

HOUSE BILL NO. HB0166

Education savings accounts-1.

Sponsored by: Representative(s) Clouston and Davis and
Senator(s) Barlow and Landen

A BILL

for

1 AN ACT relating to education; authorizing education savings
2 accounts; creating the Wyoming education savings accounts
3 expenditure account; providing for a transfer of funds to
4 the Wyoming education savings accounts expenditure account;
5 providing for the use and administration of education
6 savings accounts for education; specifying duties of the
7 state superintendent of public instruction; providing
8 rulemaking authority; making conforming amendments;
9 providing appropriations; authorizing full-time positions;
10 and providing for effective dates.

11

12 *Be It Enacted by the Legislature of the State of Wyoming:*

13

14

1 **Section 1.** W.S. 21-2-901 through 21-2-909 are created
2 to read:

3

4

ARTICLE 9

5

WYOMING EDUCATION SAVINGS ACCOUNTS

6

7

21-2-901. Short title.

8

9 This act shall be known as the "Wyoming Education Savings
10 Accounts Act." The program created by this act shall be
11 known as the "ESA program."

12

13

21-2-902. Definitions.

14

15

(a) As used in this act:

16

17

(i) "Curriculum" means a course of study for
18 content areas or grade levels, including any supplemental
19 materials required or recommended by the curriculum;

20

21

(ii) "Education savings account" or "ESA" means
22 the spending account for a child's education to which funds
23 are allocated by the state superintendent of public

1 instruction, for which a parent of an ESA student enters
2 into an agreement with the state superintendent to choose
3 and pay for qualifying education expenses to educate the
4 ESA student, subject to the requirements and conditions of
5 this act;

6

7 (iii) "Education service provider" means a person
8 or organization, including a qualified school, that receives
9 payments authorized by a parent from education savings
10 accounts to provide educational goods and services to ESA
11 students;

12

13 (iv) "ESA student" means a student eligible for
14 an ESA pursuant to W.S. 21-2-904(a) who is participating in
15 the ESA program;

16

17 (v) "Parent" means a resident of this state who
18 is the parent or legal guardian of an eligible student or
19 ESA student and may include an eligible student or ESA
20 student who is an emancipated minor;

21

22 (vi) "Qualified school" means a preschool or a
23 nonpublic primary or secondary school, certified by the

1 state superintendent of public instruction pursuant to W.S.
2 21-2-906(a), located in or that provides education services
3 in this state, that may include through online means;

4

5 (vii) "This act" means W.S. 21-2-901 through
6 21-2-909.

7

8 **21-2-903. Education savings accounts; Wyoming**
9 **education savings accounts expenditure account.**

10

11 (a) The total amount to be deposited in an education
12 savings account for an ESA student each year shall be
13 determined by the student's household income compared to
14 the federal poverty levels, using the most recent federal
15 poverty guidelines for the student's household size and
16 income, as follows:

17

18 (i) Five thousand dollars (\$5,000.00) for
19 students who's household income is at or below two hundred
20 fifty percent (250%) of the federal poverty level;

21

22 (ii) Three thousand dollars (\$3,000.00) for
23 students who's household income is at or below three

1 hundred fifty percent (350%) of the federal poverty level
2 but more than two hundred fifty percent (250%) of the
3 federal poverty level;

4

5 (iii) One thousand dollars (\$1,000.00) for
6 students who's household income is at or below four hundred
7 percent (400%) of the federal poverty level but more than
8 three hundred fifty percent (350%) of the federal poverty
9 level.

10

11 (b) Payments to ESAs under this act shall be made by
12 the state superintendent of public instruction from the
13 Wyoming education savings accounts expenditure account,
14 which is hereby created. The Wyoming education savings
15 accounts expenditure account shall consist of funds
16 transferred to the expenditure account and other funds
17 appropriated by the legislature to the expenditure account.
18 All earnings from investment of the expenditure account
19 shall be credited to the expenditure account. Any
20 unencumbered, unobligated balance of the expenditure
21 account at the end of each fiscal year shall not revert but
22 shall remain in the expenditure account and shall be
23 expended to fund ESAs as provided by this act.

