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MODEL POLICY | Education Freedom

Education Freedom Account Act

TOPLINE POINTS

- The Education Freedom Account Act qualifies every K-12 student in a state with a flexible spending account that is funded through the per-pupil funding formula, so no child can be denied by an enrollment cap or waitlist.
- Families spend on private school tuition, homeschooling expenses, tutoring, curriculum, and other approved expenses.
- A state agency oversees the program with clear rules, fast decisions on eligible uses, and risk-based audits.

Background

The Education Freedom Account Act establishes a universal education savings account (ESA) program. A state without an existing ESA can enact this model policy in whole. A state that already operates an ESA can use this model policy in part to widen eligibility, close funding gaps with district schools, or make the program easier for families and providers to use.

The Act is built on nine principles drawn from this AFPI Issue Brief, *Designing Education Savings Accounts to Maximize Education Freedom*:

1) Every K-12 student in the state qualifies for an account, and every qualifying student is guaranteed funding (Section 4).
2) ESAs are funded based on what the student would have received in a traditional public school. Students with disabilities receive supplemental funding consistent with the state's special education formula (Section 5).
3) ESAs are funded through the state's main funding formula rather than annual appropriation (Section 5).
4) Participating families choose from a broad, flexible list of allowable expenses (Section 6).
5) Participating students take nationally-norm referenced tests rather than state assessments (Section 9).
6) Schools, tutors, and other service providers should not face accreditation or certification requirements (Section 8).

7) Program oversight from a finance agency, rather than a State Education Agency. Treasurers and Comptrollers are best suited to oversee ESA programs because they have experience distributing funds, managing payment platforms, and auditing accounts (Section 7).
8) Modern oversight that limits fraud without burdening law-abiding families (Sections 7 and 10).
9) Funds roll over from year to year, giving families incentive to spend efficiently and giving providers incentives to limit tuition and fees (Section 12).

Section 1. Title

This Act shall be known as the "Education Freedom Account Act." [A State may substitute a title suited to its own context, such as an Education Savings Account, Education Scholarship Account, Empowerment Scholarship, or other title already used in State law.]

Section 2. Findings and Purpose

a) The Legislature finds that:

(1) Parents are best suited to direct the education of their children, and public education funds should, to the extent possible, be fully allocated to the learning environments their families choose.

(2) Education Freedom Accounts allow families to assemble a customized education from more than one provider, including schools, tutors, curriculum publishers, special education therapists, and online programs.

(3) Education Freedom Accounts that are open to every eligible student and supported by the State's funding formula give families dependable access and give education providers incentive to invest and serve communities across the State.

(4) Accountability is strongest when it protects taxpayers against fraud and gives parents clear information, without imposing public school controls that narrow educational freedom or drive providers away.

(b) The purpose of this Act is to establish a universal, durable ESA program that expands educational opportunity while preserving the independence of participating education service providers.

Section 3. Definitions

As used in this Act:

(a) "Account" means an Education Freedom Account established for a participating student under this Act.

(b) "Administrator" means the [State Treasurer, Comptroller, or other finance-oriented State entity] designated to administer the program.

(c) "Eligible student" means a resident of this State who is eligible to enroll in a public elementary or secondary school, including a child entering kindergarten. [A State may include children eligible for State-funded prekindergarten.]

(d) "Parent" means a parent, legal guardian, custodian, or other person with legal authority to make education decisions on behalf of an eligible student.

(e) "Participating student" means an eligible student for whom a parent has executed an account agreement under Section 4.

(f) "Education service provider" means a school, individual, business, nonprofit organization, or other entity that receives account funds for educational goods or services, including but not limited to a private school, microschool, hybrid school, online school, tutor, therapist, curriculum vendor, postsecondary institution, or career and technical education provider.

Section 4. Eligibility, Enrollment, and Account Agreements

a) Every eligible student shall qualify for an account upon application by a parent. Eligibility shall not be conditioned on household income, disability status, prior public school enrollment, attendance at a particular school, residence within a particular district, or any other student characteristic.

b) [Optional phase in for States implementing universal eligibility over multiple years.] Notwithstanding subsection (a) for the first [two] school years, accounts shall be limited to students who:

   (1) Were enrolled in a public school during the preceding school year;

   (2) Are entering kindergarten or first grade;

   (3) Did not reside in this State during the preceding school year; or

   (4) Have a sibling who holds an account.

Beginning with the [third] school year, subsection (a) applies to all eligible students and this subsection expires.

c) Each eligible student who applies shall receive an account. The accounts shall not have an enrollment cap, lottery, waitlist, or a separate annual appropriation to deny or defer an eligible applicant. No student shall receive deposits for the period in which the student was enrolled as a full-time public school student under the [State funding formula].

d) To open an account, a parent shall execute an agreement with the Administrator promising:

   1) to ensure that the participating student receives instruction in English, mathematics, science, and history;

   2) not to enroll the student as a full-time student in a public school while receiving account deposits, except for contracted services authorized by Section 6(a)(12); and

   3) to use account funds only for qualifying expenses under this Act.

