

## SENATE BILL NO. 390

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## HASTINGS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE EQUALITY OF EDUCATIONAL OPPORTUNITY ACT AND THE MONTANA EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION SAVINGS ACCOUNT PROGRAM; PROVIDING LEGISLATIVE FINDINGS AND PURPOSES; PROVIDING DEFINITIONS; ESTABLISHING REQUIREMENTS FOR ELIGIBILITY AND ALLOWABLE EXPENSES; PROVIDING RESPONSIBILITIES FOR PARENTS, SCHOOL DISTRICTS, AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION; PROVIDING RULEMAKING AUTHORITY; CLARIFYING THE AUTONOMY OF NONPUBLIC SCHOOLS AND HOME SCHOOLS UNDER THE ACT; PROVIDING FOR FUNDING OF EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION SAVINGS ACCOUNTS; ESTABLISHING THE EQUALITY OF EDUCATIONAL OPPORTUNITY EDUCATION SAVINGS TRUST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Equality of Educational Opportunity Act".

NEW SECTION. **Section 2. Montana equality of educational opportunity education savings account program -- findings and purposes.** (1) There is a Montana equality of educational opportunity

1 education savings account program provided by the legislature as a desirable educational program pursuant to  
2 Article X, section 1(3), of the Montana constitution, which gives authority to the legislature to provide for  
3 educational programs and institutions in addition to a basic system of public schools that will fulfill the goal of  
4 the people to have an overall system of education that offers equal opportunity to each person in the state to  
5 reach each person's full educational potential.

6 (2) The legislature finds that expanding educational opportunities and empowering parental choice  
7 within the state is a valid public purpose to ensure equal educational opportunity for all children.

8 (3) The purposes of [sections 1 through 10] pursuant to Article X, section 1(1), of the Montana  
9 constitution are to ensure that Montana children have access to educational opportunities that will develop each  
10 child's full educational potential.

11  
12 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], the following definitions  
13 apply:

14 (1) "Eligible postsecondary institution" means an accredited postsecondary institution located in  
15 the state.

16 (2) "ESA student amount" means the sum of:

17 (a) the data-for-achievement payment rate under 20-9-306;

18 (b) the Indian education for all payment rate under 20-9-306;

19 (c) 140% of the per-ANB amounts of the special education instructional block grant and the special  
20 education-related services block grant under 20-9-321; and

21 (d) the applicable per-ANB maximum rate established in 20-9-306 for the student multiplied by the  
22 ratio of adopted general fund budget to maximum general fund budget in the prior year, rounded to the nearest  
23 one hundredth and not to exceed 1.00, in the district in which the student is included for ANB purposes under  
24 the program.

25 (3) "Montana equality of educational opportunity education savings account" or "account" means  
26 an account within the trust established in [section 10] in which a payment under [section 9] is deposited on  
27 behalf of a qualified student for the purpose of reimbursement for the purchase of allowable educational  
28 resources pursuant to [section 4] for qualified students.

(4) "Parent" means a biological parent, adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of a qualified student and whose parental rights have not been terminated.

(5) "Program" means the Montana equality of educational opportunity education savings account program established in [section 2].

(6) "Qualified school" means a nonpublic school or home school serving any combination of grades kindergarten through 12 that meets the requirements for Montana nonpublic schools under 20-5-109.

(7) "Qualified student" means a resident of the state who in the current school year is between the ages of 5 and 19 on September 10 and who is not currently enrolled in a public school.

(8) "Resident school district" means the school district in which a student resides.

**NEW SECTION. Section 4. Use of Montana equality of educational opportunity education savings account -- allowable educational resources.** (1) Money deposited in a Montana equality of educational opportunity education savings account may be used for any of the following on behalf of the participating qualified student:

- (a) qualified school tuition, fees, textbooks, software, or other instructional materials or services;
- (b) an educational program or course using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs;
- (c) curriculum, including supplemental materials necessary for or in addition to the curriculum;
- (d) tutoring;
- (e) educational therapies or services, including but not limited to occupational, behavioral, physical, speech-language, and audiology therapies from licensed or certified practitioners or providers, including licensed or certified paraprofessionals or educational aides;
- (f) state or nationally recognized assessment tests, advanced placement exams, entrance examinations at an eligible postsecondary institution, or other assessment instruments;
- (g) services provided by a public school in the state, including individual classes and extracurricular activities;
- (h) eligible postsecondary institution tuition, books, online courses, or other fees;
- (i) no more than \$500 annually in consumable education supplies, including but not limited to

1 paper, ink, pens, and markers;

2 (j) transportation required for another allowable educational service;

3 (k) fees paid to a cooperative educational program; and

4 (l) any other educational expense approved by the superintendent of public instruction.

