

HOUSE BILL NO. 1369

Introduced by

Representatives Kading, Louser, Meier, Schatz, Strinden

Senators Dwyer, Larson, Myrdal

1 A BILL for an Act to create and enact chapter 15.1-39 of the North Dakota Century Code,
2 relating to the establishment of an education empowerment program; and to provide an
3 appropriation.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 15.1-39 of the North Dakota Century Code is created and enacted as
6 follows:

7 **15.1-39-01. Definitions.**

8 For purposes of this chapter, unless the context otherwise requires:

- 9 1. "Account" means an education empowerment account established under the program.
- 10 2. "Course documentation" means records from a qualified provider or school indicating
11 course completion.
- 12 3. "Curriculum" means a complete course of study for a particular content area or grade
13 level.
- 14 4. "Financial institution" means a bank, credit union, or savings and loan association
15 organized under state or federal law which has its main office or a branch office in this
16 state.
- 17 5. "Instructional material" means any supplemental materials required to administer a
18 curriculum.
- 19 6. "Parent" means a resident of this state who is a parent, conservator, legal guardian,
20 custodian, or other individual with legal authority to act on behalf of a program
21 participant.
- 22 7. "Program" means the education empowerment program created under this chapter.
- 23 8. "Program participant" means a child participating in the program.

1 9. "Qualified provider" means an educational service provider or vendor, including a
2 nonpublic school or a tutor, licensed or accredited by a state, regional, or national
3 accrediting organization if applicable, which accepts education empowerment funds.

4 **15.1-39-02. Program and account establishment and management.**

5 1. The superintendent of public instruction shall establish and administer the program to
6 provide funds for qualified education expenses of program participants.

7 2. The superintendent of public instruction shall create and fund an account for each
8 program participant, who may use the funds in the account only as permitted under
9 this chapter.

10 3. For each year of program participation by a program participant enrolled in public
11 school, the superintendent of public instruction shall fund the participant's account with
12 an amount that is:

13 a. Twenty percent of the per-student payment rate reduced by the state average
14 percentage of local revenue required to be subtracted to determine state aid
15 payments under section 15.1-27-04.1 for the prior fiscal year; or

16 b. Twenty percent of the per-student payment rate reduced by the state average
17 percentage of local revenue required to be subtracted to determine state aid
18 payments under section 15.1-27-04.1 for the prior fiscal year weighted to the
19 state's funding formula, if the participant has an active individualized education
20 plan.

21 4. For each year of program participation by a program participant enrolled in nonpublic
22 school, the superintendent of public instruction shall fund the participant's account with
23 an amount that is:

24 a. Seventy-five percent of the per-student payment rate reduced by the state
25 average percentage of local revenue required to be subtracted to determine state
26 aid payments under section 15.1-27-04.1 for the prior fiscal year; or

27 b. Seventy-five percent of the per-student payment rate reduced by the state
28 average percentage of local revenue required to be subtracted to determine state
29 aid payments under section 15.1-27-04.1 for the prior fiscal year weighted to the
30 state's funding formula, if the participant has an active individualized education
31 plan.

- 1 5. A parent of a program participant under subsection 3 may choose any education
2 method, including private tutor, online learning, or other qualified provider, which best
3 serves the needs of the program participant. A parent who signs an agreement with
4 the superintendent of public instruction under section 15.1-39-04 is deemed to have
5 satisfied the requirements of chapter 15.1-20 with regard to the program participant.
- 6 6. A parent of a program participant under subsection 4 may choose any education
7 method, including nonpublic school, private tutor, online learning, or other qualified
8 provider, which best serves the needs of the program participant. A parent who signs
9 an agreement with the superintendent of public instruction under section 15.1-39-04 is
10 deemed to have satisfied the requirements of chapter 15.1-20 with regard to the
11 program participant.
- 12 7. The superintendent of public instruction may contract with a third party to administer
13 the program and manage accounts for the program. The superintendent of public
14 instruction shall oversee and audit the contractor.
- 15 8. The superintendent of public instruction shall provide information regarding the
16 program to the public, including through the superintendent of public instruction's
17 website. The superintendent of public instruction shall ensure parents of children who
18 have disabilities or educational disadvantages are aware of the program.