(e) A signed account agreement satisfies the compulsory school attendance requirements of [cite State statute].

(f) An account shall renew automatically for an eligible participating student. A parent may withdraw the student from the program and enroll the student in a public school at any time. Future deposits shall cease upon withdrawal; funds already deposited remain available as provided in Section 12.

(g) The Administrator shall accept applications and enroll students throughout the year, shall permit a parent to apply in advance of a later academic term, and shall approve or deny a completed application within [30] days.

(h) Every denial shall include a written explanation and notice of appeal rights.

Section 5. Funding and Deposits

a) For each participating student, the Administrator shall deposit the amount of State funding that the student would have generated under [cite State funding formula] if enrolled in the student's resident public school. The deposit shall include all applicable student-based weights and supplements, including special education weights.

b) Accounts are funded under the State's per-pupil funding formula. Funding shall adjust automatically to participating enrollment and shall not depend on a separate annual appropriation.

c) Deposits shall be made in quarterly installments. The first quarterly deposit shall be made available not later than the first instructional day. The first deposit for a renewed account shall be available before the beginning of the academic year.

d) Account deposits, lawful withdrawals, and authorized transfers are not taxable income under the laws of this State.

e) An account awarded to a student with a disability constitutes a parental placement for purposes of 20 U.S.C. § 1412(a)(10).

f) An account remains with the participating student regardless of changes in school district residence within the State.

g) Each year the Administrator shall certify to the Governor and the Legislature the projected enrollment and the funding required for the next fiscal year. Amounts necessary to fund deposits under this Act are continuously appropriated from the [State school fund].

Section 6. Qualifying Expenses

a) Account funds may be used for the following educational expenses:

   1) tuition and fees at a private school, microschool, hybrid school, or online school;
   2) curriculum, textbooks, instructional materials, and educational supplies, including supplemental materials required by a curriculum or provider;
   3) tutoring and academic coaching;
   4) individual online courses, educational software, and digital learning programs;
   5) educational therapies, including occupational, behavioral, physical, speech-language, and audiology therapies;

6) computer hardware, software, assistive technology, and other technology used primarily for the student's education;
7) fees for nationally norm-referenced assessments; college-admission, Advanced Placement, industry-certification, and comparable examinations, plus preparation courses for those examinations;
8) tuition, fees, equipment, and materials for career and technical education, apprenticeships, and workforce credential programs;
9) tuition and fees at an institution of higher education, including dual-enrollment courses;
10) tuition and fees for summer learning and after-school academic programs;
11) co-curricular and extracurricular activities, physical education programs, and educational field trips;
12) individual courses, programs, extracurricular activities, and other contracted educational services purchased from a public school or school district;
13) transportation purchased from a transportation provider to receive services from an education service provider [up to $_____ each fiscal year];
14) school uniforms required by an education service provider;
15) fees for information and counseling to assist families navigate educational options; and
16) any other expense that is primarily and directly educational in purpose and approved under the process required in Section 7.

b) The Administrator shall not require a participating student to enroll in a particular school, purchase a particular category of expense, or use account funds in a prescribed order.
c) An education service provider that receives account funds may not return any portion of them to a parent or participating student, in cash or in kind. A refund for a purchase made with account funds shall be credited directly to the account.
d) A parent may pay out of pocket for educational costs not covered by the account balance.

Section 7. Administration and Family Access

a) The Administrator may promulgate rules only as necessary to carry out this Act. A rule or administrative practice may not narrow eligibility, qualifying expenses, or provider participation beyond the terms of this Act.
b) The Administrator may contract through a competitive and transparent process with multiple nonprofit organizations or private vendors for application processing, account management, payment systems, customer service, and other administrative functions.
c) The Administrator shall operate or procure an electronic payment platform that permits direct payment to approved providers and access to pre-approved goods and services. Reimbursement shall be available as an additional method of payment but shall not be the exclusive or ordinary means by which a family uses an account.

d) The platform shall permit a parent to request approval of a new provider, good, or service. The Administrator shall issue a decision within [15] days. An item approved for one participating student shall be available to similarly situated students.

e) The Administrator shall publish a participant handbook, a searchable list of participating providers, and a record of approved and disallowed expense categories.

f) Upon a parent's request, a public school or school district shall furnish the student's education records to the parent or the parent's designated education service provider, consistent with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

g) A public school or school district that provides a course, program, extracurricular activity, or other a la carte service to a participating student shall establish reasonable fees attributable to that service. The student purchasing a la carte services shall not be counted as a full-time public-school enrollee under the [State funding formula].

h) The Administrator may establish an advisory commission composed primarily of participating parents and education service providers to advise on the implementation and improvement of the program.

