

underscored material = new
[bracketed material] = delete

SENATE BILL 286

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Craig W. Brandt and James G. Townsend and William E. Sharer
and Larry R. Scott and Steve D. Lanier

AN ACT

RELATING TO EDUCATION; ENACTING THE EDUCATION FREEDOM ACCOUNT
ACT; PROVIDING POWERS AND DUTIES; PROVIDING FOR EDUCATION
FREEDOM ACCOUNTS; PROVIDING ALLOWABLE USES; PROVIDING
PROCEDURES AND APPLICATION REQUIREMENTS FOR PARENTS AND
EDUCATION SERVICE PROVIDERS; CREATING A REVIEW COMMISSION;
MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Education Freedom Account Act".

SECTION 2. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Education
.229271.2

Freedom Account Act:

A. "curriculum" means a complete course of study for a particular primary or secondary content area or grade level;

B. "education" means a primary or secondary education;

C. "education freedom account" means the account into which money is deposited by the department to pay for qualifying educational expenses of a participating student;

D. "education service provider" means a private school located in New Mexico that is qualified to provide educational goods and services to participating students and that receives payments from education freedom accounts; provided that "education service provider" does not mean an online school;

E. "eligible student" means a school-age person who is a resident of New Mexico, who has not received a high school diploma or a high school equivalency credential, who is eligible for enrollment or re-enrollment in a public school and whose family's income is at or below two hundred percent of the federal poverty level;

F. "participating student" means a student who is participating in the program;

G. "program" means the education freedom account program; and

.229271.2

1 H. "qualifying educational expenses" means
2 authorized expenditures from a participating student's
3 education freedom account and includes those expenses
4 enumerated in Paragraphs (1) through (7) of Subsection B of
5 Section 3 of the Education Freedom Account Act."

6 **SECTION 3.** A new section of the Public School Code is
7 enacted to read:

8 "[NEW MATERIAL] EDUCATION FREEDOM ACCOUNT PROGRAM--
9 CREATED--FUNDING USES.--

10 A. The "education freedom account program" is
11 created in the department to allow the department, in contract
12 with parents of participating students, to pay for private
13 school and other qualifying educational expenses through
14 "education freedom accounts". The department:

15 (1) shall establish education freedom accounts
16 for students who qualify for the program;

17 (2) shall determine the amount each
18 participating student is eligible to receive, which amount is
19 equal to the average amount spent by school districts and
20 charter schools on public school students in the same grade,
21 weighted by special education and at-risk program units, if
22 applicable; provided that a participating student shall not
23 receive more than the student's qualifying educational
24 expenses;

25 (3) shall make monthly deposits into each

1 education freedom account; and

2 (4) may contract for financial management
3 services for education freedom accounts.

4 B. Money in a participating student's education
5 freedom account shall be used by the department, in contract
6 with parents of participating students, only in accordance with
7 the provisions of the Education Freedom Account Act and only
8 for the following qualifying educational expenses:

9 (1) tuition and fees at a private primary or
10 secondary school that teaches, among other courses, reading,
11 language arts, mathematics, science and social studies
12 appropriate for the grade level of the participating student;

13 (2) tutoring services provided by a qualified
14 person;

15 (3) textbooks and other instructional
16 materials, including computer hardware and software, required
17 by the education service provider to deliver education to the
18 participating student;

19 (4) fees for nationally standardized
20 assessments, advanced placement examinations and other
21 assessments required by the education service provider;

22 (5) tuition or fees for summer and after-
23 school primary or secondary programs;

24 (6) public transportation to and from school;

25 and

.229271.2

1 (7) other educational charges approved by the
2 department.

3 C. The department and the parent of a participating
4 student shall enter into an annual contract that specifies what
5 qualifying educational expenses will be purchased each semester
6 or other term, the cost of the educational services to be
7 provided and by whom the educational services will be provided.
8 The department shall not deposit into an education freedom
9 account more than the combined cost of educational services
10 provided to the participating student in that year. A parent
11 shall not pay more for educational services than the parent of
12 a similarly situated school-age person pays. Money in an
13 education freedom account shall not be refunded, rebated or
14 shared with a parent or participating student in any manner. A
15 refund or rebate for educational services purchased through an
16 education freedom account shall be credited directly to that
17 account. A parent may make payments for the cost of
18 educational services not covered by an education freedom
19 account, but in no case shall a parent deposit personal funds
20 into a participating student's account.

21 D. Money in a participating student's education
22 freedom account shall be issued at the direction of the
23 participating student's parent to an education service provider
24 in the name of the student.

