



AN ACT GENERALLY REVISING LAWS RELATED TO ESTABLISHING THE STUDENTS WITH SPECIAL NEEDS EQUAL OPPORTUNITY ACT AND THE MONTANA SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS ACCOUNT PROGRAM; ESTABLISHING REQUIREMENTS FOR ELIGIBILITY AND ALLOWABLE EXPENSES; PROVIDING RESPONSIBILITIES FOR PARENTS, SCHOOL DISTRICTS, AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION; CLARIFYING THE AUTONOMY OF PARTICIPATING PRIVATE SCHOOLS; PROVIDING FOR FUNDING OF SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS ACCOUNTS; ESTABLISHING THE SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS TRUST; PROVIDING AN APPROPRIATION AND A STATUTORY APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

**Section 1. Short title.** [Sections 1 through 10] may be cited as the "Students with Special Needs Equal Opportunity Act".

**Section 2. Montana special needs equal opportunity education savings account program -- findings and purposes.** (1) There is a Montana special needs equal opportunity education savings account program provided by the legislature as a desirable educational program pursuant to Article X, section 1(3), of the Montana constitution, which gives authority to the legislature to provide for educational programs and institutions in addition to a basic system of public schools that will fulfill the goal of the people to have an overall system of education that offers equal opportunity for all to reach their full educational potential.

(2) The legislature finds that expanding special needs educational opportunities within the state is a valid public purpose to ensure equal educational opportunity for all children with special needs.

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

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

- (1) "Eligible postsecondary institution" means an accredited postsecondary institution located in Montana.
- (2) "ESA student amount" means the sum of:
- (a) the data-for-achievement payment rate under 20-9-306;
  - (b) the Indian education for all payment rate under 20-9-306;
  - (c) the per-ANB amounts of the instructional block grant and related services block grant under 20-9-321; and
  - (d) the applicable per-ANB maximum rate established in 20-9-306 for the student multiplied by the ratio of adopted general fund budget to maximum general fund budget in the prior year, rounded to the nearest one hundredth and not to exceed 1.00, in the district in which the student is included for ANB purposes under the program.
- (3) "Montana special needs equal opportunity education savings account" or "account" means an account within the trust established in [section 10] in which a payment under [section 9] is deposited on behalf of a qualified student for the purpose of reimbursement for the purchase of allowable educational 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 special needs equal opportunity education savings account program established in [section 2].
- (6) "Qualified school" means a nonpublic school serving any combination of grades kindergarten through 12 that:
- (a) is in compliance with applicable local health and safety regulations;
  - (b) holds a valid occupancy permit, if required by the municipality;

(c) does not discriminate on the basis of race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds, pursuant to 49-2-307;

(d) requires that any employee who may have unsupervised access to children be subject to a criminal history background check prior to employment pursuant to and in support of 42 U.S.C. 5119(a) and (c); and

(e) meets the requirements for Montana nonpublic schools under 20-5-109.

(7) "Qualified student" means a resident of the state who:

(a) in the current school year:

(i) is identified as a "child with a disability" under the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(ii) is between the ages of 5 and 19 on September 10;

(b) is not currently enrolled in a school operating for the purpose of providing educational services to youth in department of corrections commitment programs or in the Montana school for the deaf and blind; and

(c) (i) was counted during the previous school year for purposes of school district ANB funding;

(ii) was enrolled during the previous school year in a program listed in subsection (7)(b);

(iii) did not reside in the state in the previous school year; or

(iv) is eligible to enter a kindergarten program pursuant to 20-7-117.

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

**Section 4. Use of Montana special needs equal opportunity education savings account -- allowable educational resources.** (1) The superintendent of public instruction shall allow money deposited in the Montana special needs equal opportunity education savings account to be used to reimburse parents for the purchase of the following educational resources only for the benefit of the individual for whom the account was created:

(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 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 \$50 annually in consumable education supplies, such as paper, pens, and markers;

(j) transportation required for another allowable educational service;

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

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

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

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

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

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

(a) utilize account funds to procure allowable educational resources under [section 4] to develop

the qualified student's full educational potential;

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

(c) submit to the superintendent of public instruction copies of receipts for allowable educational resources for reimbursement;

(d) if the qualified student is re-enrolled in a public school, immediately notify the superintendent of public instruction; and

(e) if the qualified student enrolls at a qualified school, ensure that the qualified student:

(i) remains in attendance unless excused by the qualified school for illness or other good cause;

and

(ii) complies with the qualified school's published policies.

(2) If a qualified student re-enrolls full-time in a public school district, the superintendent of public instruction shall terminate payments for the student to the Montana special needs equal opportunity education savings account.

**Section 6. Responsibilities of superintendent of public instruction -- rulemaking.** (1) The superintendent of public instruction shall make information about the program accessible through printed informational materials and the office of public instruction website to parents, students, and school districts.

