

116TH CONGRESS
1ST SESSION

H. R. 4586

To expand opportunity for Native American children through additional options in education, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 1, 2019

Mr. BIGGS (for himself, Mr. GOSAR, Mrs. LESKO, Mr. SCHWEIKERT, and Mr. KING of Iowa) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To expand opportunity for Native American children through additional options in education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American Edu-
5 cation Opportunity Act”.

6 **SEC. 2. NATIVE AMERICAN EDUCATION OPPORTUNITY PRO-**
7 **GRAM.**

8 (a) IN GENERAL.—Part B of title XI of the Edu-
9 cation Amendments of 1978 (25 U.S.C. 2000 et seq.) is
10 amended—

1 (1) by redesignating section 1141 as section
2 1142; and

3 (2) by inserting after section 1140 the fol-
4 lowing:

5 **“SEC. 1141. FUNDING OF TRIBAL-BASED EDUCATION SAV-**
6 **INGS ACCOUNT PROGRAMS.**

7 “(a) PROGRAM AUTHORIZED.—

8 “(1) DISBURSEMENTS.—At the request of
9 Tribes, the Secretary of Education shall, for the
10 2020–2021 school year and each subsequent school
11 year, disburse amounts transferred under section
12 2101(a)(2) of the Elementary and Secondary Edu-
13 cation Act of 1965 (20 U.S.C. 6611(a)(2)) for the
14 fiscal year to such Tribes that administer education
15 savings account programs to enable the Tribes to
16 award grants to education savings accounts for ESA
17 eligible students for such school year, in accordance
18 with subsection (b).

19 “(2) APPLICABILITY.—This section shall apply
20 with respect to ESA eligible students who have sub-
21 mitted their application for participation under this
22 section to the Tribe of which the student is an en-
23 rolled member on or after January 1, 2019.

24 “(3) ACCOUNT ADMINISTRATION.—A Tribe may
25 enter into an agreement with a nonprofit entity for

1 the administration of the accounts created through
2 the Tribe's education savings account program.

3 “(4) REQUIRED USE OF FUNDS.—Funds dis-
4 bursed to a Tribe under this section shall be used
5 to deposit \$8,000 each year in the Tribal education
6 savings accounts of ESA eligible students.

7 “(5) PERMISSIBLE USE OF FUNDS.—Funds dis-
8 bursed to a Tribe under this section may be used
9 for—

10 “(A) private tutoring, including academic,
11 Native language, or cultural tutoring;

12 “(B) costs of attendance at a private ele-
13 mentary school or secondary school recognized
14 by the State, which may include a private
15 school that has a religious mission;

16 “(C) private online learning programs;

17 “(D) services provided by a public elemen-
18 tary school or secondary school attended by the
19 child on a less than full-time basis, including in-
20 dividual classes and extracurricular activities
21 and programs;

22 “(E) textbooks, curriculum programs, or
23 other instructional materials, including any sup-
24 plemental materials required by a curriculum
25 program, private school, private online learning

1 program, or a public school, or any parent di-
2 rected curriculum associated with K–12 edu-
3 cation;

4 “(F) computer hardware or other techno-
5 logical devices that are used to help meet a stu-
6 dent’s educational needs, except that such hard-
7 ware or devices may not be purchased by a par-
8 ent more than once in an 18-month period;

9 “(G) educational software and applica-
10 tions;

11 “(H) uniforms purchased for attendance at
12 a private school recognized by the State;

13 “(I) fees for nationally standardized as-
14 sessment exams, advanced placement exams,
15 any exams related to college or university ad-
16 mission, or tuition or fees for preparatory
17 courses for such exams;

18 “(J) fees for summer education programs
19 and specialized after-school education programs
20 (but not including after-school childcare);

21 “(K) educational services and therapies,
22 including occupational, behavioral, physical,
23 speech-language, and audiology therapies;

24 “(L) transportation to receive a service
25 under paragraph (4);

1 “(M) costs of attendance at an institution
2 of higher education;

3 “(N) costs associated with an apprentice-
4 ship or other vocational training program;

5 “(O) fees for State-recognized industry
6 certification exams, and tuition or fees for pre-
7 paratory courses for such exams;

8 “(P) contributions to a college savings ac-
9 count, which may include contributions to a
10 qualified tuition program (as defined in section
11 529(b)(1)(A) of the Internal Revenue Code of
12 1986) or other prepaid tuition plan offered by
13 a State; or

14 “(Q) any other educational expenses ap-
15 proved by the Secretary.