1

2 (c) Payments to each approved ESA shall be disbursed
3 on a quarterly basis by the state superintendent.

4

5 **21-2-904. ESA program eligibility; parent agreement;**
6 **ESA administration.**

7

8 (a) Subject to the availability of funds as
9 determined by the legislature, any child who is a Wyoming
10 resident, who meets one (1) of the following
11 qualifications, and subject to W.S. 21-2-903(a), shall be
12 eligible to receive an ESA subject to the provisions of
13 this act:

14

15 (i) The child has not graduated from high
16 school, received a high school equivalency certificate or
17 completed the equivalent of high school through a
18 home-based educational program and is eligible to attend a
19 public school in this state; or

20

21 (ii) The child is not less than four (4) years
22 of age as of August 1 of the year in which the application

1 for an ESA is made and has not yet attained the age to
2 attend public school in this state.

3

4 (b) To participate in the ESA program, parents of an
5 ESA student shall sign an agreement with the state
6 superintendent that:

7

8 (i) Requires use of the ESA funds for the
9 following qualifying expenses to educate the ESA student:

10

11 (A) Tuition and fees at a qualified school;

12

13 (B) Tutoring services provided by an
14 individual or a tutoring facility. The tutoring services
15 shall not be provided by an ESA student's immediate family;

16

17 (C) Services contracted for and provided by
18 a public school district, including services provided by a
19 public charter school. Services under this subparagraph may
20 include, without limitation, individual classes and
21 extracurricular activities and programs;

22

1 (D) Textbooks, curriculum and other
2 instructional materials, including, but not limited to, any
3 supplemental materials or associated online instruction
4 required by either a curriculum or an education service
5 provider;

6

7 (E) Computer hardware or other
8 technological devices that are primarily used to help meet
9 an ESA student's educational needs;

10

11 (F) Educational software and applications;

12

13 (G) School uniforms;

14

15 (H) Fees for nationally standardized
16 assessments, advanced placement examinations, examinations
17 related to college or university admission and tuition and
18 fees for preparatory courses for the exams;

19

20 (J) Tuition and fees for summer education
21 programs and specialized after school education programs;

22

1 (K) Tuition, fees, instructional materials
2 and examination fees at a career or technical school;

3

4 (M) Educational services and therapies
5 including, but not limited to, occupational, behavioral,
6 physical, speech-language and audiology therapies;

7

8 (N) Tuition and fees at an institution of
9 higher education;

10

11 (O) Fees for transportation paid to a
12 fee-for-service transportation provider for the student to
13 travel to and from an education service provider;

14

15 (P) Any other educational expense approved
16 by the state superintendent.

17

18 (ii) For students eligible for an ESA under
19 paragraph (a)(i) of this section:

20

21 (A) Requires that the ESA student receive
22 instruction in, at minimum, reading, writing, mathematics,
23 civics, history, literature and science. No parent shall be

1 required to include any instruction that conflicts with the
2 parent's or the ESA student's religious doctrines;

3

4 (B) Requires that the ESA student take the
5 statewide assessments administered pursuant to W.S.
6 21-2-304(a) or a nationally normed achievement exam;

7

8 (C) Certifies that the ESA student is not,
9 or will not be, enrolled in a public school district upon
10 receipt of the ESA and releases the applicable school
11 district from all obligations to educate the ESA student.
12 This subparagraph shall not:

13

14 (I) Require an eligible student to
15 withdraw from a public school district before applying for
16 or receiving an ESA if the student withdraws from the
17 public school district before receiving or expending any
18 monies in the student's ESA;

19

20 (II) Prevent a qualified student from
21 applying in advance for an ESA student to be funded
22 beginning the following school year; or

23

1 (III) Prevent a public school district
2 from charging an ESA for any services provided to the
3 qualified student to the extent authorized by law.

4

5 (c) Funds in an ESA shall not be refunded, rebated or
6 shared with a parent of an ESA student in any manner. Any
7 refund or rebate for goods or services purchased with ESA
8 funds shall be credited directly to the student's ESA.