25 E. If an education service provider requires

1 partial payment of tuition or fees prior to the start of the
2 academic year to reserve space for a participating student
3 admitted to the education service provider, such partial
4 payment may be paid by the department prior to the start of the
5 school year in which the education freedom account is awarded
6 and deducted in an equitable manner from subsequent monthly
7 account deposits to ensure that adequate funds remain available
8 throughout the school year; provided that if the participating
9 student does not attend the education service provider to which
10 partial payment was made, the partial payment shall be returned
11 to the department by the education service provider for credit
12 to the account.

13 F. Funds deposited in an education freedom account
14 shall not constitute taxable income for state tax purposes of
15 the parent or the participating student.

16 G. Except as provided in Subsection H of this
17 section, any unexpended or unencumbered balance in an education
18 freedom account may remain in the account until one of the
19 following occurs, at which time the department shall close the
20 account and the unexpended or unencumbered balance shall revert
21 to the general fund:

22 (1) the parent withdraws the participating
23 student from the program;

24 (2) the student graduates from high school; or

25 (3) the account is closed by the department

1 because of misuse of funds as determined by the department.

2 H. The department shall revert unexpended or
3 unencumbered balances every two years unless it waives the
4 reversion of a specific education freedom account for
5 extenuating circumstances.

6 I. Nothing in the Education Freedom Account Act
7 shall be construed to require a participating student to be
8 enrolled only in a private school, but the participating
9 student must be in compliance with the Attendance for Success
10 Act."

11 SECTION 4. A new section of the Public School Code is
12 enacted to read:

13 "[NEW MATERIAL] EDUCATION FREEDOM ACCOUNT--APPLICATION
14 PROCESS--RENEWAL--SUSPENSION.--

15 A. A parent may apply to the department to
16 establish an education freedom account for an eligible student.

17 B. The department shall accept and approve
18 applications year-round and shall establish procedures and
19 rules for approving applications in an expeditious manner.

20 C. The department shall create a standard form that
21 parents shall submit to establish a student's eligibility for
22 the program and shall ensure that the application is publicly
23 available and may be submitted through various sources,
24 including the internet.

25 D. The department shall approve an application for

.229271.2

1 an education freedom account if:

2 (1) the parent submits an application for an
3 education freedom account in accordance with the application
4 procedures established by the department;

5 (2) the student, on whose behalf the parent is
6 applying, is an eligible student;

7 (3) funds are available for the program or the
8 education freedom account; and

9 (4) the parent signs a contract with the
10 department agreeing:

11 (a) to provide an education for the
12 participating student in at least the subjects of reading,
13 language arts, mathematics, science and social studies;

14 (b) not to enroll the student as a full-
15 time student in a public school while participating in the
16 program;

17 (c) to use the funds in the education
18 freedom account only for qualifying educational expenses to
19 educate the student; and

20 (d) to comply with the rules and
21 requirements of the program.

22 E. The department shall annually renew a student's
23 education freedom account if funds are available.

24 F. Upon notice to the department, a participating
25 student may choose to stop receiving education freedom account

.229271.2

1 funding and enroll full time in a public school. Enrolling as
2 a full-time student in a public school shall result in the
3 immediate suspension of payment of additional funds into the
4 student's education freedom account; provided that, for
5 education freedom accounts that have been open for at least one
6 full school year, the department may allow an education freedom
7 account to remain open and active for the parent to pay
8 qualifying educational expenses to educate the student from
9 money remaining in the account. The department shall revert
10 unexpended or unencumbered balances in a student's education
11 freedom account and close the education freedom account at the
12 beginning of the next school year if the student is enrolled in
13 a public school.

14 G. If an eligible student decides to return to the
15 program, payments into the student's education freedom account
16 may resume if the education freedom account is still open and
17 active. A new education freedom account may be established if
18 the student's education freedom account is closed.

19 H. The department may adopt rules to provide the
20 least disruptive process for a student who chooses to stop
21 participating in the program and enroll full time in a public
22 school."

23 SECTION 5. A new section of the Public School Code is
24 enacted to read:

25 "[NEW MATERIAL] ADDITIONAL POWERS AND DUTIES--ALLOWABLE

.229271.2

1 USES OF FUNDS--EDUCATION SERVICE PROVIDERS.--

2 A. The department shall:

3 (1) maintain an updated list of qualified
4 education service providers and ensure that the list is
5 publicly available through various sources, including the
6 internet;

7 (2) provide parents with a written explanation
8 of the allowable uses of education freedom account funds, the
9 responsibilities of parents in ensuring the education of their
10 children, the duties of the department and the role of any
11 private financial management firms or other private
12 organizations that the department may contract with to
13 administer the program or any aspect of the program;

