

1 HOUSE BILL 387
2 57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

3 INTRODUCED BY
4 Rebecca Dow and Luis M. Terrazas and Jimmy G. Mason
5 and Rod Montoya
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10 AN ACT
11 RELATING TO EDUCATION; ENACTING THE EDUCATION OPPORTUNITY
12 ACCOUNT ACT; PROVIDING POWERS AND DUTIES; PROVIDING FOR
13 EDUCATION OPPORTUNITY ACCOUNTS; PROVIDING ALLOWABLE USES;
14 PROVIDING PROCEDURES AND APPLICATION REQUIREMENTS FOR PARENTS
15 AND EDUCATION SERVICE PROVIDERS; CREATING A REVIEW COMMISSION;
16 MAKING APPROPRIATIONS.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

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

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

2 A. "curriculum" means a complete course of study
3 for a particular primary or secondary content area or grade
4 level;

5 B. "education" means a primary or secondary
6 education;

7 C. "education opportunity account" means the
8 account into which money is deposited by the department to pay
9 for qualifying education expenses of a participating student;

10 D. "education service provider" means a private
11 school located in New Mexico that is qualified to provide
12 educational goods and services to participating students and
13 that receives payments from education opportunity accounts;
14 provided that "education service provider" does not mean an
15 online school;

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

20 F. "participating student" means a student who is
21 participating in the program; and

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

24 **SECTION 3.** A new section of the Public School Code is
25 enacted to read:

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1 "[NEW MATERIAL] EDUCATION OPPORTUNITY ACCOUNT PROGRAM--
2 CREATED--FUNDING USES.--

3 A. The "education opportunity account program" is
4 created in the department to allow the department, in contract
5 with parents of participating students, to pay for private
6 school and other eligible expenses through "education
7 opportunity accounts". The department:

8 (1) shall establish education opportunity
9 accounts for students who qualify for the program;

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

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

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

22 B. Money in a participating student's education
23 opportunity account shall be used by the department, in
24 contract with parents of participating students, only in
25 accordance with the provisions of the Education Opportunity

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1 Account Act and only for the following qualifying education
2 expenses:

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

7 (2) tutoring services provided by a qualified
8 person;

9 (3) textbooks and other instructional
10 materials, including computer hardware and software, required
11 by the education service provider to deliver education to the
12 participating student;

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

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

18 (6) public transportation to and from school;
19 and

20 (7) other educational charges approved by the
21 department.

22 C. The department and the parent of a participating
23 student shall enter into an annual contract that specifies what
24 qualifying education expenses will be purchased each semester
25 or other term, the cost of the educational services to be

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1 provided and by whom the educational services will be provided.
2 The department shall not deposit into an education opportunity
3 account more than the combined cost of educational services
4 provided to the participating student in that year. A parent
5 shall not pay more for educational services than the parent of
6 a similarly situated school-age person pays. Money in an
7 education opportunity account shall not be refunded, rebated or
8 shared with a parent or participating student in any manner. A
9 refund or rebate for educational services purchased through an
10 education opportunity account shall be credited directly to
11 that account. A parent may make payments for the cost of
12 educational services not covered by an education opportunity
13 account, but in no case shall a parent deposit personal funds
14 into a participating student's account.

15 D. Money in a participating student's education
16 opportunity account shall be issued at the direction of the
17 participating student's parent to an education service
18 provider, in the name of the student.

19 E. If an education service provider requires
20 partial payment of tuition or fees prior to the start of the
21 academic year to reserve space for a participating student
22 admitted to the education service provider, such partial
23 payment may be paid by the department prior to the start of the
24 school year in which the education opportunity account is
25 awarded and deducted in an equitable manner from subsequent

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1 monthly account deposits to ensure that adequate funds remain
2 available throughout the school year; provided that if the
3 participating student does not attend the education service
4 provider to which partial payment was made, the partial payment
5 shall be returned to the department by the education service
6 provider for credit to the account.

7 F. Funds deposited in an education opportunity
8 account shall not constitute taxable income for state tax
9 purposes of the parent or the participating student.

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

16 (1) the parent withdraws the participating
17 student from the program;

18 (2) the student graduates from high school; or

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

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

25 I. Nothing in the Education Opportunity Account Act

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1 shall be construed to require a participating student to be
2 enrolled only in a private school, but the participating
3 student must be in compliance with the Attendance for Success
4 Act."