19 **15.1-39-03. Program eligibility.**

20 A child is eligible for the program if the child is eligible to attend kindergarten through grade
21 five at a public school in this state.

22 **15.1-39-04. Agreement required.**

23 Before a program participant may receive funding under this chapter, a parent must agree
24 in writing to:

- 25 1. Spend program funds only on qualified education expenses as provided under section
26 15.1-39-05.
- 27 2. Notify the superintendent of public instruction immediately if the program participant
28 enrolls in a public or nonpublic school.
- 29 3. Provide course documentation to the superintendent of public instruction to prove the
30 program participant's fulfillment of state graduation requirements.

1 **15.1-39-05. Qualified education expenses.**

- 2 1. Program funds may be used to pay the following qualified education expenses:
- 3 a. Tuition, books, instructional materials, and fees at an accredited nonpublic
- 4 school.
- 5 b. Textbook purchases.
- 6 c. Curriculum purchases.
- 7 d. Computer and any other hardware purchases that may be approved by the
- 8 program administrator every three years.
- 9 e. Instructional material purchases.
- 10 f. Professional fees of a private tutor or teaching services.
- 11 g. Professional fees of a practitioner or provider of educational therapies or
- 12 services.
- 13 h. Fees for a nationally standardized, norm-referenced achievement test or
- 14 examination.
- 15 i. Educational services purchased from a public school, but which do not qualify the
- 16 participant to be counted in daily attendance at the school.
- 17 j. Professional fees of a financial institution that manages the participant's account.
- 18 2. Program funds may not be used for the purchase of food or child care provided before
- 19 or after school hours or during holidays and vacations.
- 20 3. A qualified provider shall give a parent a receipt for each qualifying education expense
- 21 charged by the qualified provider.
- 22 4. This section does not limit the ability of a program participant to pay a qualified
- 23 provider with funds other than program funds for educational courses, materials,
- 24 supplies, or services not covered by the program.

25 **15.1-39-06. Application for program.**

- 26 1. A parent may enroll an eligible child in the program for the next school year at any time
- 27 during a calendar year.
- 28 2. The superintendent of public instruction shall use a standardized enrollment form to
- 29 determine a child's eligibility for the program. The superintendent of public instruction
- 30 shall make the enrollment form readily available through various sources, including the
- 31 superintendent of public instruction's website, fax, and mail.

1 3. The superintendent of public instruction shall provide to each applicant and annually to
2 each program participant information that describes the operation of the program
3 including the list of qualified education expenses; expense reporting requirements; a
4 list of qualified providers, including nonpublic schools participating in the program; and
5 a description of the responsibilities of program participants and the superintendent of
6 public instruction.

7 **15.1-39-07. Achievement testing.**

- 8 1. A parent shall arrange for the program participant to be administered a nationally
9 recognized norm-referenced achievement test each year unless the program
10 participant is attending a nonpublic school and the school administers the program
11 participant a national norm-referenced assessment.
- 12 2. The parent shall report the results of the assessment to an independent researcher
13 selected by the superintendent of public instruction through procurement practices,
14 including a request for proposals. The independent researcher shall aggregate the test
15 scores for all program participants and produce an annual report containing the
16 aggregated results. Each report of the independent researcher must document
17 changes in assessment scores of program participants. The first report must be
18 produced three years after the program commences.
- 19 3. The requirements of subsection 1 do not apply if the parent notifies the school district
20 in which the program participant resides, and the independent researcher selected by
21 the superintendent of public instruction, that the parent has a philosophical, moral, or
22 religious objection to the use of norm-referenced achievement tests.

23 **15.1-39-08. Administration of accounts.**

- 24 1. The superintendent of public instruction shall issue a request for proposals if the
25 superintendent of public instruction chooses to hire a contractor to manage accounts
26 under the program. The contractor shall establish an account for each program
27 participant. A program participant may pay qualified expenses with program funds by
28 using debit cards, online payment services, or other methods.
- 29 2. Program funds must be transferred to each program participant's account in quarterly
30 installments of equal amounts to be made by September fifteenth, December fifteenth,

1 March fifteenth, and June fifteenth, unless a parent negotiates a different schedule
2 with the superintendent of public instruction.

