

ENROLLED ACT NO. 53, HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2024 BUDGET SESSION

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

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

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

ARTICLE 9
WYOMING EDUCATION SAVINGS ACCOUNTS

21-2-901. Short title.

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

21-2-902. Definitions.

(a) As used in this act:

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

(ii) "Education savings account" or "ESA" means the spending account for a child's education to which funds

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are allocated by the state superintendent of public instruction, for which a parent of an ESA student enters into an agreement with the state superintendent to choose and pay for qualifying education expenses to educate the ESA student, subject to the requirements and conditions of this act;

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

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

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

(vi) "Pre-kindergarten" means an educational program with the primary goal of preparing children for kindergarten that provides up to one (1) school year of education prior to entry into kindergarten;

(vii) "Qualified school" means a pre-kindergarten or a nonpublic primary or secondary school, certified by the state superintendent of public instruction pursuant to W.S. 21-2-906(a), located in or that provides education services in this state, that may include through online means;

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(viii) "This act" means W.S. 21-2-901 through 21-2-909.

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

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

(i) Six thousand dollars (\$6,000.00) for students whose household income is at or below one hundred fifty percent (150%) of the federal poverty level;

(ii) Four thousand eight hundred dollars (\$4,800.00) for students whose household income is at or below two hundred percent (200%) of the federal poverty level but more than one hundred fifty percent (150%) of the federal poverty level;

(iii) Three thousand six hundred dollars (\$3,600.00) for students whose household income is at or below two hundred fifty percent (250%) of the federal poverty level but more than two hundred percent (200%) of the federal poverty level;

(iv) Three thousand dollars (\$3,000.00) for students whose household income is at or below three hundred percent (300%) of the federal poverty level but more than two hundred fifty percent (250%) of the federal poverty level;

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(v) Two thousand four hundred dollars (\$2,400.00) for students whose household income is at or below three hundred fifty percent (350%) of the federal poverty level but more than three hundred percent (300%) of the federal poverty level;

(vi) One thousand eight hundred dollars (\$1,800.00) for students whose household income is at or below four hundred percent (400%) of the federal poverty level but more than three hundred fifty percent (350%) of the federal poverty level;

(vii) One thousand two hundred dollars (\$1,200.00) for students whose household income is at or below four hundred fifty percent (450%) of the federal poverty level but more than four hundred percent (400%) of the federal poverty level;

(viii) Six hundred dollars (\$600.00) for students whose household income is at or below five hundred percent (500%) of the federal poverty level but more than four hundred fifty percent (450%) of the federal poverty level.

(b) Payments to ESAs under this act shall be made by the state superintendent of public instruction from the Wyoming education savings accounts expenditure account, which is hereby created. The Wyoming education savings accounts expenditure account shall consist of funds transferred to the expenditure account and other funds appropriated by the legislature to the expenditure account. All earnings from investment of the expenditure account shall be credited to the expenditure account. Any unencumbered, unobligated balance of the expenditure account at the end of each fiscal year shall not revert but

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shall remain in the expenditure account and shall be expended to fund ESAs as provided by this act.

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

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

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

(i) The child has not graduated from high school or received a high school equivalency certificate and is eligible to attend a public school in this state; or

(ii) The child is not less than four (4) years of age as of August 1 of the year in which the application for an ESA is made and has not yet attained the age to attend public school in this state.

(b) To participate in the ESA program, the custodial parent of an ESA student shall sign an agreement with the state superintendent that:

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

(A) Tuition and fees at a qualified school;

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

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

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

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

(F) Educational software and applications;

(G) School uniforms;

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

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

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

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

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

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

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

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

(A) Requires that the ESA student receive instruction in, at minimum, reading, writing, mathematics, civics, including studies of the United States constitution and the constitution of the state of Wyoming, history, literature and science. No parent shall be required to include any instruction that conflicts with the parent's or the ESA student's religious doctrines;

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

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

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

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

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

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

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

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

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

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instruction in a non-school setting shall not be construed to be a student of a home-based educational program as defined in W.S. 21-4-101(a)(v).

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

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

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

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

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

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

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

(iii) Funds are available for the ESA;

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

(e) Except as provided under this subsection, eight percent (80%) of the ESAs shall be awarded to students eligible pursuant to W.S. 21-2-904(a)(i) and the remaining twenty percent (20%) shall be awarded to students eligible pursuant to W.S. 21-2-904(a)(ii) each year. Any funds allocated under this subsection for the award of ESAs to students eligible pursuant to W.S. 21-2-904(a)(ii) that are not awarded in any school year may be awarded to students eligible pursuant to W.S. 21-2-904(a)(i). If the number of applications for ESAs exceeds the available funds for any school year, the students shall be selected on a first-come, first-served basis, except preference shall be given to an eligible student who received funds under the ESA program in the immediately preceding school year.

