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SENATE BILL 210

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Craig W. Brandt and Rebecca Dow

AN ACT

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

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:

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

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

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

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

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

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

21 G. "program" means the education freedom account
22 program."

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

25 "NEW MATERIAL] EDUCATION FREEDOM ACCOUNT PROGRAM--

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1 CREATED--FUNDING USES.--

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

6 (1) shall establish education freedom accounts
7 for students who qualify for the program;

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

16 (3) shall make monthly deposits into each
17 education freedom account; and

18 (4) may contract for financial management
19 services for education freedom accounts.

20 B. Money in a participating student's education
21 freedom account shall be used by the parent of the
22 participating student only in accordance with the provisions of
23 the Education Freedom Account Act and only for the following
24 qualifying education expenses:

25 (1) tuition and fees at a private elementary

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1 or secondary school that teaches, among other courses, reading,
2 language arts, mathematics, science and social studies
3 appropriate for the grade level of the participating student;

4 (2) tutoring services provided by a qualified
5 person;

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

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

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

15 (6) public transportation to and from school;
16 and

17 (7) other educational charges approved by the
18 department.

19 C. The department and the parent of a participating
20 student shall enter into an annual contract that specifies what
21 qualifying education expenses will be purchased each semester
22 or other term, the cost of the educational services to be
23 provided and by whom the educational services will be provided.
24 The department shall not deposit into an education freedom
25 account more than the combined cost of educational services

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

12 D. If an education service provider requires
13 partial payment of tuition or fees prior to the start of the
14 academic year to reserve space for a participating student
15 admitted to the education service provider, such partial
16 payment may be paid by the department prior to the start of the
17 school year in which the education freedom account is awarded
18 and deducted in an equitable manner from subsequent monthly
19 account deposits to ensure that adequate funds remain available
20 throughout the school year; provided that if the participating
21 student does not attend the education service provider to which
22 partial payment was made, the partial payment shall be returned
23 to the department by the education service provider for credit
24 to the account.

25 E. Funds deposited in an education freedom account

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1 shall not constitute taxable income for state tax purposes of
2 the parent or the participating student.

3 F. Except as provided in Subsection G of this
4 section, any unexpended or unencumbered balance in an education
5 freedom account may remain in the account until one of the
6 following occurs, at which time the department shall close the
7 account and the unexpended or unencumbered balance shall revert
8 to the general fund:

9 (1) the parent withdraws the participating
10 student from the program;

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

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

14 G. The department shall revert unexpended or
15 unencumbered balances every two years unless it waives the
16 reversion of a specific education freedom account for
17 extenuating circumstances.

18 H. Nothing in the Education Freedom Account Act
19 shall be construed to require a participating student to be
20 enrolled only in a private school, but the participating
21 student must be in compliance with the Attendance for Success
22 Act."

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

25 "[NEW MATERIAL] EDUCATION FREEDOM ACCOUNT--APPLICATION

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1 PROCESS--RENEWAL--SUSPENSION.--

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

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

7 C. The department shall create a standard form that
8 parents shall submit to establish a student's eligibility for
9 the program and shall ensure that the application is publicly
10 available and may be submitted through various sources,
11 including the internet.

12 D. The department shall approve an application for
13 an education freedom account if:

14 (1) the parent submits an application for an
15 education freedom account in accordance with the application
16 procedures established by the department;

17 (2) the student, on whose behalf the parent is
18 applying, is an eligible student;

19 (3) funds are available for the program or the
20 education freedom account; and

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

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

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1 (b) not to enroll the student as a
2 full-time student in a public school while participating in the
3 program;

4 (c) to use the funds in the education
5 freedom account only for qualifying education expenses to
6 educate the student; and

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

9 E. The department shall annually renew a student's
10 education freedom account if funds are available.

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

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1 G. If an eligible student decides to return to the
2 program, payments into the student's education freedom account
3 may resume if the education freedom account is still open and
4 active. A new education freedom account may be established if
5 the student's education freedom account is closed.

6 H. The department may adopt rules to provide the
7 least disruptive process for a student who chooses to stop
8 participating in the program and enroll full time in a public
9 school."

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

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

14 A. The department shall:

15 (1) maintain an updated list of qualified
16 education service providers and ensure that the list is
17 publicly available through various sources, including the
18 internet;

19 (2) provide parents with a written explanation
20 of the allowable uses of account funds, the responsibilities of
21 parents in ensuring the education of their children, the duties
22 of the department and the role of any private financial
23 management firms or other private organizations that the
24 department may contract with to administer the program or any
25 aspect of the program;

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

7 (4) implement a commercially viable,
8 cost-effective and user-friendly system for processing payments
9 for services from an education freedom account to an education
10 service provider by electronic or online funds transfer;
11 provided that the department:

12 (a) provides flexibility to parents by
13 facilitating direct payments to education service providers as
14 well as requests for preapproval of and reimbursements for
15 qualifying education expenses; and