9

10 (d) Parents may make payments for costs of
11 educational goods and services not covered by the funds in
12 the ESA. Personal deposits into an ESA shall not be
13 permitted.

14

15 (e) An ESA shall remain active and any unused funds
16 shall not revert until the parent withdraws the ESA student
17 from the ESA program or until the ESA student is no longer
18 eligible for the ESA program, unless the ESA is closed
19 because of a substantial misuse of funds. When an ESA is
20 closed, any unused funds shall revert to the Wyoming
21 education savings accounts expenditure account.

22

1 (f) Nothing in this act shall be construed to require
2 an ESA student to be enrolled, full-time or part-time, in a
3 nonpublic school.

4

5 **21-2-905. Application, award and allocation of ESAs.**

6

7 (a) A parent may apply to the state superintendent of
8 public instruction to establish an ESA for an eligible
9 student.

10

11 (b) The state superintendent shall establish
12 procedures for approving applications in an expeditious
13 manner.

14

15 (c) The state superintendent shall create a standard
16 form that parents may submit to establish their student's
17 eligibility for the ESA program and shall ensure that the
18 application form is publicly available and that completed
19 applications may be submitted through various sources,
20 including the internet.

21

1 (d) Except as provided under subsection (e) of this
2 section, the state superintendent shall approve an
3 application for an ESA if:

4

5 (i) The parent submits an application for an ESA
6 in accordance with application procedures established by
7 the state superintendent;

8

9 (ii) The student is an eligible student pursuant
10 to W.S. 21-2-904(a);

11

12 (iii) Funds are available for the ESA;

13

14 (iv) The parent signs an agreement with the
15 state superintendent as provided in W.S. 21-2-904(b).

16

17 (e) Seventy percent (70%) of the ESAs shall be
18 awarded to students eligible pursuant to W.S.
19 21-2-904(a)(i) and the remaining thirty percent (30%) shall
20 be awarded to students eligible pursuant to W.S.
21 21-2-904(a)(ii) each year. If the number of applications
22 for ESAs exceeds the available funds for any school year,
23 the students shall be selected on a first-come,

1 first-served basis, except preference shall be given to an
2 eligible student who received funds under the ESA program
3 in the immediately preceding school year.

4

5 (f) For students eligible for an ESA under W.S.
6 21-2-904(a)(i), the following shall apply:

7

8 (i) A signed agreement between the parent and
9 state superintendent under W.S. 21-2-904(b) shall satisfy
10 the compulsory school attendance requirements of W.S.
11 21-4-102 and the parent shall annually provide the
12 student's resident public school district notice of intent
13 to participate in the ESA program;

14

15 (ii) Upon notice to the state superintendent, an
16 ESA student may choose to stop receiving an ESA and enroll
17 full-time in a public school. Enrolling as a full-time
18 student in a public school shall result in the immediate
19 suspension of payment of additional funds to the student's
20 ESA and the state superintendent may close the ESA. If an
21 eligible student applies to the state superintendent to
22 return to the ESA program, payments into the student's
23 existing ESA may resume if the ESA is still open and

1 active. A new ESA may be established if an eligible
2 student's ESA was closed;

3

4 (iii) The state superintendent may adopt rules
5 and policies to provide the least disruptive process for
6 ESA students who choose to enroll full-time in a public
7 school.

8

9 **21-2-906. Duties of the state superintendent of**
10 **public instruction to administer the education savings**
11 **accounts program.**

12

13 (a) The state superintendent of public instruction
14 shall:

15

16 (i) Establish a certification process for
17 education service providers, which shall, at minimum,
18 ensure ESA students attending qualified schools in
19 kindergarten through grade twelve (12) receive instruction
20 in reading, writing, mathematics, civics, history,
21 literature and science;

22

1 (ii) Maintain a list of certified education
2 service providers and ensure the list is available to
3 parents of ESA students. The list shall enable the
4 education service provider to indicate if the education
5 service provider is accepting new ESA students;

6

7 (iii) Provide parents with a written explanation
8 of the qualified expenses for ESA funds, the
9 responsibilities of parents and the duties of the state
10 superintendent related to administration of the ESA
11 program;

