

118TH CONGRESS  
1ST SESSION

# H. R. 66

To expand opportunity for Native American children through additional options in education, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2023

Mr. BIGGS introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To expand opportunity for Native American children through additional options in education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Native American Edu-  
5 cation Opportunity Act”.

6 **SEC. 2. NATIVE AMERICAN EDUCATION OPPORTUNITY PRO-**  
7 **GRAM.**

8 (a) IN GENERAL.—Part B of title XI of the Edu-  
9 cation Amendments of 1978 (25 U.S.C. 2000 et seq.) is  
10 amended—

1           (1) by redesignating section 1141 as section  
2           1142; and

3           (2) by inserting after section 1140 the fol-  
4           lowing:

5   **“SEC. 1141. FUNDING OF TRIBAL-BASED EDUCATION SAV-**  
6                           **INGS ACCOUNT PROGRAMS.**

7           “(a) PROGRAM AUTHORIZED.—

8                   “(1) DISBURSEMENTS.—At the request of  
9           Tribes, the Secretary of Education and the Sec-  
10          retary of the Interior shall, for the 2023–2024  
11          school year and each subsequent school year, dis-  
12          burse amounts transferred under section 2101(a)(2)  
13          of the Elementary and Secondary Education Act of  
14          1965 (20 U.S.C. 6611(a)(2)) for the fiscal year to  
15          such Tribes that administer education savings ac-  
16          count programs to enable the Tribes to award grants  
17          to education savings accounts for ESA eligible stu-  
18          dents for such school year, in accordance with sub-  
19          section (b).

20                   “(2) APPLICABILITY.—This section shall apply  
21          with respect to ESA eligible students who have sub-  
22          mitted their application for participation under this  
23          section to the Tribe of which the student is an en-  
24          rolled member on or after January 1, 2023.

1           “(3) ACCOUNT ADMINISTRATION.—A Tribe may  
2 enter into an agreement with a nonprofit entity for  
3 the administration of the accounts created through  
4 the Tribe’s education savings account program.

5           “(4) REQUIRED USE OF FUNDS.—Funds dis-  
6 bursed to a Tribe under this section shall be used  
7 to deposit \$8,000 each year in the Tribal education  
8 savings accounts of ESA eligible students who have  
9 not yet attained a regular high school diploma or its  
10 recognized equivalent.

11           “(5) PERMISSIBLE USE OF FUNDS.—Funds dis-  
12 bursed to a Tribe under this section may be used  
13 for—

14                   “(A) private tutoring, including academic,  
15 Native language, or cultural tutoring;

16                   “(B) costs of attendance at a private ele-  
17 mentary school or secondary school recognized  
18 by the State, which may include a private  
19 school that has a religious mission;

20                   “(C) private online learning programs;

21                   “(D) services provided by a public elemen-  
22 tary school or secondary school attended by the  
23 child on a less than full-time basis, including in-  
24 dividual classes and extracurricular activities  
25 and programs;

1           “(E) textbooks, curriculum programs, or  
2 other instructional materials, including any sup-  
3 plemental materials required by a curriculum  
4 program, private school, private online learning  
5 program, or a public school, or any parent di-  
6 rected curriculum associated with K–12 edu-  
7 cation;

8           “(F) computer hardware or other techno-  
9 logical devices that are used to help meet a stu-  
10 dent’s educational needs, except that such hard-  
11 ware or devices may not be purchased by a par-  
12 ent more than once in an 18-month period;

13           “(G) educational software and applica-  
14 tions;

15           “(H) uniforms purchased for attendance at  
16 a private school recognized by the State;

17           “(I) fees for nationally standardized as-  
18 sessment exams, advanced placement exams,  
19 any exams related to college or university ad-  
20 mission, or tuition or fees for preparatory  
21 courses for such exams;

22           “(J) fees for summer education programs  
23 and specialized after-school education programs  
24 (but not including after-school childcare);

1           “(K) educational services and therapies,  
2 including occupational, behavioral, physical,  
3 speech-language, and audiology therapies;

4           “(L) transportation to receive a service  
5 under paragraph (4);

6           “(M) costs of attendance at an institution  
7 of higher education;

8           “(N) costs associated with an apprentice-  
9 ship or other vocational training program;

10           “(O) fees for State-recognized industry  
11 certification exams, and tuition or fees for pre-  
12 paratory courses for such exams;

13           “(P) contributions to a college savings ac-  
14 count, which may include contributions to a  
15 qualified tuition program (as defined in section  
16 529(b)(1)(A) of the Internal Revenue Code of  
17 1986) or other prepaid tuition plan offered by  
18 a State; or

19           “(Q) any other educational expenses ap-  
20 proved by the Secretary.

21           “(b) DISBURSEMENTS.—

22           “(1) ANNUAL DISBURSEMENTS.—A Tribe that  
23 receives a disbursement amount under subsection (a)  
24 shall make semi-annual distributions of such amount

1 to education savings accounts for ESA eligible stu-  
2 dents.