14 (3) ensure that parents of students with
15 disabilities receive notice that participation in the program
16 is a parental placement pursuant to the federal Individuals
17 with Disabilities Education Act, along with an explanation of
18 the rights that parentally placed students may possess under
19 federal law and any applicable state laws and rules;

20 (4) implement a commercially viable, cost-
21 effective and user-friendly system for processing payments for
22 services from an education freedom account to an education
23 service provider by electronic or online funds transfer;
24 provided that the department:

25 (a) provides flexibility to parents by

1 facilitating direct payments to education service providers as
2 well as requests for preapproval of and reimbursements for
3 qualifying educational expenses; and

4 (b) may contract with private
5 institutions to develop the payment system;

6 (5) implement, as soon as practicable, a
7 commercially viable, cost-effective and user-friendly system,
8 as part of the same system that facilitates the electronic or
9 online funds transfers, for parents to publicly rate, review
10 and share information about education service providers;

11 (6) continue making deposits into a student's
12 education freedom account until the:

13 (a) department has been notified or
14 determines that the student is no longer a participating
15 student;

16 (b) department determines that there was
17 misuse of the funds in the education freedom account;

18 (c) student withdraws from the program;

19 (d) student enrolls full time in a
20 public school; or

21 (e) student graduates from high school;

22 (7) audit individual education freedom
23 accounts;

24 (8) make a parent or participating student
25 ineligible for the program in the event of misuse of education

1 freedom account funds; provided that if a parent is determined
2 to be ineligible for the program and the participating student
3 is free from personal misconduct, that student may be eligible
4 for an education freedom account if placed with a new guardian
5 or other person with the legal authority to act on behalf of
6 the student;

7 (9) refer suspected cases of misuse of
8 education freedom account funds to law enforcement if evidence
9 of fraudulent use of education freedom account funds exists;

10 (10) create procedures to ensure that a fair
11 process exists to determine whether a misuse of education
12 freedom account funds has occurred; and

13 (11) create procedures to ensure that a fair
14 process exists to determine whether an education service
15 provider may be barred from receiving payments from education
16 freedom accounts; provided that an education service provider
17 may appeal the department's decision to bar the education
18 service provider from receiving payments from education freedom
19 accounts; and provided further that if the department bars an
20 education service provider from receiving payments, the
21 department shall notify parents of participating students of
22 the department's decision.

23 B. The department may:

24 (1) contract with private organizations to
25 administer the program or specific functions of the program,

.229271.2

1 including contracting with private financial management firms
2 to manage education freedom accounts;

3 (2) withhold from deposits or deduct from an
4 education freedom account an amount to cover the costs of
5 administering the program, in an amount up to a maximum of five
6 percent annually in the first two years of the program and up
7 to a maximum of three percent annually thereafter;

8 (3) bar an education service provider from
9 accepting payments from education freedom accounts if the
10 department determines that the education service provider has:

11 (a) substantially misrepresented
12 information or failed to refund any overpayments in a timely
13 manner; or

14 (b) failed to provide participating
15 students with sufficient educational goods or services;

16 (4) accept gifts, grants and donations from
17 any source to cover administrative costs, to inform the public
18 about the program or to fund additional education freedom
19 accounts; and

20 (5) adopt rules in accordance with the State
21 Rules Act that are consistent with the Education Freedom
22 Account Act and necessary for the administration of that act,
23 including rules:

24 (a) establishing or contracting for the
25 establishment of an online anonymous fraud reporting service;

.229271.2

1 (b) establishing an anonymous telephone
2 hotline for fraud reporting;

3 (c) requiring a surety bond for
4 education service providers receiving more than one hundred
5 thousand dollars (\$100,000) in education freedom account funds;
6 or

7 (d) for refunding payments from
8 education service providers to education freedom accounts."

9 SECTION 6. A new section of the Public School Code is
10 enacted to read:

11 "[NEW MATERIAL] EDUCATION SERVICE PROVIDERS--
12 APPLICATIONS--AUTONOMY--NOT ACTING FOR THE STATE.--

13 A. The department by rule shall provide the
14 application process and procedures for prospective education
15 service providers to apply for listing as an eligible education
16 service provider. An application form signed by a prospective
17 education service provider warrants that the education service
18 provider:

19 (1) shall not refund, rebate or share money
20 from education freedom accounts with parents or participating
21 students and shall return refunds to the department; and

22 (2) shall provide the education services
23 contained in the agreement entered into with a parent.

24 B. An education service provider is not an agent of
25 the state or federal government, a local school board or school

1 district or governing authority or charter school. No action
2 of an education service provider shall be construed as an
3 action by the state or any of its departments, institutions or
4 political subdivisions.