16 (b) may contract with private
17 institutions to develop the payment system;

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

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

25 (a) department has been notified or

1 determines that the student is no longer a participating
2 student;

3 (b) department determines that there was
4 misuse of the funds in the education freedom account;

5 (c) student withdraws from the program;

6 (d) student enrolls full time in a
7 public school; or

8 (e) student graduates from high school;

9 (7) audit individual education freedom
10 accounts;

11 (8) make a parent or participating student
12 ineligible for the program in the event of misuse of education
13 freedom account funds; provided that if a parent is determined
14 to be ineligible for the program and the participating student
15 is free from personal misconduct, that student may be eligible
16 for an education freedom account if placed with a new guardian
17 or other person with the legal authority to act on behalf of
18 the student;

19 (9) refer suspected cases of misuse of
20 education freedom account funds to law enforcement if evidence
21 of fraudulent use of education freedom account funds exists;

22 (10) create procedures to ensure that a fair
23 process exists to determine whether a misuse of education
24 freedom account funds has occurred; and

25 (11) create procedures to ensure that a fair

1 process exists to determine whether an education service
2 provider may be barred from receiving payments from education
3 freedom accounts; provided that an education service provider
4 may appeal the department's decision to bar the education
5 service provider from receiving payments from education freedom
6 accounts; and provided further that if the department bars an
7 education service provider from receiving payments, the
8 department shall notify parents of participating students of
9 the department's decision.

10 B. The department may:

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

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

20 (3) bar an education service provider from
21 accepting payments from education freedom accounts if the
22 department determines that the education service provider has:

23 (a) substantially misrepresented
24 information or failed to refund any overpayments in a timely
25 manner; or

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1 (b) failed to provide participating
2 students with sufficient educational goods or services;

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

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

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

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

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

19 (d) for refunding payments from
20 education service providers to education freedom accounts."

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

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

25 A. The department by rule shall provide the

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1 application process and procedures for prospective education
2 service providers to apply for listing as an eligible education
3 service provider. An application form signed by a prospective
4 education service provider warrants that the education service
5 provider:

6 (1) will not refund, rebate or share money
7 from education freedom accounts with parents or participating
8 students and shall return refunds to the department; and

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

11 B. An education service provider is not an agent of
12 the state or federal government, a local school board or school
13 district or governing authority or charter school. No action
14 of an education service provider shall be construed as an
15 action by the state or any of its departments, institutions or
16 political subdivisions.

17 C. An education service provider shall not be
18 required to alter its creed, practices, admissions policy or
19 curriculum to accept payments pursuant to the Education Freedom
20 Account Act except as provided in that act."

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

23 "[NEW MATERIAL] STUDENT RECORDS.--Upon being notified that
24 a participating student is enrolled with an education service
25 provider, a public school that previously enrolled the

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1 participating student shall provide the education service
2 provider with the student's school records. The public school
3 and the education service provider shall comply with the
4 provisions of the federal Family Educational Rights and Privacy
5 Act of 1974 when sharing student records."

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

8 "[NEW MATERIAL] EDUCATION FREEDOM REVIEW COMMISSION.--

9 A. The department shall create the "education
10 freedom review commission" to assist the department in
11 determining what expenditures meet the requirements to be
12 considered qualifying education expenses to educate a
13 participating student and to provide recommendations to the
14 department on how to implement, administer and improve the
15 program.

16 B. The education freedom review commission shall
17 consist of nine voting members who shall be:

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

20 (2) four New Mexico licensed educators.

21 C. The voting members shall be appointed by the
22 secretary and shall serve at the pleasure of the secretary.
23 The secretary, or the secretary's designee, shall serve as the
24 nonvoting chair of the education freedom review commission.

25 D. The department may request that the education

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1 freedom review commission meet, in person or through a virtual
2 or telephonic platform, to:

3 (1) determine whether an expenditure from an
4 education freedom account is or was a qualifying expense; and

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

7 E. When requested, the education freedom review
8 commission shall, by majority vote, recommend to the
9 department:

10 (1) if a particular use of funds constitutes a
11 qualifying expense; and

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

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

17 "[NEW MATERIAL] REPORT TO LEGISLATURE AND GOVERNOR.--The
18 department shall report to the legislature and the governor by
19 December 1 of each year on the program and its participants.

20 The report shall include the number, grades and ages of
21 participating students and where they attend school or receive
22 other educational services; the geographic distribution of
23 participating students by county; other demographic and
24 economic data about participating students and parents; the
25 number and locations of education service providers, the

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1 services they provide and the number of students they serve;
2 the total amount of deposits into education freedom accounts
3 and the cost of financial management contracts; the total
4 expenditures for education service providers and the average
5 cost of educational services being provided to participating
6 students, by type of service and geographic region; and other
7 information requested by the legislature or governor and
8 considered reportable by the department."

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

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