12

13 (iv) For students eligible for an ESA under W.S.
14 21-2-904(a)(i), ensure that parents of ESA students with
15 disabilities receive notice that participation in the ESA
16 program is a parental placement under 20 U.S.C. § 1412,
17 Individuals with Disabilities Education Act (IDEA), along
18 with an explanation of the rights that parentally placed
19 students possess under IDEA and any applicable state laws
20 and regulations;

21

22 (v) If determined necessary by the state
23 superintendent, contract with one (1) or more private

1 organizations to administer the ESA program or specific
2 functions of the ESA program including, without limitation,
3 contracting with private financial management firms to
4 manage ESAs. The state superintendent shall comply with
5 applicable procurement statutes and rules in securing
6 services under this paragraph;

7

8 (vi) Implement a commercially viable,
9 cost-effective and user-friendly system for payment of
10 services from ESAs to education service providers by
11 electronic or online funds transfer. The payment system
12 shall not rely exclusively on requiring parents to be
13 reimbursed for out-of-pocket expenses. The payment system
14 shall provide maximum flexibility to parents by
15 facilitating direct payments to education service providers
16 as well as requests for pre-approval of and reimbursements
17 for qualifying expenses listed in W.S. 21-2-904(b)(i). The
18 state superintendent may contract with private
19 organizations to develop the payment system;

20

21 (vii) Continue certifying deposits into a
22 student's ESA until:

23

1 (A) The state superintendent determines
2 that the ESA student is no longer an eligible student;

3

4 (B) The state superintendent determines
5 there was an intentional and substantial misuse of the
6 funds in the ESA;

7

8 (C) The ESA student withdraws from the ESA
9 program; or

10

11 (D) The ESA student enrolls full-time in a
12 public school.

13

14 (viii) Conduct or contract for the auditing of
15 individual ESAs and shall at a minimum conduct or contract
16 for audits of not less than two percent (2%) of all ESAs,
17 selected randomly, on an annual basis;

18

19 (ix) Investigate reports of intentional and
20 substantial misuse of ESA funds and prohibit an eligible
21 ESA student from receipt of ESA funds if the state
22 superintendent determines that the ESA student or ESA
23 student's parent intentionally and substantially misused

1 ESA funds. The state superintendent shall by rule create
2 procedures to ensure that a fair process exists to
3 determine whether an intentional and substantial misuse of
4 ESA funds has occurred. The state superintendent shall have
5 the authority to refer suspected cases of intentional and
6 substantial misuse of ESA funds to the department of audit
7 or the attorney general for investigation if evidence of
8 fraudulent use of ESA funds is obtained;

9

10 (x) Establish rules to prohibit an education
11 service provider from accepting payments from ESAs if the
12 state superintendent determines the education service
13 provider has:

14

15 (A) Intentionally and substantially
16 misrepresented information or failed to refund any
17 overpayments in a timely manner; or

18

19 (B) Routinely failed to provide students
20 with required educational goods or services.

21

22 (xi) Shall notify parents and ESA students
23 within ten (10) business days if the state superintendent

1 prohibits an education service provider from receiving ESA
2 funds under paragraph (x) of this subsection;

3

4 (xii) For students eligible for an ESA under
5 W.S. 21-2-904(a)(i), ensure ESA students, who choose to,
6 participate in the statewide assessments administered
7 pursuant to W.S. 21-2-304(a) and compile the assessment
8 results to analyze student proficiency and academic
9 progress among the students participating in the ESA
10 program, including an analysis of graduation rates,
11 proficiency and progress based on grade level. The results
12 of the analysis under this paragraph shall be included in
13 the annual report required pursuant to W.S. 21-2-204(k).

14

15 (b) If an education service provider requires partial
16 payment of tuition or fees prior to the start of the school
17 year to reserve space for an ESA student admitted to the
18 education service provider, the state superintendent may
19 certify the partial payment prior to the start of the
20 school year in which the ESA is awarded and deduct that
21 amount from subsequent quarterly ESA deposits. If an ESA
22 student decides not to use the education service provider,
23 the partial payment made under this subsection shall be

1 returned to the state superintendent by the education
2 service provider and credited to the student's ESA.