3 “(2) LIMITATION.—A Tribe shall allocate not  
4 more than 5 percent of the amount received per  
5 pupil under this section to the administration of the  
6 education savings account programs of the Tribe.

7 “(3) ROLL OVER AND REMAINING FUNDS IN AN  
8 ACCOUNT.—Amounts remaining in the Tribal edu-  
9 cation savings account of a student at the end of a  
10 school year shall remain available until expended for  
11 use in accordance with this section.

12 “(4) TERMINATION AND RETURN OF FUNDS.—  
13 The Tribal education savings account of a student  
14 shall terminate on—

15 “(A) the date on which the student enrolls  
16 in a public elementary school or secondary  
17 school on a full-time basis;

18 “(B) in the case of a student who is pur-  
19 suing postsecondary education, the earlier of—

20 “(i) the date on which the student  
21 completes postsecondary education; or

22 “(ii) the date on which the student at-  
23 tains the age of 25 years;

1           “(C) in the case of a student who is an in-  
2           dividual with a disability, the date on which the  
3           student attains the age of 26 years; or

4           “(D) in the case of an individual not de-  
5           scribed in subparagraph (B) or (C), the earlier  
6           of—

7                   “(i) the date on which the student at-  
8                   tains the age of 25 years; or

9                   “(ii) the expiration of any 2-year pe-  
10                  riod during which funds in the account are  
11                  not used in accordance with this section.

12           “(c) COMPULSORY ATTENDANCE REQUIREMENTS.—  
13           A State that receives funds under this title shall consider  
14           a child with a Tribal education savings account for a  
15           school year as meeting the State’s compulsory school at-  
16           tendance requirements for such school year.

17           “(d) SPECIAL RULE.—In the case of a child with a  
18           Tribal education savings account who attends a public  
19           school on a less than full-time basis in a school year—

20                   “(1) the child may not attend the public school  
21                   free of charge; and

22                   “(2) funds in the account, in an amount deter-  
23                   mined pursuant to an agreement between the parent  
24                   of the child and the local educational agency con-

1       cerned, shall be used to pay for the child’s costs of  
2       attendance at such school.

3       “(e) TRIBAL CONSULTATION.—

4               “(1) IN GENERAL.—Before providing edu-  
5       cational services to ESA eligible students, and on an  
6       annual basis thereafter, a participating educational  
7       service provider shall engage in consultation with ap-  
8       propriate tribal officials before providing educational  
9       services to ESA eligible students.

10              “(2) DOCUMENTATION.—The participating edu-  
11       cational service provider shall maintain in the pro-  
12       vider’s records and provide to the Bureau of Indian  
13       Education a written affirmation signed by the ap-  
14       propriate officials of the participating tribes or tribal  
15       organizations approved by the tribes that the con-  
16       sultation required by this section has occurred. If  
17       such officials do not provide such affirmation within  
18       a reasonable period of time, the affected educational  
19       service provider shall forward documentation that  
20       such consultation has taken place to the Bureau of  
21       Indian Education.

22              “(3) RULE OF CONSTRUCTION.—Nothing in  
23       this section shall be construed to require the partici-  
24       pating educational service provider to determine who  
25       are the appropriate officials.



1           “(4) LIMITATION.—Consultation required under  
2           this section shall not interfere with the timely ap-  
3           proval and operation of participating educational  
4           service providers.

5           “(f) RULE OF CONSTRUCTION.—A grant awarded to  
6           an ESA eligible student under this section shall be consid-  
7           ered assistance to the student and shall not be considered  
8           assistance to a school that enrolls the ESA eligible student  
9           or any other educational service provider from which the  
10          ESA eligible student receives services. The amounts pro-  
11          vided on behalf of an ESA eligible student under this sec-  
12          tion shall not be treated as income of the parent or the  
13          student for purposes of Federal tax laws or for deter-  
14          mining eligibility for any other Federal program.

15          “(g) TERMINATION.—The authority to carry out this  
16          section shall expire on the date that is 5 years after the  
17          date of the enactment of this Act.

18          “(h) DEFINITIONS.—In this section:

19                  “(1) APPROPRIATE OFFICIALS.—The term ‘ap-  
20                  propriate officials’ means—

21                          “(A) tribal officials who are elected; or

22                          “(B) appointed tribal leaders or officials  
23                  designated in writing.

24                  “(2) EDUCATIONAL SERVICE PROVIDER.—The  
25                  term ‘educational service provider’ means an edu-

1        cational service provider that has entered into an  
2        agreement with a Tribe.