16 “(b) DISBURSEMENTS.—

17 “(1) ANNUAL DISBURSEMENTS.—A Tribe that
18 receives a disbursement amount under subsection (a)
19 shall make semi-annual distributions of such amount
20 to education savings accounts for ESA eligible stu-
21 dents.

22 “(2) LIMITATION.—A Tribe shall allocate not
23 more than 5 percent of the amount received per
24 pupil under this section to the administration of the
25 education savings account programs of the Tribe.

1 “(3) ROLL OVER AND REMAINING FUNDS IN AN
2 ACCOUNT.—Amounts remaining in the Tribal edu-
3 cation savings account of a student at the end of a
4 school year shall remain available until expended for
5 use in accordance with this section.

6 “(4) TERMINATION AND RETURN OF FUNDS.—
7 The Tribal education savings account of a student
8 shall terminate on—

9 “(A) the date on which the student enrolls
10 in a public elementary school or secondary
11 school on a full-time basis;

12 “(B) in the case of a student who is pur-
13 suing postsecondary education, the earlier of—

14 “(i) the date on which the student
15 completes postsecondary education; or

16 “(ii) the date on which the student at-
17 tains the age of 25 years;

18 “(C) in the case of a student who is an in-
19 dividual with a disability, the date on which the
20 student attains the age of 26 years; or

21 “(D) in the case of an individual not de-
22 scribed in subparagraphs (B) or (C), the earlier
23 of—

24 “(i) the date on which the student at-
25 tains the age of 25 years; or

1 “(ii) the expiration of any 2-year pe-
2 riod during which funds in the account are
3 not used in accordance with this section.

4 “(c) COMPULSORY ATTENDANCE REQUIREMENTS.—
5 A State that receives funds under this title shall consider
6 a child with a Tribal education savings account for a
7 school year as meeting the State’s compulsory school at-
8 tendance requirements for such school year.

9 “(d) SPECIAL RULE.—In the case of a child with a
10 Tribal education savings account who attends a public
11 school on a less than full-time basis in a school year—

12 “(1) the child may not attend the public school
13 free of charge; and

14 “(2) funds in the account, in an amount deter-
15 mined pursuant to an agreement between the parent
16 of the child and the local educational agency con-
17 cerned, shall be used to pay for the child’s costs of
18 attendance at such school.

19 “(e) TRIBAL CONSULTATION.—

20 “(1) IN GENERAL.—Before providing edu-
21 cational services to ESA eligible students, and on an
22 annual basis thereafter, a participating educational
23 service provider shall engage in consultation with ap-
24 propriate tribal officials before providing educational
25 services to ESA eligible students.

1 “(2) DOCUMENTATION.—The participating edu-
2 cational service provider shall maintain in the pro-
3 vider’s records and provide to the Bureau of Indian
4 Education a written affirmation signed by the ap-
5 propriate officials of the participating tribes or tribal
6 organizations approved by the tribes that the con-
7 sultation required by this section has occurred. If
8 such officials do not provide such affirmation within
9 a reasonable period of time, the affected educational
10 service provider shall forward documentation that
11 such consultation has taken place to the Bureau of
12 Indian Education.

13 “(3) RULE OF CONSTRUCTION.—Nothing in
14 this section shall be construed to require the partici-
15 pating educational service provider to determine who
16 are the appropriate officials.

17 “(4) LIMITATION.—Consultation required under
18 this section shall not interfere with the timely ap-
19 proval and operation of participating educational
20 service providers.

21 “(f) RULE OF CONSTRUCTION.—A grant awarded to
22 an ESA eligible student under this section shall be consid-
23 ered assistance to the student and shall not be considered
24 assistance to a school that enrolls the ESA eligible student
25 or any other educational service provider from which the

1 ESA eligible student receives services. The amounts pro-
2 vided on behalf of an ESA eligible student under this sec-
3 tion shall not be treated as income of the parent or the
4 student for purposes of Federal tax laws or for deter-
5 mining eligibility for any other Federal program.

6 “(g) TERMINATION.—The authority to carry out this
7 section shall expire on the date that is 5 years after the
8 date of the enactment of this Act.

