract with private organizations to
14 administer the program or specific functions of the program,
15 including contracting with private financial management firms
16 to manage education opportunity accounts;

17 (2) withhold from deposits or deduct from an
18 education opportunity account an amount to cover the costs of
19 administering the program, in an amount up to a maximum of five
20 percent annually in the first two years of the program and up
21 to a maximum of three percent annually thereafter;

22 (3) bar an education service provider from
23 accepting payments from education opportunity accounts if the
24 department determines that the education service provider has:

25 (a) substantially misrepresented

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information or failed to refund any overpayments in a timely manner; or

(b) failed to provide participants with sufficient educational goods or services;

(4) accept gifts, grants and donations from any source to cover administrative costs, to inform the public about the program or to fund additional education opportunity accounts; and

(5) adopt rules in accordance with the State Rules Act that are consistent with the Education Opportunity Account Act and necessary for the administration of that act, including rules:

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

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

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

(d) for refunding payments from education service providers to education opportunity accounts."

SECTION 7. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] DEPARTMENT ADDITIONAL POWERS AND DUTIES--

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1 The department shall:

2 A. maintain an updated list of qualified education
3 service providers and ensure that the list is publicly
4 available through various sources, including the department's
5 website;

6 B. provide parents with a written explanation of
7 the allowable uses of education opportunity account funds, the
8 responsibilities of parents in ensuring the education of their
9 children, the duties of the department and the role of any
10 private financial management firms or other private
11 organizations that the department may contract with to
12 administer the program or any aspect of the program;

13 C. ensure that parents of children with
14 disabilities receive notice that participation in the program
15 is a parental placement pursuant to the federal Individuals
16 with Disabilities Education Act, along with an explanation of
17 the rights that parentally placed children may possess under
18 federal law and any applicable state laws and rules;

19 D. implement a commercially available, cost-
20 effective and user-friendly payment system for processing
21 payments for services from an education opportunity account to
22 an education service provider by electronic or online funds
23 transfer; provided that the department:

24 (1) provides flexibility to parents by
25 facilitating direct payments to education service providers or

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1 requests for preapproval of and reimbursements for qualifying
2 education expenses; and

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

5 E. implement, as soon as practicable, a
6 commercially available, cost-effective and user-friendly system
7 as part of the same payment system for parents to publicly
8 rate, review and share information about education service
9 providers;

10 F. continue making deposits into a participant's
11 education opportunity account until the:

12 (1) department is notified or determines that
13 the participant is no longer participating in the program;

14 (2) participant withdraws from the program;

15 (3) participant enrolls full time in a public
16 school;

17 (4) participant graduates from high school; or

18 (5) department determines that there was
19 misuse of the funds in the participant's education opportunity
20 account;

21 G. audit individual education opportunity accounts;

22 H. determine a parent or participant ineligible for
23 the program in the event of misuse of education opportunity
24 account funds; provided that if a parent is determined to be
25 ineligible for the program but the participant is free from

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1 personal misconduct, that participant may be eligible for an
2 education opportunity account if placed with a new guardian or
3 other person with the legal authority to act on behalf of the
4 participant;

5 I. create a fair process to determine whether a
6 misuse of education opportunity account funds has occurred;

7 J. refer cases of misuse of education opportunity
8 account funds to law enforcement when evidence of fraudulent
9 use of the account funds exists; and

10 K. create a fair process to determine whether an
11 education service provider may be barred from receiving
12 payments from education opportunity accounts; provided that:

13 (1) an education service provider may appeal
14 the department's final decision to bar the education service
15 provider from receiving payments from education opportunity
16 accounts;

17 (2) an education service provider aggrieved by
18 a final decision of the department may appeal the decision to
19 the district court pursuant to the provisions of Section
20 39-3-1.1 NMSA 1978; and

21 (3) if the department bars an education
22 service provider from receiving payments, the department shall
23 notify parents of participants of the department's decision."