5 (2) Account funds may not be refunded, rebated, or shared with a parent or participating student in  
6 any manner.

7 (3) A parent may pay for educational services or costs not covered by account funds.

8 (4) Nothing in [sections 1 through 10] may be construed to require that a qualified student must be  
9 enrolled full-time or part-time in either a private school or a nonpublic online school.

10 (5) The superintendent of public instruction shall ensure compliance with this section.

11

12 **NEW SECTION. Section 5. Parent responsibilities.** (1) In order for a qualified student to participate  
13 in the Montana equality of educational opportunity education savings account program during the time periods  
14 designated by the superintendent of public instruction pursuant to [section 6], the superintendent of public  
15 instruction shall require parents of qualified students who wish to participate in the program to notify the  
16 superintendent of public instruction and sign a contract with the superintendent of public instruction to do the  
17 following:

18 (a) utilize account funds to procure allowable educational resources under [section 4] to develop  
19 the qualified student's full educational potential;

20 (b) release the resident school district from all obligations to educate the qualified student for as  
21 long as the student participates in the program, including any requirements that the district provide a free and  
22 appropriate education to the qualified student or develop an individualized education program for the qualified  
23 student; and

24 (c) if the qualified student is re-enrolled in a public school, immediately notify the superintendent of  
25 public instruction.

26 (2) If a qualified student re-enrolls full-time in a public school district, the superintendent of public  
27 instruction shall terminate payments for the student to the Montana equality of educational opportunity  
28 education savings account and direct those payments to the school district in which the student is enrolled.

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2           **NEW SECTION. Section 6. Responsibilities of superintendent of public instruction --**

3   **rulemaking.** (1) The superintendent of public instruction shall make information about the program accessible  
4 through printed informational materials and the office of public instruction website to parents, students, and  
5 school districts.

6           (2) The superintendent of public instruction shall ensure that parents of qualified students with  
7 disabilities receive notice that participation in the program is a parental placement under the Individuals With  
8 Disabilities Education Act, 20 U.S.C. 1412, along with an explanation of the rights that parentally placed  
9 students possess under the Individuals With Disabilities Education Act and any applicable state laws and  
10 regulations.

11           (3) The superintendent of public instruction may remove a qualified student from eligibility for an  
12 account if the parent fails to comply with the terms of the contract signed pursuant to [section 5], knowingly  
13 misuses account funds, or knowingly fails to comply with the terms of the contract with intent to defraud. If a  
14 qualified student is removed from eligibility, the superintendent of public instruction shall suspend the qualified  
15 student from the program and shall notify the parent in writing that the qualified student has been suspended  
16 and that no further reimbursements from the account will be allowed. The notification must specify the reason  
17 for the suspension and state that the parent has 10 business days to respond and take corrective action. If the  
18 parent refuses or fails within the 10-day period to contact the superintendent of public instruction or provide  
19 information or make a report that is required for reinstatement, the superintendent of public instruction may  
20 remove the qualified student from the program pursuant to this subsection. A parent may appeal the  
21 superintendent of public instruction's decision pursuant to Title 2, chapter 4, part 6.

22           (4) The superintendent of public instruction may refer cases of substantial misuse of account funds  
23 to the attorney general for investigation if the superintendent of public instruction obtains evidence of fraudulent  
24 use of an account.

25           (5) The superintendent of public instruction shall establish rules necessary for administering the  
26 program that are limited to the following:

27           (a) establishment of no fewer than two time periods each year during which a student's parent may  
28 notify the superintendent of public instruction of the parent's desire for the student to participate in the program.

Each time period must be at least 1 month long. One time period must be between September 1 and January 1, and the other time period must be between March 1 and June 1 based on the superintendent of public instruction's determination of school district and parent needs.

