

1 HOUSE BILL NO. 288

2 INTRODUCED BY SCHWADERER, ARNTZEN, BALLANCE, G. BENNETT, BLASDEL, BLYTON, CLARK,
3 EHLI, HALVORSON, HANSEN, HERTZ, JACKSON, D. JONES, LAVIN, LENZ, MCNIVEN, REGIER,
4 C. SMITH, TAYLOR, VANCE, WASHBURN, R. BRODEHL

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA SPECIAL EDUCATION SAVINGS
7 ACCOUNT PROGRAM; PROVIDING DEFINITIONS; ESTABLISHING ELIGIBILITY REQUIREMENTS;
8 PROVIDING RESPONSIBILITIES FOR PARENTS, STUDENTS, THE SUPERINTENDENT OF PUBLIC
9 INSTRUCTION, THE COMMISSIONER OF HIGHER EDUCATION, AND EDUCATION PROVIDERS;
10 SUPERSEDING THE UNFUNDED MANDATE LAWS; PROVIDING RULEMAKING AUTHORITY; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **NEW SECTION. Section 1. Montana special education savings account program -- findings and**
16 **purposes.** (1) There is a Montana special education savings account program.

17 (2) The legislature finds that:

18 (a) parents desire education options for their special needs children; and

19 (b) expanding special educational opportunities from kindergarten through postsecondary education
20 within the state is a valid public purpose.

21 (3) The purposes of [sections 1 through 9] are to:

22 (a) enable parents to make short-term and long-term decisions on how best to educate their special
23 needs children; and

24 (b) ensure that each Montana child receives the best education possible to maximize the child's potential.
25

26 **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 9], the following definitions
27 apply:

28 (1) (a) "Education provider" means a public school, nonpublic school, accredited virtual school, tutor, or
29 other individual or institution providing education to K-12 students that has notified the superintendent of public
30 instruction of the provider's intent to participate in the program and comply with the program's requirements.

1 (b) The term does not include a home school.

2 (2) "Eligible postsecondary institution" means an accredited postsecondary institution located in Montana
3 or an accredited postsecondary institution located outside Montana that offers distance learning or online courses.

4 (3) "Montana special education savings account" means an account into which public K-12 per-pupil
5 expenditures are deposited for the purpose of purchasing education instruction from an education provider or for
6 payment toward college tuition, books, online courses, or fees.

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

8

9 **NEW SECTION. Section 3. Eligibility.** (1) A student is eligible for a Montana special education savings
10 account if the student:

11 (a) has an individualized education program that meets the requirements of the Individuals With
12 Disabilities Education Act, 20 U.S.C. 1400, et seq., and its implementing regulations at 34 CFR, part 300;

13 (b) was counted during the previous year for purposes of school district ANB funding, was enrolled in
14 the previous year in a program listed in subsection (2), or is eligible to enter kindergarten;

15 (c) resides in Montana; and

16 (d) has not graduated from high school or reached 19 years of age.

17 (2) A student is not eligible for a Montana special education savings account while:

18 (a) enrolled in a school operating for the purpose of providing educational services to youth in
19 department of corrections commitment programs;

20 (b) participating in a virtual school, correspondence school, or distance learning program that receives
21 state funding pursuant to the student's participation; or

22 (c) enrolled in the Montana school for the deaf and blind.

23

24 **NEW SECTION. Section 4. Use of Montana special education savings account.** Money deposited
25 in a Montana special education savings account may be used for any of the following on behalf of the student:

26 (1) payment of tuition and fees to an education provider;

27 (2) textbooks and other instructional materials of an education provider;

28 (3) educational therapies from a licensed or accredited provider;

29 (4) fees for nationally recognized assessment tests, advanced placement exams, entrance examinations
30 at an eligible postsecondary institution, or other assessment instruments;

- 1 (5) services provided by a public school, including classes and extracurricular activities; and
- 2 (6) payment to an eligible postsecondary institution for tuition, books, online courses, or other fees.

3

4 NEW SECTION. Section 5. Parent and student responsibilities. (1) A parent shall annually enroll

5 ~~each child participating in the Montana special education savings account program with the resident school~~

6 ~~district and~~ notify the superintendent of public instruction AND THE RESIDENT SCHOOL DISTRICT OF EACH CHILD

7 PARTICIPATING IN THE MONTANA SPECIAL EDUCATION SAVINGS ACCOUNT PROGRAM.

8 (2) If a parent seeks to have the parent's child educated through an education provider, then the parent

9 shall:

- 10 (a) select an education provider and apply for admission for the student;
- 11 (b) inform the resident school district when the parent enrolls the student with an education provider;
- 12 (c) pay the balance of the education provider's tuition and fees not covered by the Montana special
- 13 education savings account payments; ~~and~~
- 14 (d) quarterly submit to the superintendent of public instruction copies of all expense receipts and account
- 15 statements related to the Montana special education savings account; AND