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

7 "[NEW MATERIAL] EDUCATION OPPORTUNITY ACCOUNT--APPLICATION
8 PROCESS--RENEWAL--SUSPENSION.--

9 A. A parent may apply to the department to
10 establish an education opportunity account for an eligible
11 student.

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

15 C. The department shall create a standard form that
16 parents shall submit to establish a student's eligibility for
17 the program and shall ensure that the application is publicly
18 available and may be submitted through various sources,
19 including the internet.

20 D. The department shall approve an application for
21 an education opportunity account if:

22 (1) the parent submits an application for an
23 education opportunity account in accordance with the
24 application procedures established by the department;

25 (2) the student, on whose behalf the parent is

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1 applying, is an eligible student;

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

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

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

9 (b) not to enroll the student as a
10 full-time student in a public school while participating in the
11 program;

12 (c) to use the funds in the education
13 opportunity account only for qualifying education expenses to
14 educate the student; and

15 (d) to comply with the rules and
16 requirements of the program.

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

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

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

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1 been open for at least one full school year, the department may
2 allow an education opportunity account to remain open and
3 active for the parent to pay qualifying education expenses to
4 educate the student from money remaining in the account. The
5 department shall revert unexpended or unencumbered balances in
6 a student's education opportunity account and close the
7 education opportunity account at the beginning of the next
8 school year if the student is enrolled in a public school.

9 G. If an eligible student decides to return to the
10 program, payments into the student's education opportunity
11 account may resume if the education opportunity account is
12 still open and active. A new education opportunity account may
13 be established if the student's education opportunity account
14 is closed.

15 H. The department may adopt rules to provide the
16 least disruptive process for a student who chooses to stop
17 participating in the program and enroll full time in a public
18 school."

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

21 "[NEW MATERIAL] ADDITIONAL POWERS AND DUTIES--ALLOWABLE
22 USES OF FUNDS--EDUCATION SERVICE PROVIDERS.--

23 A. The department shall:

24 (1) maintain an updated list of qualified
25 education service providers and ensure that the list is

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1 publicly available through various sources, including the
2 internet;

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

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

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

21 (a) provides flexibility to parents by
22 facilitating direct payments to education service providers as
23 well as requests for preapproval of and reimbursements for
24 qualifying education expenses; and

25 (b) may contract with private

1 institutions to develop the payment system;

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

7 (6) continue making deposits into a student's
8 education opportunity account until the:

9 (a) department has been notified or
10 determines that the student is no longer a participating
11 student;

12 (b) department determines that there was
13 misuse of the funds in the education opportunity account;

14 (c) student withdraws from the program;

15 (d) student enrolls full time in a
16 public school; or

17 (e) student graduates from high school;

18 (7) audit individual education opportunity
19 accounts;

20 (8) make a parent or participating student
21 ineligible for the program in the event of misuse of education
22 opportunity account funds; provided that if a parent is
23 determined to be ineligible for the program and the
24 participating student is free from personal misconduct, that
25 student may be eligible for an education opportunity account if

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1 placed with a new guardian or other person with the legal
2 authority to act on behalf of the student;

3 (9) refer suspected cases of misuse of
4 education opportunity account funds to law enforcement if
5 evidence of fraudulent use of education opportunity account
6 funds exists;

7 (10) create procedures to ensure that a fair
8 process exists to determine whether a misuse of education
9 opportunity account funds has occurred; and

10 (11) create procedures to ensure that a fair
11 process exists to determine whether an education service
12 provider may be barred from receiving payments from education
13 opportunity accounts; provided that an education service
14 provider may appeal the department's decision to bar the
15 education service provider from receiving payments from
16 education opportunity accounts; and provided further that if
17 the department bars an education service provider from
18 receiving payments, the department shall notify parents of
19 participating students of the department's decision.