9 “(h) DEFINITIONS.—In this section:

10 “(1) APPROPRIATE OFFICIALS.—The term ‘ap-
11 propriate officials’ means—

12 “(A) tribal officials who are elected; or

13 “(B) appointed tribal leaders or officials
14 designated in writing.

15 “(2) EDUCATIONAL SERVICE PROVIDER.—The
16 term ‘educational service provider’ means an edu-
17 cational service provider that has entered into an
18 agreement with a Tribe.

19 “(3) ESA ELIGIBLE STUDENT.—The term
20 ‘ESA eligible student’ means an individual who is—

21 “(A) an elementary school or secondary
22 school Tribal enrolled student who attended a
23 school operated by the Bureau of Indian Edu-
24 cation in the semester preceding the date on

1 which the student first applies for participation
2 in an education savings account program; or

3 “(B) a child who—

4 “(i) will be eligible to attend a school
5 operated by the Bureau of Indian Edu-
6 cation for kindergarten or any other ele-
7 mentary school grade in the next semester
8 that will start after the date on which the
9 student first applies for participation in an
10 education savings account program; or

11 “(ii) will not be attending a school op-
12 erated by the Bureau of Indian Education,
13 receiving an education savings account
14 from another Tribe, or attending a public
15 elementary school or secondary school,
16 while the student is participating in an
17 education savings account program of a
18 Tribe.

19 “(4) EDUCATION SAVINGS ACCOUNT PRO-
20 GRAM.—The term ‘education savings account pro-
21 gram’ means a program administered by a Tribe in
22 which the Tribe awards a grant to an account man-
23 aged by the Tribe or a nonprofit entity on behalf of
24 a parent of an elementary school or secondary school

1 student from which the parent may purchase goods
2 and services needed for the education of the student.

3 “(5) NONPROFIT ENTITY DEFINED.—In this
4 paragraph, the term ‘nonprofit entity’ means an en-
5 tity that is described in the section 501(c)(3) of the
6 Internal Revenue Code of 1986 and is exempt from
7 taxation under section 501(a) of such Code.

8 “(6) PARENT.—The term ‘parent’ has the
9 meaning given the term in section 8101 of the Ele-
10 mentary and Secondary Education Act of 1965 (20
11 U.S.C. 7801).

12 “(7) TRIBE.—The term ‘Tribe’ means any rec-
13 ognized Indian tribe included on the current list
14 published by the Secretary under section 104 of the
15 Federally Recognized Indian Tribe Act of 1994 (25
16 U.S.C. 5131).”.

17 (b) CONFORMING AMENDMENT.—Section 1126(c) of
18 the Education Amendments of 1978 (25 U.S.C. 2006(c))
19 is amended by striking “section 1141(12)” and inserting
20 “section 1142(12)”.

21 **SEC. 3. AMENDMENTS TO THE ELEMENTARY AND SEC-**
22 **ONDARY EDUCATION ACT OF 1965.**

23 Section 2101(a) of the Elementary and Secondary
24 Education Act of 1965 (20 U.S.C. 6611(a)) is amended
25 at the end by inserting the following new paragraph:

1 “(3) one-half of one percent for Tribes that ad-
 2 minister education savings account programs under
 3 section 1141 of part B of title XI of the Education
 4 Amendments of 1978 (25 U.S.C. 2000 et seq.).”.

5 **SEC. 4. CHARTER SCHOOLS AUTHORIZED.**

6 (a) IN GENERAL.—The Bureau of Indian Education
 7 is authorized to approve and fund a Bureau-Funded Char-
 8 ter School at any school operated or funded by the Bureau
 9 of Indian Education.

10 (b) USE OF BUREAU FACILITIES.—Tribes are au-
 11 thorized to use existing Bureau of Indian Education facili-
 12 ties for the operation, management, and expansion of
 13 grades in Bureau-funded charter schools, as defined in
 14 section 4(d)(1).

15 (c) USE OF FUNDS.—Funds dispersed to tribes
 16 under this section may be used for subcontracts with a
 17 tribal organization or developer to manage or operate Bu-
 18 reau-funded charter schools.