Section 8. Education Service Provider Participation and Independence

a) To receive account funds, an education service provider shall submit a notice of intent to participate and certify that it will:

   1) provide the educational goods or services for which it accepts payment;

   2) refund overpayments to the applicable account;

   3) comply with generally applicable health and safety laws; and

   4) refrain from discrimination based on race, color, ethnicity, or national origin, consistent with 42 U.S.C. § 1981.

b) The Administrator shall not require accreditation, State certification or licensure of instructors, a minimum period of prior operation, or a particular educational model as a condition of participation.

c) Acceptance of account funds does not make an education service provider a State actor, agent, or recipient of a State contract. Participation shall not require a provider to alter its religious character, admissions standards, curriculum, employee-selection practices, or governance.

d) The Administrator may suspend or remove a provider that knowingly misrepresents its services or credentials or repeatedly fails to deliver paid-for goods or services. Before removal, the provider shall receive notice, an opportunity to respond, and an appeal. The Administrator shall notify affected families of suspension or removal.

Section 9. Accountability to Parents and the Public

a) A participating student shall not be required to take the State assessment administered to public-school students.

b) A parent shall ensure that a participating student in grades [3 through 8 and once in high school] takes a nationally norm-referenced assessment selected by the parent or the student's school. Results shall be reported to the parent.

c) The Administrator shall conduct an annual parent-satisfaction survey and publish an annual report containing participation, spending by category, administrative costs, and survey results. The report shall not include personally identifiable student information.

Section 10. Program Integrity and Due Process

a) The Administrator shall use risk-based auditing that concentrates review on accounts, transactions, and providers with elevated risk indicators, supplemented by random sampling. The audit process shall protect taxpayers without imposing unnecessary delay on ordinary educational purchases.

b) The Administrator shall maintain a secure method for reporting suspected fraud, waste, or abuse and shall investigate credible reports promptly.

c) Before suspending an account or taking another adverse action, the Administrator shall give the parent or provider written notice and [15] business days to respond. If the matter does not involve intentional misuse, the parent or provider may correct the deficiency or repay the disputed amount, and a repaid amount shall be credited back to the account.

d) Upon a finding of intentional misuse of account funds, the Administrator may suspend an account, recover misspent amounts, and refer the matter to the Attorney General or other appropriate law-enforcement authority. Before a final adverse action, the parent or provider shall receive an opportunity to appeal.

Section 11. Coordination with the Federal Education Freedom Tax Credit

a) Using an account does not affect a student's eligibility to receive a scholarship funded through the federal education freedom tax credit established by 26 U.S.C. § 25F, and a family may benefit from both at the same time.

b) A scholarship awarded to a participating student by a scholarship granting organization under 26 U.S.C. § 25F:

   1) shall not affect the student's eligibility under this Act;

   2) may be used alongside account funds to pay tuition or any other educational expense of the student; and

   3) is excluded from income under the tax laws of this State.

c) A scholarship shall be applied first to any expense it is restricted to covering, and account funds shall be available for the remaining qualifying expenses of the student. Account funds and a scholarship may not together pay more than the actual cost of the same expense. This subsection does not limit rollover of unspent account funds under Section 12.

Section 12. Rollover, Postsecondary Use, and Closure

a) Unused account funds shall roll over from year to year while the student remains eligible for an account.

b) When a participating student withdraws from the program and enrolls full time in a public school, deposits shall cease. Subject to subsection (c), the existing balance remains available for qualifying expenses of the student.

c) If a student does not begin participation for a term after a deposit is made, or withdraws to enroll full time in a public school, the Administrator shall recover the portion of the deposit attributable to the period the student was funded but not participating. Funds already spent on qualifying expenses shall not be recovered.

d) After high-school graduation or completion of its equivalent, the remaining account balance shall remain available for qualifying postsecondary education and workforce-training expenses until the student reaches age [26].

e) At any time after graduation and before the student reaches age [26], the parent, or the student upon reaching the age of majority, may direct the Administrator to transfer all or part of the remaining balance to a qualified tuition program under 26 U.S.C. § 529 for which the student is the designated beneficiary. The Administrator shall transfer the funds directly to the qualified tuition program, with no amount transferred under this subsection paid to the parent or student.

f) Any amount not spent or transferred by the time the student reaches age [26] shall revert to the [State education fund].

Section 13. Construction, Enforcement, and Severability

a) This Act shall be construed liberally to promote parent-directed education and the widest range of educational options consistent with program integrity.

b) No State official may impose a requirement on an education service provider as a condition of receiving account funds unless the requirement is expressly authorized by this Act.

c) A parent of an eligible or participating student may intervene in an action challenging the validity of this Act.

d) If a provision of this Act is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision.

Section 14. Effective Date

This Act takes effect upon becoming law. The Administrator shall accept applications no later than [180] days after the effective date, and the first account deposits shall be available for the next academic year.