3

4 (c) The state superintendent may adopt rules that are
5 not inconsistent with this act and that are necessary for
6 the administration of this act including rules:

7

8 (i) Establishing or contracting for the
9 establishment of an online anonymous fraud reporting
10 service;

11

12 (ii) Establishing an anonymous telephone hotline
13 for fraud reporting;

14

15 (iii) Requiring a surety bond for education
16 service providers receiving more than one hundred fifty
17 thousand dollars (\$150,000.00) in ESA funds; and

18

19 (iv) Establishing a procedure for refunding
20 payments from education service providers to ESAs.

21

22 **21-2-907. Education service providers.**

23

1 (a) Before receiving payment from an ESA, a
2 prospective education service provider shall:

3

4 (i) Be certified by the state superintendent of
5 public instruction pursuant to W.S. 21-2-906(a) to receive
6 payments from ESAs;

7

8 (ii) Agree not to refund, rebate or share ESA
9 funds with parents or ESA students in any manner, except
10 that funds may be remitted or refunded to an ESA in
11 accordance with procedures established by the state
12 superintendent.

13

14 (b) Nothing in this act shall be deemed to limit the
15 independence or autonomy of an education service provider
16 or to make the actions of an education service provider the
17 actions of state government or public school district.

18

19 (c) Education service providers shall be given
20 maximum freedom to provide instruction and services in
21 their usual and customary manner to meet the educational
22 needs of ESA students.

23

1 (d) An education service provider that accepts
2 payment from an ESA pursuant to this act is not an agent of
3 the state or federal government or a public school
4 district.

5

6 (e) Nothing in this act shall be construed to expand
7 the regulatory authority of the state, its officers, or any
8 school district to impose any additional regulation of
9 education service providers beyond those necessary to
10 enforce the requirements of the ESA program.

11

12 **21-2-908. Responsibilities of public schools and**
13 **school districts.**

14

15 A public school or school district that previously enrolled
16 an ESA student shall provide an education service provider
17 that has enrolled the ESA student with a complete copy of
18 the ESA student's school records as necessary, while
19 complying with 20 U.S.C. § 1232g, the Family Educational
20 Rights and Privacy Act of 1974.

21

22 **21-2-909. Legal liability.**

23

1 No liability shall arise on the part of the state
2 superintendent of public instruction or the state or any
3 public school or school district based on the award of or
4 use of an ESA pursuant to this act.

5

6 **Section 2.** W.S. 21-4-102 by creating a new subsection
7 (d), 21-4-301 and 21-13-310(a)(ix) are amended to read:

8

9 **21-4-102. When attendance required; exemptions;**
10 **withdrawal.**

11

12 (d) A child participating in the ESA program
13 specified by W.S. 21-2-901 and who provides notice of
14 participation in the ESA program to the child's school
15 district shall be deemed to be in compliance with the
16 compulsory attendance requirement under this section.

17

18 **21-4-301. Schools to be free and accessible to all**
19 **children; minimum school year.**

20

21 (a) Except as otherwise provided by law, the public
22 schools of each school district in the state shall at all
23 times be equally free and accessible to all children

1 resident therein of five (5) years of age as of August 1,
2 or September 15 if pursuant to an approved request under
3 W.S. 21-3-110(a)(xxxviii), of the year in which they may
4 register in kindergarten as provided in W.S. 21-4-302(b)
5 and under the age of twenty-one (21), subject to
6 regulations of the board of trustees. Each school district
7 shall operate its schools and its classes for a minimum of
8 one hundred seventy-five (175) days each school year unless
9 an alternative schedule has been approved by the state
10 board. Prior to submission of a proposed alternative
11 schedule to the state board, the board of trustees shall
12 hold at least two (2) advertised public meetings within the
13 district, at which the board shall present the proposed
14 alternative schedule and respond to public questions and
15 comments. Any school district operating under an
16 alternative schedule shall annually evaluate the
17 effectiveness of that schedule in meeting the educational
18 goals and purposes for which the schedule was adopted.