19 (d) DEFINITIONS.—In this section:

20 (1) BUREAU-FUNDED CHARTER SCHOOL.—The
 21 term “Bureau-Funded Charter School” means a
 22 school that—

23 (A) is approved by the Tribal government
 24 where the school operates and is approved and
 25 funded by the Bureau of Indian Education;

1 (B) is exempt from significant Federal,
2 State, or local rules that inhibit the flexible op-
3 eration and management of Bureau-funded
4 schools, but not from any rules relating to the
5 other requirements of this paragraph;

6 (C) is created by a developer as a Bureau-
7 funded school, or is adapted by a developer
8 from an existing Bureau-funded school;

9 (D) operates in pursuit of a specific set of
10 educational objectives determined by the
11 school's developer and agreed to by each Tribe
12 served and the Bureau of Indian Education;

13 (E) provides a program of elementary or
14 secondary education, or both;

15 (F) is not affiliated with a sectarian school
16 or religious institution;

17 (G) does not charge tuition;

18 (H) complies with the Age Discrimination
19 Act of 1975 (42 U.S.C. 6101 et seq.), title VI
20 of the Civil Rights Act of 1964 (42 U.S.C.
21 2000d et seq.), title IX of the Education
22 Amendments of 1972 (20 U.S.C. 1681 et seq.),
23 section 504 of the Rehabilitation Act of 1973
24 (29 U.S.C. 794), the Americans with Disabil-
25 ities Act of 1990 (42 U.S.C. 12101 et seq.),

1 section 1232g of this title (commonly referred
2 to as the “Family Educational Rights and Pri-
3 vacy Act of 1974”), and part B of the Individ-
4 uals with Disabilities Education Act (20 U.S.C.
5 1411 et seq.);

6 (I) is a school to which parents choose to
7 send their children, and that—

8 (i) admits students on the basis of a
9 lottery, consistent with section
10 4303(c)(3)(A) of the Elementary and Sec-
11 ondary Education Act of 1965 (20 U.S.C.
12 7221b(c)(3)(A)), if more students apply
13 for admission than can be accommodated;
14 or

15 (ii) automatically enrolls students who
16 are enrolled in the immediate prior grade
17 level of Bureau-funded schools and, for any
18 additional student openings or student
19 openings created through regular attrition
20 in student enrollment in the affiliated
21 charter school and the enrolling school, ad-
22 mits students on the basis of a lottery as
23 described in clause (i);

24 (J) agrees to comply with the same Fed-
25 eral audit requirements as do other Bureau-

1 funded schools, unless such Federal audit re-
2 quirements are waived by the Bureau of Indian
3 Education;

4 (K) meets all applicable Federal health
5 and safety requirements;

6 (L) operates in accordance with Federal
7 law;

8 (M) has a written performance contract
9 with the Bureau of Indian Education that in-
10 cludes a description of how student perform-
11 ance will be measured in charter schools pursu-
12 ant to assessments that are required of other
13 schools and pursuant to any other assessments
14 mutually agreeable to the Bureau of Indian
15 Education, tribe(s) served, and the charter
16 school; and

17 (N) may serve students in early childhood
18 education programs.

19 (2) DEVELOPER.—The term “developer” means
20 an individual or group of individuals (including a
21 public, private, or tribal nonprofit organization),
22 which may include teachers, administrators and
23 other school staff, parents, or other members of the
24 local community in which a charter school project
25 will be carried out.

1 **SEC. 5. GAO STUDY.**

2 Not later than 3 years after the date of enactment
3 of this Act, the Comptroller General of the United States
4 shall—

5 (1) conduct a review of the implementation of
6 the programs established by this Act during the pre-
7 ceding 3-year period, including any factors impact-
8 ing increased participation in education savings ac-
9 count programs established pursuant to the amend-
10 ments made by this Act;

11 (2) submit a report describing the results of the
12 review under paragraph (1) to—

13 (A) the Committee on Indian Affairs of the
14 Senate; and

15 (B) the Subcommittee on Indian, Insular
16 and Alaska Native Affairs of the Committee on
17 Natural Resources of the House of Representa-
18 tives; and

19 (3) make the report described in paragraph (2)
20 publicly available.

21 **SEC. 6. SEVERABILITY.**

22 If any provision of this Act, or an amendment made
23 by this Act, or the application of such provision or amend-
24 ment to any person or circumstance, is held to be invalid,
25 the remainder of this Act, or an amendment made by this

- 1 Act, or the application of such provision to other persons
- 2 or circumstances, shall not be affected.