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

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

(ii) Upon notice to the state superintendent, an ESA student may choose to stop receiving an ESA and enroll full-time in a public school. Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds to the student's ESA and the state superintendent may close the ESA. If an eligible student applies to the state superintendent to

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return to the ESA program, payments into the student's existing ESA may resume if the ESA is still open and active. A new ESA may be established if an eligible student's ESA was closed;

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

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

(a) The state superintendent of public instruction shall:

(i) Establish a certification process for education service providers, which shall, at minimum, ensure ESA students attending qualified schools in kindergarten through grade twelve (12) receive instruction in reading, writing, mathematics, civics, including studies of the United States constitution and the constitution of the state of Wyoming, history, literature and science and for pre-kindergarten ensure ESA students at minimum receive instruction necessary for preparation to enter kindergarten;

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

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

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

(v) If determined necessary by the state superintendent, contract with one (1) or more private organizations to administer the ESA program or specific functions of the ESA program including, without limitation, contracting with private financial management firms to manage ESAs. The state superintendent shall comply with applicable procurement statutes and rules in securing services under this paragraph;

(vi) Implement a commercially viable, cost-effective and user-friendly system for payment of services from ESAs to education service providers by electronic or online funds transfer. The payment system shall not rely exclusively on requiring parents to be reimbursed for out-of-pocket expenses. The payment system shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for pre-approval of and reimbursements for qualifying expenses listed in W.S. 21-2-904(b)(i). The

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state superintendent may contract with private organizations to develop the payment system;

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

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

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

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

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

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

(ix) Investigate reports of intentional and substantial misuse of ESA funds and prohibit an eligible ESA student from receipt of ESA funds if the state superintendent determines that the ESA student or ESA student's parent intentionally and substantially misused ESA funds. The state superintendent shall by rule create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred. The state superintendent shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the department of audit

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or the attorney general for investigation if evidence of fraudulent use of ESA funds is obtained;

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

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

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

(xi) Notify parents and ESA students within ten (10) business days if the state superintendent prohibits an education service provider from receiving ESA funds under paragraph (x) of this subsection;

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

(b) If an education service provider requires partial payment of tuition or fees prior to the start of the school year to reserve space for an ESA student admitted to the education service provider, the state superintendent may

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certify the partial payment prior to the start of the school year in which the ESA is awarded and deduct that amount from subsequent quarterly ESA deposits. If an ESA student decides not to use the education service provider, the partial payment made under this subsection shall be returned to the state superintendent by the education service provider and credited to the student's ESA.

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

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

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

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

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

21-2-907. Education service providers.

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

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

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

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

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

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

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

(f) An education service provider shall not be required to alter its creed, practices, admission policy or curriculum to accept payments authorized by a parent from an ESA.

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

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

21-2-909. Legal liability.

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

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

21-4-102. When attendance required; exemptions; withdrawal.

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

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

(a) Except as otherwise provided by law, the public schools of each school district in the state shall at all times be equally free and accessible to all children resident therein of five (5) years of age as of August 1, or September 15 if pursuant to an approved request under W.S. 21-3-110(a)(xxxviii), of the year in which they may

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register in kindergarten as provided in W.S. 21-4-302(b) and under the age of twenty-one (21), subject to regulations of the board of trustees. Each school district shall operate its schools and its classes for a minimum of one hundred seventy-five (175) days each school year unless an alternative schedule has been approved by the state board. Prior to submission of a proposed alternative schedule to the state board, the board of trustees shall hold at least two (2) advertised public meetings within the district, at which the board shall present the proposed alternative schedule and respond to public questions and comments. Any school district operating under an alternative schedule shall annually evaluate the effectiveness of that schedule in meeting the educational goals and purposes for which the schedule was adopted.

(b) A parent, guardian or other person having control or charge of any child eligible to attend public school in Wyoming under subsection (a) of this section shall have the option to apply for the ESA program specified by W.S. 21-2-901 on behalf of the child.

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

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

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(ix) The amount of tuition paid to the district during the previous school year, including any amount charged under W.S. 21-4-501 and any amount assessed in excess of the costs incurred for adult education programs, summer school programs, programs provided under an agreement for cooperative educational programs under W.S. 21-20-101 through 21-20-111 and any amount assessed for programs and services for children with disabilities, but excluding any tuition assessed by a district for the provision of virtual education programs to participating students pursuant to W.S. 21-13-330, any tuition assessed by a district for the provision of part-time educational programs to participating students pursuant to W.S. 21-2-904(b)(i)(C) and 21-4-502(c), any revenues received by a district from post secondary education option programs provided under W.S. 21-20-201 or for the provision of educational programs to a nonresident student placed in a juvenile detention facility pursuant to an agreement with the student's resident school district;

Section 3. There is appropriated twenty million dollars (\$20,000,000.00) from the general fund to the education savings accounts expenditure account created by W.S. 21-2-903(b) for purposes of the Wyoming education savings accounts program. This appropriation shall be subject to the terms of W.S. 21-2-903(b).

Section 4.

(a) The department of education is authorized two (2) full-time employees for the purposes of this act. There is appropriated four hundred eighty thousand dollars (\$480,000.00) from the general fund for the salary and benefits of the positions created by this section for the period beginning July 1, 2024 and ending June 30, 2026.

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These funds shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law. It is the intent of the legislature that four hundred eighty thousand dollars (\$480,000.00) and these positions be included in the department of education's standard budget for the immediately succeeding fiscal biennium.

(b) There is appropriated to the department of education four hundred thousand dollars (\$400,000.00) from the general fund for contractual services (900 series) necessary to implement this act for the period beginning July 1, 2024 and ending June 30, 2026. These funds shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law. It is the intent of the legislature that four hundred thousand dollars (\$400,000.00) for contractual services (900 series) necessary to implement this act be included in the department of education's standard budget for the immediately succeeding fiscal biennium. As a condition of this appropriation, the department of education shall regularly report on the expenditures from the appropriation under this subsection to the legislature through the joint education interim committee.

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

ORIGINAL HOUSE
BILL NO. HB0166

ENGROSSED

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Section 6.

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

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

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk