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SENATE BILL 109

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Craig W. Brandt

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; 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 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 .223669.2

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1 Freedom 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 freedom account" means the account  
8 into which money is deposited by the department to pay for  
9 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 freedom 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 freedom account  
23 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 FREEDOM ACCOUNT PROGRAM--  
2            CREATED--FUNDING USES.--

3            A. The "education freedom 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 freedom  
7            accounts". The department:

8                            (1) shall establish education freedom accounts  
9                            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 freedom account; and

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

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

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1 for the following qualifying education expenses:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 I. Nothing in the Education Freedom Account Act  
25 shall be construed to require a participating student to be

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

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

6 "[NEW MATERIAL] EDUCATION FREEDOM ACCOUNT--APPLICATION  
7 PROCESS--RENEWAL--SUSPENSION.--

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

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

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

18 D. The department shall approve an application for  
19 an education freedom account if:

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

23 (2) the student, on whose behalf the parent is  
24 applying, is an eligible student;

25 (3) funds are available for the program or the

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1 education freedom account; and

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

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

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

10 (c) to use the funds in the education  
11 freedom account only for qualifying education expenses to  
12 educate the student; and

13 (d) to comply with the rules and  
14 requirements of the program.

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

17 F. Upon notice to the department, a participating  
18 student may choose to stop receiving education freedom account  
19 funding and enroll full time in a public school. Enrolling as  
20 a full-time student in a public school shall result in the  
21 immediate suspension of payment of additional funds into the  
22 student's education freedom account; provided that, for  
23 education freedom accounts that have been open for at least one  
24 full school year, the department may allow an education freedom  
25 account to remain open and active for the parent to pay

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1 qualifying education expenses to educate the student from money  
2 remaining in the account. The department shall revert  
3 unexpended or unencumbered balances in a student's education  
4 freedom account and close the education freedom account at the  
5 beginning of the next school year if the student is enrolled in  
6 a public school.

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

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

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

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

20 A. The department shall:

21 (1) maintain an updated list of qualified  
22 education service providers and ensure that the list is  
23 publicly available through various sources, including the  
24 internet;

25 (2) provide parents with a written explanation

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1 of the allowable uses of education freedom account funds, the  
2 responsibilities of parents in ensuring the education of their  
3 children, the duties of the department and the role of any  
4 private financial management firms or other private  
5 organizations that the department may contract with to  
6 administer the program or any aspect of the program;

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

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

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

22 (b) may contract with private  
23 institutions to develop the payment system;

24 (5) implement, as soon as practicable, a  
25 commercially viable, cost-effective and user-friendly system,

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1 as part of the same system that facilitates the electronic or  
2 online funds transfers, for parents to publicly rate, review  
3 and share information about education service providers;

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

6 (a) department has been notified or  
7 determines that the student is no longer a participating  
8 student;

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

11 (c) student withdraws from the program;

12 (d) student enrolls full time in a  
13 public school; or

14 (e) student graduates from high school;

15 (7) audit individual education freedom  
16 accounts;

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

25 (9) refer suspected cases of misuse of

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1 education freedom account funds to law enforcement if evidence  
2 of fraudulent use of education freedom account funds exists;

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

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

16 B. The department may:

17 (1) contract with private organizations to  
18 administer the program or specific functions of the program,  
19 including contracting with private financial management firms  
20 to manage education freedom accounts;

21 (2) withhold from deposits or deduct from an  
22 education freedom account an amount to cover the costs of  
23 administering the program, in an amount up to a maximum of five  
24 percent annually in the first two years of the program and up  
25 to a maximum of three percent annually thereafter;

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

4 (a) substantially misrepresented  
5 information or failed to refund any overpayments in a timely  
6 manner; or

7 (b) failed to provide participating  
8 students with sufficient educational goods or services;

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

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

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

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

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

25 (d) for refunding payments from

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1 education service providers to education freedom accounts."

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

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

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

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

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

17 B. An education service provider is not an agent of  
18 the state or federal government, a local school board or school  
19 district or governing authority or charter school. No action  
20 of an education service provider shall be construed as an  
21 action by the state or any of its departments, institutions or  
22 political subdivisions.

23 C. An education service provider shall not be  
24 required to alter its creed, practices, admissions policy or  
25 curriculum to accept payments pursuant to the Education Freedom

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1 Account Act except as provided in that act."

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

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

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

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

15 A. The department shall create the "education  
16 freedom review commission" to assist the department in  
17 determining what expenditures meet the requirements to be  
18 considered qualifying education expenses to educate a  
19 participating student and to provide recommendations to the  
20 department on how to implement, administer and improve the  
21 program.

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

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

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1 (2) four New Mexico licensed educators.

2 C. The voting members shall be appointed by the  
3 secretary and shall serve at the pleasure of the secretary.  
4 The secretary, or the secretary's designee, shall serve as the  
5 nonvoting chair of the education freedom review commission.

6 D. The department may request that the education  
7 freedom review commission meet, in person or through a virtual  
8 or telephonic platform, to:

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

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

13 E. When requested, the education freedom review  
14 commission shall, by majority vote, recommend to the  
15 department:

16 (1) if a particular use of funds constitutes a  
17 qualifying expense; and

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

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

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

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

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

17 "[NEW MATERIAL] EDUCATION FREEDOM ACCOUNT FUND--CREATED.--

18 A. The "education freedom account fund" is  
19 created in the state treasury. The fund consists of money  
20 appropriated by the legislature, federal money granted to the  
21 state for the purposes of the fund, income from investment of  
22 the fund and money otherwise accruing to the fund. Money in  
23 the fund shall not revert to any other fund at the end of a  
24 fiscal year. The department shall administer the fund, and  
25 money in the fund is appropriated to the department to carry

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1 out the purposes of the Education Freedom Account Act.

2 B. Money in the fund shall be disbursed on warrants  
3 signed by the secretary of the department pursuant to vouchers  
4 signed by the secretary or the secretary's authorized  
5 representative."

6 SECTION 11. APPROPRIATIONS.--

7 A. The following amounts are appropriated from the  
8 general fund to the education freedom account fund for  
9 expenditure in fiscal years 2024 and subsequent fiscal years  
10 for the following purposes:

11 (1) five hundred eighty thousand dollars  
12 (\$580,000) for the public education department to administer  
13 the education freedom account program; and

14 (2) one hundred million dollars (\$100,000,000)  
15 to carry out the purposes of the Education Freedom Account Act.

16 B. Any unexpended or unencumbered balance remaining  
17 at the end of a fiscal year shall not revert to the general  
18 fund.

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