16 (E) ENSURE THAT THE STUDENT PARTICIPATES IN ANNUAL STATE ASSESSMENT TESTING OR ANOTHER NATIONALLY

17 RECOGNIZED ASSESSMENT AND ANNUALLY REPORT THE STUDENT'S SCORES TO THE SUPERINTENDENT OF PUBLIC

18 INSTRUCTION. THE RESIDENT SCHOOL DISTRICT MAY NOT INCLUDE THESE SCORES IN ITS ASSESSMENT REPORTS.

19 (3) At any time a parent may choose to have the student attend full-time classes in the resident school

20 district, and payments to the Montana special education savings account must cease. The parent of a student

21 who returns to the resident school district is responsible for the payment of any outstanding costs to education

22 providers or eligible postsecondary institutions that were incurred and not covered by Montana special education

23 savings account funds.

24 (4) A student who receives funding from a Montana special education savings account while enrolled

25 with an education provider shall:

- 26 (a) remain in attendance unless excused by the education provider for illness or other good cause; AND
- 27 (b) comply with the education provider's published policies; ~~and~~
- 28 ~~(c) perform the assessment required by the education provider pursuant to [section 7(3)].~~

29

30 NEW SECTION. Section 6. Responsibilities of superintendent of public instruction. (1) The

1 superintendent of public instruction shall establish procedures implementing the following provisions of [sections
2 1 through 9]:

- 3 (a) the verification of student eligibility under [section 3];
4 (b) the maintenance and publication of a registry of education providers;
5 (c) the oversight of education providers to ensure compliance with the provisions of [section 7];
6 (d) the calculation of the amount of the Montana special education savings account payment under
7 [section 8];
8 (e) the payments to the commissioner of higher education and deductions to a resident school district
9 as provided under [section 8];
10 (f) a reporting process by which individuals may notify the superintendent of public instruction of any
11 suspected violation by a parent, education provider, or school district of state laws relating to program
12 participation; and
13 (g) the development of a cooperative agreement with the commissioner of higher education to assist in
14 the administration of Montana special education savings accounts.

15 (2) (a) The superintendent of public instruction may exclude an education provider from participation in
16 the Montana special education savings account program if the superintendent establishes that the education
17 provider has:

- 18 (i) intentionally and substantially misrepresented information required under [section 7];
19 (ii) routinely failed to comply with the accountability standards established in [section 7]; or
20 (iii) operated in this state or another state or jurisdiction in a manner contrary to the health, safety, or
21 welfare of the public.

22 (b) If the noncompliance is correctable within a reasonable amount of time and the health, safety, or
23 welfare of the students is not threatened, the superintendent shall issue a notice of noncompliance that provides
24 the education provider with an opportunity to provide evidence of compliance prior to excluding the education
25 provider from participation in the Montana special education savings account program.

26 (3) If the superintendent of public instruction excludes an education provider from the Montana special
27 education savings account program, the superintendent shall notify eligible students and parents of the decision
28 immediately. Participating students enrolled with an education provider excluded by the superintendent of public
29 instruction retain Montana special education savings account program eligibility and may enroll with another
30 education provider.

1
2 **NEW SECTION. Section 7. Accountability standards for education providers.** (1) To ensure that
3 students are treated fairly and safely, each nonpublic education provider shall:

- 4 (a) comply with applicable local health and safety regulations;
5 (b) hold a valid occupancy permit if required by the municipality;
6 (c) certify that the education provider complies with the nondiscrimination policies set forth in 42 U.S.C.
7 1981; and
8 (d) require that any employee who may have unsupervised access to children be subject to a criminal
9 history background check prior to employment pursuant to and in support of 42 U.S.C. 5119(a) and (c).

10 (2) To ensure that public funds are spent appropriately, all nonpublic education providers shall
11 demonstrate their financial accountability by:

12 (a) quarterly submitting to the superintendent of public instruction on a form established by the
13 superintendent of public instruction a report of receipts and expenditures for services provided to participating
14 students; and

15 (b) if the superintendent of public instruction determines an audit is needed based on reliable information
16 reporting a misappropriation or mishandling of Montana special education savings account program funds,
17 submitting to an audit provided for by the superintendent of public instruction to certify that the report to the
18 superintendent is free of material misstatements. The audit must be limited in scope to those records that are
19 necessary to complete the investigation.

20 ~~———(3) To ensure adequate academic progress, nonpublic education providers shall participate in annual~~
21 ~~state assessment testing or provide another nationally recognized assessment, regularly report to the parent on~~
22 ~~the student's progress, and annually report scores to the superintendent of public instruction. The resident school~~
23 ~~district may not include these scores in its assessment reports.~~

24 ~~(4)~~(3) (a) Except as otherwise provided in [sections 1 through 9], a nonpublic education provider is
25 autonomous and is not an agent of the state or federal government.