5 C. An education service provider shall not be
6 required to alter its creed, practices, admissions policy or
7 curriculum to accept payments pursuant to the Education Freedom
8 Account Act except as provided in that act."

9 SECTION 7. A new section of the Public School Code is
10 enacted to read:

11 "[NEW MATERIAL] STUDENT RECORDS.--Upon being notified that
12 a participating student is enrolled with an education service
13 provider, a public school that previously enrolled the
14 participating student shall provide the education service
15 provider with the student's school records. The public school
16 and the education service provider shall comply with the
17 provisions of the federal Family Educational Rights and Privacy
18 Act of 1974 when sharing student records."

19 SECTION 8. A new section of the Public School Code is
20 enacted to read:

21 "[NEW MATERIAL] EDUCATION FREEDOM REVIEW COMMISSION.--

22 A. The department shall create the "education
23 freedom review commission" to assist the department in
24 determining what expenditures meet the requirements to be
25 considered qualifying educational expenses to educate a

.229271.2

1 participating student and to provide recommendations to the
2 department on how to implement, administer and improve the
3 program.

4 B. The education freedom review commission shall
5 consist of nine voting members who shall be:

6 (1) five parents of participating students and
7 represent no fewer than four counties of the state; and

8 (2) four New Mexico licensed educators.

9 C. The voting members shall be appointed by the
10 secretary and shall serve at the pleasure of the secretary.
11 The secretary, or the secretary's designee, shall serve as the
12 nonvoting chair of the education freedom review commission.

13 D. The department may request that the education
14 freedom review commission meet, in person or through a virtual
15 or telephonic platform, to:

16 (1) determine whether an expenditure from an
17 education freedom account is or was a qualifying educational
18 expense; and

19 (2) review appeals of denials of an education
20 service provider and make a recommendation to the secretary.

21 E. When requested, the education freedom review
22 commission shall, by majority vote, recommend to the
23 department:

24 (1) if a particular use of funds constitutes a
25 qualifying educational expense; and

1 (2) if an education service provider should be
2 allowed to receive, or continue receiving, payments from
3 education freedom accounts."

4 SECTION 9. A new section of the Public School Code is
5 enacted to read:

6 "[NEW MATERIAL] REPORT TO LEGISLATURE AND GOVERNOR.--The
7 department shall report to the legislature and the governor by
8 December 1 of each year on the program and its participants.
9 The report shall include the number, grades and ages of
10 participating students and where they attend school or receive
11 other educational services; the geographic distribution of
12 participating students by county; other demographic and
13 economic data about participating students and parents; the
14 number and locations of education service providers, the
15 services they provide and the number of students they serve;
16 the total amount of deposits into education freedom accounts
17 and the cost of financial management contracts; the total
18 expenditures for education service providers and the average
19 cost of educational services being provided to participating
20 students, by type of service and geographic region; and other
21 information requested by the legislature or governor and
22 considered reportable by the department."

23 SECTION 10. A new section of the Public School Code is
24 enacted to read:

25 "[NEW MATERIAL] EDUCATION FREEDOM ACCOUNT FUND--CREATED.--

.229271.2

1 A. The "education freedom account fund" is created
2 in the state treasury. The fund consists of money appropriated
3 by the legislature, federal money granted to the state for the
4 purposes of the fund, income from investment of the fund and
5 money otherwise accruing to the fund. Money in the fund shall
6 not revert to any other fund at the end of a fiscal year. The
7 department shall administer the fund, and money in the fund is
8 appropriated to the department to carry out the purposes of the
9 Education Freedom Account Act.

10 B. Money in the fund shall be disbursed on warrants
11 signed by the secretary pursuant to vouchers signed by the
12 secretary or the secretary's authorized representative."

13 **SECTION 11. APPROPRIATIONS.--**

14 A. The following amounts are appropriated from the
15 general fund to the education freedom account fund for
16 expenditure in fiscal year 2026 and subsequent fiscal years for
17 the following purposes:

18 (1) five hundred eighty thousand dollars
19 (\$580,000) for the public education department to administer
20 the education freedom account program; and

21 (2) one hundred million dollars (\$100,000,000)
22 to carry out the purposes of the Education Freedom Account Act.

23 B. Any unexpended or unencumbered balance remaining
24 at the end of a fiscal year shall not revert to the general
25 fund.

underscored material = new
[bracketed material] = delete

1 SECTION 12. SEVERABILITY.--If any part or application of
2 the Education Freedom Account Act is held invalid, the
3 remainder or its application to other situations or persons
4 shall not be affected.

5 - 19 -
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

.229271.2