20 B. The department may:

21 (1) contract with private organizations to
22 administer the program or specific functions of the program,
23 including contracting with private financial management firms
24 to manage education opportunity accounts;

25 (2) withhold from deposits or deduct from an

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1 education opportunity account an amount to cover the costs of
2 administering the program, in an amount up to a maximum of five
3 percent annually in the first two years of the program and up
4 to a maximum of three percent annually thereafter;

5 (3) bar an education service provider from
6 accepting payments from education opportunity accounts if the
7 department determines that the education service provider has:

8 (a) substantially misrepresented
9 information or failed to refund any overpayments in a timely
10 manner; or

11 (b) failed to provide participating
12 students with sufficient educational goods or services;

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

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

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

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

25 (c) requiring a surety bond for

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1 education service providers receiving more than one hundred
2 thousand dollars (\$100,000) in education opportunity account
3 funds; or

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

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

8 "[NEW MATERIAL] EDUCATION SERVICE PROVIDERS--
9 APPLICATIONS--AUTONOMY--NOT ACTING FOR THE STATE.--

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

16 (1) will not refund, rebate or share money
17 from education opportunity accounts with parents or
18 participating students and shall return refunds to the
19 department; and

20 (2) will provide the education services
21 contained in the agreement entered into with a parent.

22 B. An education service provider is not an agent of
23 the state or federal government, a local school board or school
24 district or governing authority or charter school. No action
25 of an education service provider shall be construed as an

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1 action by the state or any of its departments, institutions or
2 political subdivisions.

3 C. An education service provider shall not be
4 required to alter its creed, practices, admissions policy or
5 curriculum to accept payments pursuant to the Education
6 Opportunity Account Act except as provided in that act."

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

9 "[NEW MATERIAL] STUDENT RECORDS.--Upon being notified that
10 a participating student is enrolled with an education service
11 provider, a public school that previously enrolled the
12 participating student shall provide the education service
13 provider with the student's school records. The public school
14 and the education service provider shall comply with the
15 provisions of the federal Family Educational Rights and Privacy
16 Act of 1974 when sharing student records."

17 SECTION 8. A new section of the Public School Code is
18 enacted to read:

19 "[NEW MATERIAL] EDUCATION OPPORTUNITY REVIEW COMMISSION.--

20 A. The department shall create the "education
21 opportunity review commission" to assist the department in
22 determining what expenditures meet the requirements to be
23 considered qualifying education expenses to educate a
24 participating student and to provide recommendations to the
25 department on how to implement, administer and improve the

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1 program.

2 B. The education opportunity review commission
3 shall consist of nine voting members who shall be:

4 (1) five parents of participating students and
5 represent no fewer than four counties of the state; and

6 (2) four New Mexico licensed educators.

7 C. The voting members shall be appointed by the
8 secretary and shall serve at the pleasure of the secretary.
9 The secretary, or the secretary's designee, shall serve as the
10 nonvoting chair of the education opportunity review commission.

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

14 (1) determine whether an expenditure from an
15 education opportunity account is or was a qualifying expense;
16 and

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

19 E. When requested, the education opportunity review
20 commission shall, by majority vote, recommend to the
21 department:

22 (1) if a particular use of funds constitutes a
23 qualifying expense; and

24 (2) if an education service provider should be
25 allowed to receive, or continue receiving, payments from

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1 education opportunity accounts."

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

4 "[NEW MATERIAL] REPORT TO LEGISLATURE AND GOVERNOR.--The
5 department shall report to the legislature and the governor by
6 December 1 of each year on the program and its participants.
7 The report shall include the number, grades and ages of
8 participating students and where they attend school or receive
9 other educational services; the geographic distribution of
10 participating students by county; other demographic and
11 economic data about participating students and parents; the
12 number and locations of education service providers, the
13 services they provide and the number of students they serve;
14 the total amount of deposits into education opportunity
15 accounts and the cost of financial management contracts; the
16 total expenditures for education service providers and the
17 average cost of educational services being provided to
18 participating students, by type of service and geographic
19 region; and other information requested by the legislature or
20 governor and considered reportable by the department."

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

23 "[NEW MATERIAL] EDUCATION OPPORTUNITY ACCOUNT FUND--
24 CREATED.--

25 A. The "education opportunity account fund" is

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1 created in the state treasury. The fund consists of money
2 appropriated by the legislature, federal money granted to the
3 state for the purposes of the fund, income from investment of
4 the fund and money otherwise accruing to the fund. Money in
5 the fund shall not revert to any other fund at the end of a
6 fiscal year. The department shall administer the fund, and
7 money in the fund is appropriated to the department to carry
8 out the purposes of the Education Opportunity Account Act.

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

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 2025 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. Any unexpended or unencumbered balance remaining
25 at the end of a fiscal year shall not revert to the general

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1 fund.

2 SECTION 12. SEVERABILITY.--If any part or application of
3 the Education Opportunity Account Act is held invalid, the
4 remainder or its application to other situations or persons
5 shall not be affected.

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