3 3. The superintendent of public instruction may deduct from each quarterly transfer of
4 funds an amount not to exceed three percent of the transferred funds to cover the
5 superintendent of public instruction's cost of overseeing accounts and administering
6 the program.

7 4. The superintendent of public instruction shall approve reasonable fees a contractor
8 may charge for managing accounts under the program. The fees must be based on
9 market rates.

10 5. Any funds remaining in an account at the end of a school year revert to the state
11 general fund.

12 **15.1-39-09. Auditing of accounts.**

13 To ensure compliance with applicable law and the requirements of the program, the
14 superintendent of public instruction annually shall audit a sufficient number of program accounts
15 chosen randomly.

16 **15.1-39-10. Suspension of accounts.**

17 The superintendent of public instruction shall suspend the account of any program
18 participant who fails to comply with applicable law or the requirements of the program or who
19 commits a substantial misuse of program funds. The superintendent of public instruction shall
20 notify the program participant in writing the account has been suspended and no further
21 transactions are allowed on or disbursements made from the account. The notification must
22 specify the grounds for the suspension and state the program participant has ten business days
23 to respond and take any corrective action ordered by the superintendent of public instruction.

24 Following the expiration of the ten-day period, the superintendent of public instruction shall:

25 1. Order permanent closure of the suspended account and declare the program
26 participant ineligible for the program;

27 2. Order temporary reinstatement of the account, conditioned on the performance of
28 specified action by the program participant; or

29 3. Order full reinstatement of the account.

30 **15.1-39-11. Rates and rebates - Restrictions.**

31 A qualified provider may not:

1 1. Charge a program participant an amount greater than the standard rate charged to
2 nonparticipants for the item or service provided.

3 2. Share with or refund, credit, or rebate to a parent or program participant, or any
4 person on behalf of a parent or program participant, any program funds paid or owed
5 by the program participant to the qualified provider.

6 **15.1-39-12. Referral to the attorney general.**

7 If the superintendent of public instruction obtains evidence of any fraudulent use of an
8 account, the superintendent of public instruction shall refer the matter to the attorney general for
9 investigation and prosecution.

10 **15.1-39-13. Limitation on regulation of qualified providers.**

11 1. The program does not expand the regulatory authority of the superintendent of public
12 instruction, or any school district to impose additional regulations on a qualified
13 provider under the program beyond what is necessary by the superintendent of public
14 instruction to enforce the financial and administrative requirements of the program.

15 The superintendent of public instruction and school districts may not regulate the
16 educational program of a qualified provider under the program.

17 2. A qualified provider may not be required to alter its creed, practices, admissions policy,
18 or curriculum to accept a student whose parent pays tuition or fees from an education
19 empowerment account or to participate as a qualified provider.

20 **15.1-39-14. Student records.**

21 Upon request, a school district a program participant otherwise would attend shall provide
22 the parent or the participating nonpublic school the program participant attends a complete copy
23 of the program participant's school records. This section does not require or authorize the
24 release of information except in conformity with the Family Educational Rights and Privacy Act
25 of 1974 [20 U.S.C. 1232g].

26 **15.1-39-15. Annual survey.**

27 The superintendent of public instruction annually may request a parent to complete a
28 written survey that solicits the parent's overall satisfaction with the program and opinion on
29 specified topics and issues relevant to the effectiveness of the program.

1 **15.1-39-16. Rules.**

2 The superintendent of public instruction shall adopt rules, procedures, and forms necessary
3 to implement the program.

4 **15.1-39-17. Applicability.**

5 Funds must be available to program participants starting with the 2022-23 school year.

6 **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general
7 fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the
8 sum as may be necessary, to the department of public instruction for the purpose of providing
9 salaries for temporary administrators of the program under section 1 of this Act, for the
10 biennium beginning July 1, 2021, and ending June 30, 2023.

11 **SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general
12 fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the
13 sum as may be necessary, to the department of public instruction for the purpose of funding
14 accounts of nonpublic school participants of the education empowerment program under
15 subsection 4 of section 15.1-39-02, for the biennium beginning July 1, 2021, and ending
16 June 30, 2023.