26 (b) Neither the superintendent of public instruction nor any other state agency may regulate the
27 educational program of a nonpublic education provider that enrolls an eligible student.

28 (c) The creation of the Montana special education savings account program does not expand the
29 regulatory authority of the state, its officers, or any school district to impose any additional regulation on education
30 providers beyond those reasonably necessary to enforce the requirements of the Montana special education

1 savings account program.

2

3 **NEW SECTION. Section 8. Montana special education savings account -- funding and amount.**

4 (1) The amount of the Montana special education savings account provided for a single school year must be 90%
5 of the per-pupil average, but not the per-ANB average, of total school expenditures for the resident school district
6 for the previous school year. The superintendent of public instruction shall determine this amount. Funds to be
7 included in total school expenditures must include:

8 (a) general fund;

9 (b) transportation;

10 (c) bus depreciation;

11 ~~—— (d) food services;~~

12 ~~(e)(D)~~ tuition;

13 ~~(f)(E)~~ retirement;

14 ~~—— (g) miscellaneous programs;~~

15 ~~(h)(F)~~ traffic education;

16 ~~(i)(G)~~ nonoperating;

17 ~~(j)(H)~~ lease-rental agreement;

18 ~~(k)(I)~~ compensated absence fund;

19 ~~(l)(J)~~ metal mines tax reserve;

20 ~~(m)(K)~~ state mining impact;

21 ~~—— (n) impact aid;~~

22 ~~(o)(L)~~ litigation reserve;

23 ~~(p)(M)~~ technology acquisition;

24 ~~(q)(N)~~ flexibility fund;

25 ~~(r)(O)~~ debt service;

26 ~~(s)(P)~~ building reserve; and

27 ~~(t)(Q)~~ interlocal agreement.

28 (2) The resident school district shall continue to include the student in the district's ANB count until the
29 student has graduated or reached 19 years of age. No other school district may include the student for ANB
30 purposes.

1 (3) Upon notification by the parent of the student's participation and verification of the student's eligibility
2 under [section 3], the superintendent of public instruction shall transfer the Montana special education savings
3 account amount provided in subsection (1) of this section to the commissioner of higher education in 10 equal
4 payments, payable by the last day of the month, from August through May of the school year. The superintendent
5 of public instruction may retain up to 2% of the payment amounts for deposit in the superintendent of public
6 instruction Montana special education savings account fund established in subsection (5).

7 (4) The superintendent of public instruction shall deduct the Montana special education savings account
8 amount provided in subsection (1) from the resident school district's aid payments in 10 equal deductions from
9 August through May of the school year.

10 (5) (a) There is a superintendent of public instruction Montana special education savings account fund
11 consisting of money retained by the superintendent of public instruction pursuant to subsection (3). The
12 superintendent of public instruction shall administer the fund. Money in the fund must be used for the
13 superintendent of public instruction's costs in administering Montana special education savings accounts.

14 (b) The superintendent of public instruction may adopt rules and policies necessary for the administration
15 of Montana special education savings accounts.

16
17 **NEW SECTION. Section 9. Responsibilities of commissioner of higher education.** (1) The
18 commissioner of higher education shall:

19 (a) manage individual Montana special education savings accounts and may contract with private
20 financial management firms to manage Montana special education savings accounts with the supervision of the
21 commissioner;

22 (b) adopt rules and establish procedures to administer and manage individual Montana special education
23 savings accounts;

24 (c) ensure that parents have the freedom to expend account funds for the purposes listed in [section 4];
25 and

26 (d) develop a cooperative agreement with the superintendent of public instruction to assist in the
27 administration of [sections 1 through 9].

28 (2) The commissioner of higher education may retain up to 2% of the payment amounts for deposit in
29 the commissioner of higher education Montana special education savings account fund established in subsection
30 (3).

1 (3) There is a commissioner of higher education Montana special education savings account fund
2 consisting of money retained by the commissioner of higher education pursuant to subsection (2). The
3 commissioner of higher education shall administer the fund. Money in the fund must be used for the
4 commissioner of higher education's costs in administering Montana special education savings accounts.

5 (4) On a student's 26th birthday, the student's Montana special education savings account must be
6 closed and any remaining funds must be returned to the state general fund.

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8 **NEW SECTION. Section 10. Unfunded mandate laws superseded.** The provisions of [this act]
9 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

10
11 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 9] are intended to be
12 codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 through 9].

13
14 **NEW SECTION. Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
16 the part remains in effect in all valid applications that are severable from the invalid applications.

17
18 **NEW SECTION. Section 13. Effective date.** [This act] is effective on passage and approval.

19 - END -