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

(3) The superintendent of public instruction may remove a qualified student from eligibility for an account if the parent fails to comply with the terms of the contract signed pursuant to [section 5], knowingly misuses account funds, or knowingly fails to comply with the terms of the contract with intent to defraud. If a qualified student is removed from eligibility, the superintendent of public instruction shall suspend the qualified student from the program and shall notify the parent in writing that the qualified student has been suspended

and that no further reimbursements from the account will be allowed. The notification must specify the reason for the suspension and state that the parent has 10 business days to respond and take corrective action. If the parent refuses or fails within the 10-day period to contact the superintendent of public instruction or provide information or make a report that is required for reinstatement, the superintendent of public instruction may remove the qualified student from the program pursuant to this subsection. A parent may appeal the superintendent of public instruction's decision pursuant to Title 2, chapter 4, part 6.

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

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

(a) establishment of no fewer than two time periods each year during which a student's parent may 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 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)];

(g) establishment of participation agreements to create a trust interest in the special needs equal opportunity education savings trust established in [section 10] and provision for participation in the program;

and

(h) procedures for reimbursement for the purchase of allowable educational resources from a student's account.

**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 special needs equal 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.

**Section 8. Qualified schools -- regulations.** (1) The superintendent of public instruction shall require qualified schools who enroll students who are participating in the Montana special needs equal opportunity education savings account program to submit quarterly reports of services provided to qualified students as required under the program.

(2) A qualified school is not an agent of the state or federal government.

(3) 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.

(4) The creation of the Montana special needs equal 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 special needs equal opportunity education savings account program.

**Section 9. Montana special needs equal 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) 95% of the money must be deposited in accounts within the special needs equal opportunity education savings trust established in [section 10] to be used only for reimbursing parents for the purchase of allowable educational resources pursuant to [section 4]; and
  - (b) 5% of the money must be deposited in the office of public instruction special needs equal opportunity ESA administration account established in subsection (7).
- (5) The office of public instruction shall ensure that the participating student is included in the resident school district's ANB calculation 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 office of public instruction shall administer the individual student accounts pursuant to subsection (4)(a) so that:
  - (a) reimbursements are made promptly to parents 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.
- (7) (a) There is an office of public instruction special needs equal opportunity ESA administration account within the state special revenue fund created in 17-2-102 consisting of 5% of the money remitted to the office of public instruction pursuant to subsection (2).
- (b) Funds in the office of public instruction special needs equal opportunity ESA administration account are statutorily appropriated, as provided in 17-7-502, to the office of public instruction and must be used for the costs of administering the program.

**Section 10. Special needs equal opportunity education savings trust.** There is a special needs equal 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.

**Section 11.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-218; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; [section 9]; 20-8-107; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 46-32-108; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-

102]; 87-1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021, the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; and pursuant to sec. 15, Ch. 574, L. 2021, the inclusion of 46-32-108 terminates June 30, 2023.)"

**Section 12. Appropriation.** The following money is appropriated from the state general fund to the office of public instruction:

- (1) for fiscal year 2024, \$75,000 for the purpose of Montana special needs equal opportunity education savings account program administrative costs; and
- (2) for fiscal year 2025, \$30,000 for the purpose of Montana special needs equal opportunity education savings account program administrative costs.

**Section 13. Transition.** The legislature intends that this program be operational for the school year beginning July 1, 2024, and that the office of public instruction develop all necessary components of the program during the school year beginning July 1, 2023, to meet that intention.

**Section 14. 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].

**Section 15. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 16. Effective date.** [This act] is effective July 1, 2023.

- END -

I hereby certify that the within bill,  
HB 393, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2023.

HOUSE BILL NO. 393

INTRODUCED BY S. VINTON, G. HERTZ, F. ANDERSON, B. LER, B. MITCHELL, L. REKSTEN, K.  
SEEKINS-CROWE, M. BERTOGLIO, S. ESSMANN, M. YAKAWICH, L. DEMING, J. BERGSTROM

AN ACT GENERALLY REVISING LAWS RELATED TO ESTABLISHING THE STUDENTS WITH SPECIAL NEEDS EQUAL OPPORTUNITY ACT AND THE MONTANA SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS ACCOUNT PROGRAM; ESTABLISHING REQUIREMENTS FOR ELIGIBILITY AND ALLOWABLE EXPENSES; PROVIDING RESPONSIBILITIES FOR PARENTS, SCHOOL DISTRICTS, AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION; CLARIFYING THE AUTONOMY OF PARTICIPATING PRIVATE SCHOOLS; PROVIDING FOR FUNDING OF SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS ACCOUNTS; ESTABLISHING THE SPECIAL NEEDS EQUAL OPPORTUNITY EDUCATION SAVINGS TRUST; PROVIDING AN APPROPRIATION AND A STATUTORY APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.