24 **SECTION 8.** A new section of the Public School Code is
25 enacted to read:

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1 "[NEW MATERIAL] PARTICIPANT RECORDS.--Upon being notified
2 that a participant is enrolled with an education service
3 provider, a public school that previously enrolled the
4 participant as a student shall provide the education service
5 provider with that previously enrolled student's school
6 records. The public school and the education service provider
7 shall comply with the provisions of the federal Family
8 Educational Rights and Privacy Act of 1974 when sharing student
9 records."

10 SECTION 9. A new section of the Public School Code is
11 enacted to read:

12 "[NEW MATERIAL] EDUCATION OPPORTUNITY REVIEW COMMISSION.--
13 A. The department shall create the "education
14 opportunity review commission" to assist the department in
15 determining what expenditures meet the requirements to be
16 considered qualifying education expenses to educate a
17 participant and to provide recommendations to the department on
18 how to implement, administer and improve the program.

19 B. The education opportunity review commission
20 consists of nine voting members who shall be:

21 (1) five parents of participants and represent
22 no fewer than four counties of the state; and
23 (2) four New-Mexico-licensed educators.

24 C. The voting members shall be appointed by the
25 secretary and shall serve at the pleasure of the secretary.

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1 The secretary, or the secretary's designee, shall serve as the
2 nonvoting chair of the education opportunity review commission.

3 D. The department may request that the education
4 opportunity review commission meet, in person or through a
5 virtual or telephonic platform, to:

6 (1) determine whether an expenditure from an
7 education opportunity account is or was a qualifying education
8 expense; and

9 (2) review appeals of denials of an education
10 service provider and make a recommendation to the secretary.

11 E. When requested, the education opportunity review
12 commission shall, by majority vote, recommend to the
13 department:

14 (1) if a particular use of funds constitutes a
15 qualifying education expense; and

16 (2) if an education service provider should be
17 allowed to receive, or continue receiving, payments from
18 education opportunity accounts."

19 **SECTION 10.** A new section of the Public School Code is
20 enacted to read:

21 "[NEW MATERIAL] REPORT TO LEGISLATURE AND GOVERNOR.--The
22 department shall report to the legislature and the governor by
23 December 1 of each year on the program and its participants.
24 The report shall include the number, grades and ages of
25 participants and where those participants attend school or

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1 receive other educational services; the geographic distribution
2 of participants by county; other demographic and economic data
3 about participants and parents; the number and locations of
4 education service providers, the services they provide and the
5 number of participants they serve; the total amount of deposits
6 into education opportunity accounts and the cost of financial
7 management contracts; the total expenditures for education
8 service providers and the average cost of educational services
9 being provided to participants, by type of service and
10 geographic region; and other information requested by the
11 legislature or governor and considered reportable by the
12 department."

13 **SECTION 11. APPROPRIATIONS.--**

14 A. The following amounts are appropriated from the
15 general fund to the education opportunity account fund for
16 expenditure in fiscal year 2027 and subsequent fiscal years for
17 the following purposes:

18 (1) five hundred eighty thousand dollars
19 (\$580,000) for the public education department to administer
20 the education opportunity account program; and

21 (2) one hundred million dollars (\$100,000,000)
22 to carry out the purposes of the Education Opportunity Account
23 Act.

24 B. The public education department shall not
25 retain, assess, charge or expend any portion of the dollars

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1 appropriated in Subsection A of this section for indirect
2 costs, overhead or any purpose other than administration of the
3 education opportunity account program, and the amounts
4 appropriated shall not be transferred to any other program or
5 fund.

6 C. Any unexpended balance remaining at the end of a
7 fiscal year shall not revert to the general fund.

8 **SECTION 12. SEVERABILITY.**--If any part or application of
9 the Education Opportunity Account Act is held invalid, the
10 remainder or its application to other situations or persons
11 shall not be affected.

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