19

20 (b) A parent, guardian or other person having control
21 or charge of any child eligible to attend public school in
22 Wyoming under subsection (a) of this section shall have the

1 option to apply for the ESA program specified by W.S.
2 21-2-901 on behalf of the child.

3

4 **21-13-310. Annual computation of district revenues.**

5

6 (a) To ensure revenues available to each district are
7 uniformly sufficient to enable compliance with the uniform
8 standards for educational programs prescribed under W.S.
9 21-9-101 and 21-9-102 and to secure state board
10 accreditation of educational programs under W.S.
11 21-2-304(a)(ii), the revenues specified under this
12 subsection shall be deemed state revenues and shall be
13 considered in determining the amount to be distributed to
14 each district under W.S. 21-13-311. A district shall make
15 an annual computation of the following revenues:

16

17 (ix) The amount of tuition paid to the district
18 during the previous school year, including any amount
19 charged under W.S. 21-4-501 and any amount assessed in
20 excess of the costs incurred for adult education programs,
21 summer school programs, programs provided under an
22 agreement for cooperative educational programs under W.S.
23 21-20-101 through 21-20-111 and any amount assessed for

1 programs and services for children with disabilities, but
2 excluding any tuition assessed by a district for the
3 provision of virtual education programs to participating
4 students pursuant to W.S. 21-13-330, any tuition assessed
5 by a district for the provision of part-time educational
6 programs to participating students pursuant to W.S.
7 21-2-904(b)(i)(C) and 21-4-502(c), any revenues received by
8 a district from post secondary education option programs
9 provided under W.S. 21-20-201 or for the provision of
10 educational programs to a nonresident student placed in a
11 juvenile detention facility pursuant to an agreement with
12 the student's resident school district;

13

14 **Section 3.** There is appropriated forty million
15 dollars (\$40,000,000.00) from the general fund to the
16 education savings accounts expenditure account created by
17 W.S. 21-2-903(b) for purposes of the Wyoming education
18 savings accounts program. This appropriation shall be
19 subject to the terms of W.S. 21-2-903(b).

20

21 **Section 4.**

22

1 (a) The department of education is authorized two (2)
2 full-time employees for the purposes of this act. There is
3 appropriated four hundred eighty thousand dollars
4 (\$480,000.00) from the general fund for the salary and
5 benefits of the positions created by this section for the
6 period beginning July 1, 2024 and ending June 30, 2026.
7 These funds shall not be transferred or expended for any
8 other purpose and any unexpended, unobligated funds
9 remaining from this appropriation shall revert as provided
10 by law. It is the intent of the legislature that four
11 hundred eighty thousand dollars (\$480,000.00) and these
12 positions be included in the department of education's
13 standard budget for the immediately succeeding fiscal
14 biennium.

15

16 (b) There is appropriated to the department of
17 education four hundred thousand dollars (\$400,000.00) from
18 the general fund for contractual services (900 series)
19 necessary to implement this act for the period beginning
20 July 1, 2024 and ending June 30, 2026. These funds shall
21 not be transferred or expended for any other purpose and
22 any unexpended, unobligated funds remaining from this
23 appropriation shall revert as provided by law. It is the

1 intent of the legislature that four hundred thousand
2 dollars (\$400,000.00) for contractual services (900 series)
3 necessary to implement this act be included in the
4 department of education's standard budget for the
5 immediately succeeding fiscal biennium. As a condition of
6 this appropriation, the department of education shall
7 regularly report on the expenditures from the appropriation
8 under this subsection to the legislature through the joint
9 education interim committee.

10

11 **Section 5.** The state superintendent of public
12 instruction shall adopt rules and take other actions as
13 necessary to enable students to enroll in the ESA program
14 created by this act for school year 2025-2026. The state
15 superintendent shall begin accepting applications for the
16 ESA program not later than January 1, 2025.

17

1 **Section 6.**

2

3 (a) Except as provided in subsections (b) and (c) of
4 this section, this act is effective July 1, 2024.

5

6 (b) Sections 1 and 2 of this act are effective
7 January 1, 2025.

8

9 (c) Section 3 of this act is effective July 1, 2025.

10

11

(END)