(b) verification of student eligibility pursuant to [section 3];

(c) creation of a parent contract pursuant to [section 5];

(d) notification of the resident school district of the student's participation in the program;

(e) calculation of the amount of the ESA student amount;

(f) accounting guidance related to the money remitted by school districts under [section 9(2)]; and

(g) establishment of participation agreements to create a trust interest in the equality of educational opportunity education savings trust established in [section 10] and provide for participation in the program.

**NEW SECTION. Section 7. Responsibilities of public school districts -- student records.** A

public school or school district that previously enrolled a qualified student participating in the Montana equality of educational opportunity education savings account program shall provide a qualified school that has enrolled a participating student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

**NEW SECTION. Section 8. Qualified schools -- autonomy.** (1) A qualified school is not an agent of the state or federal government.

(2) The superintendent of public instruction or any other state agency may not regulate the educational program of a qualified school that enrolls a qualified student, except as provided under 20-5-109.

(3) The creation of the Montana equality of educational opportunity education savings account program does not expand the regulatory authority of the state, its officers, or a school district to impose additional regulation on providers of educational services under the program beyond that reasonably necessary to enforce the requirements of the Montana equality of educational opportunity education savings account program.

**NEW SECTION. Section 9. Montana equality of educational opportunity education savings**

**account -- funding and administration.** (1) Following receipt of a signed contract pursuant to [section 5], the superintendent of public instruction shall notify the resident school district of the qualifying student's participation in the program and the amount calculated by dividing the student's ESA student amount by 10.

(2) Beginning with the next distribution of BASE aid payments pursuant to 20-9-344 for the months of August through May, the resident school district shall remit to the office of public instruction the amount calculated in subsection (1) for each participating student by no later than the 10th of the month following the BASE aid distribution.

(3) The money remitted under subsection (2):

(a) must be from the district's general fund;

(b) may not include revenue from the guarantee account described in 20-9-622; and

(c) must be accounted for under rules adopted by the superintendent of public instruction.

(4) The superintendent of public instruction shall account for the money remitted under subsection (2) as follows:

(a) 98% of the money must be deposited in accounts within the equality of educational opportunity education savings trust established in [section 10] to be used only for the purchase of allowable educational resources pursuant to [section 4]; and

(b) 2% of the money must be deposited in the office of public instruction equality of educational opportunity ESA administration account established in subsection (8).

(5) The superintendent of public instruction shall ensure that the participating student is included in the resident school district's ANB calculation for funding purposes only pursuant to 20-9-311 in any year that the student remains otherwise eligible for inclusion and participates in the program. No other school district may count the student for ANB purposes. The participating student is not considered to be enrolled in the resident school district.

(6) The superintendent of public instruction shall administer the individual student accounts pursuant to subsection (4)(a) so that:

(a) parents have the freedom to expend account funds for the purchase of allowable educational resources for a participating student pursuant to [section 4]; and

(b) on a student's 24th birthday, the student's account is closed and any remaining funds in the student's account are returned to the guarantee account described in 20-9-622. If a student is enrolled in a postsecondary institution on the student's 24th birthday, the account must remain active until the student is no longer enrolled in a postsecondary institution.

(7) The superintendent of public instruction may contract with private financial management firms to manage the individual student accounts pursuant to subsection (4)(a) with the supervision of the superintendent.

(8) There is an office of public instruction equality of educational opportunity ESA administration account within the state special revenue fund created in 17-2-102 consisting of 2% of the money remitted to the office of public instruction pursuant to subsection (2).

**NEW SECTION. Section 10. Equality of educational opportunity education savings trust.** There is an equality of educational opportunity education savings trust that is an instrumentality of the state and that is created for a public purpose. The trust consists of participating trusts with each participating trust corresponding to an account. The assets of one participating trust may not be commingled with the assets of any other participating trust. The assets and earnings of any participating trust may not be used to satisfy the obligations of any other participating trust. Each participating trust account represents a trust interest in the trust and includes interest and investment income earned by the trust account.

**NEW SECTION. Section 11. Transition.** The legislature intends that this program be operational for the 2023-2024 school year and that the office of public instruction promptly develop all necessary components of the program to meet that intention.

**NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [sections 1 through 10].

**NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
 2 the part remains in effect in all valid applications that are severable from the invalid applications.

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4 NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

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