3            “(3) ESA ELIGIBLE STUDENT.—The term  
4        ‘ESA eligible student’ means an individual who is—

5            “(A) an elementary school or secondary  
6        school Tribal enrolled student who attended a  
7        school operated by the Bureau of Indian Edu-  
8        cation in the semester preceding the date on  
9        which the student first applies for participation  
10       in an education savings account program; or

11           “(B) a child who—

12           “(i) will be eligible to attend a school  
13        operated by the Bureau of Indian Edu-  
14        cation for kindergarten or any other ele-  
15        mentary school grade in the next semester  
16        that will start after the date on which the  
17        student first applies for participation in an  
18        education savings account program; or

19           “(ii) will not be attending a school op-  
20        erated by the Bureau of Indian Education,  
21        receiving an education savings account  
22        from another Tribe, or attending a public  
23        elementary school or secondary school,  
24        while the student is participating in an

1 education savings account program of a  
2 Tribe.

3 “(4) EDUCATION SAVINGS ACCOUNT PRO-  
4 GRAM.—The term ‘education savings account pro-  
5 gram’ means a program administered by a Tribe in  
6 which the Tribe awards a grant to an account man-  
7 aged by the Tribe or a nonprofit entity on behalf of  
8 a parent of an elementary school or secondary school  
9 student from which the parent may purchase goods  
10 and services needed for the education of the student.

11 “(5) NONPROFIT ENTITY DEFINED.—In this  
12 paragraph, the term ‘nonprofit entity’ means an en-  
13 tity that is described in the section 501(c)(3) of the  
14 Internal Revenue Code of 1986 and is exempt from  
15 taxation under section 501(a) of such Code.

16 “(6) PARENT.—The term ‘parent’ has the  
17 meaning given the term in section 8101 of the Ele-  
18 mentary and Secondary Education Act of 1965 (20  
19 U.S.C. 7801).

20 “(7) TRIBE.—The term ‘Tribe’ means any rec-  
21 ognized Indian tribe included on the current list  
22 published by the Secretary under section 104 of the  
23 Federally Recognized Indian Tribe Act of 1994 (25  
24 U.S.C. 5131).”.

1 (b) CONFORMING AMENDMENT.—Section 1126(c) of  
2 the Education Amendments of 1978 (25 U.S.C. 2006(e))  
3 is amended by striking “section 1141(12)” and inserting  
4 “section 1142(12)”.

5 **SEC. 3. AMENDMENTS TO THE ELEMENTARY AND SEC-**  
6 **ONDARY EDUCATION ACT OF 1965.**

7 Section 2101(a) of the Elementary and Secondary  
8 Education Act of 1965 (20 U.S.C. 6611(a)) is amended  
9 at the end by inserting the following new paragraph:

10 “(3) one-half of one percent for Tribes that ad-  
11 minister education savings account programs under  
12 section 1141 of part B of title XI of the Education  
13 Amendments of 1978 (25 U.S.C. 2000 et seq.).”.

14 **SEC. 4. CHARTER SCHOOLS AUTHORIZED.**

15 (a) IN GENERAL.—The Bureau of Indian Education  
16 is authorized to approve and fund a Bureau-Funded Char-  
17 ter School at any school operated or funded by the Bureau  
18 of Indian Education.

19 (b) USE OF BUREAU FACILITIES.—Tribes are au-  
20 thorized to use existing Bureau of Indian Education facili-  
21 ties for the operation, management, and expansion of  
22 grades in Bureau-funded charter schools, as defined in  
23 section 4(d)(1).

24 (c) USE OF FUNDS.—Funds dispersed to tribes  
25 under this section may be used for subcontracts with a

1 tribal organization or developer to manage or operate Bu-  
2 reau-funded charter schools.

3 (d) DEFINITIONS.—In this section:

4 (1) BUREAU-FUNDED CHARTER SCHOOL.—The  
5 term “Bureau-Funded Charter School” means a  
6 school that—

7 (A) is approved by the Tribal government  
8 where the school operates and is approved and  
9 funded by the Bureau of Indian Education;

10 (B) is exempt from significant Federal,  
11 State, or local rules that inhibit the flexible op-  
12 eration and management of Bureau-funded  
13 schools, but not from any rules relating to the  
14 other requirements of this paragraph;

15 (C) is created by a developer as a Bureau-  
16 funded school, or is adapted by a developer  
17 from an existing Bureau-funded school;

18 (D) operates in pursuit of a specific set of  
19 educational objectives determined by the  
20 school’s developer and agreed to by each Tribe  
21 served and the Bureau of Indian Education;

22 (E) provides a program of elementary or  
23 secondary education, or both;

24 (F) is not affiliated with a sectarian school  
25 or religious institution;

1 (G) does not charge tuition;

2 (H) complies with the Age Discrimination  
3 Act of 1975 (42 U.S.C. 6101 et seq.), title VI  
4 of the Civil Rights Act of 1964 (42 U.S.C.  
5 2000d et seq.), title IX of the Education  
6 Amendments of 1972 (20 U.S.C. 1681 et seq.),  
7 section 504 of the Rehabilitation Act of 1973  
8 (29 U.S.C. 794), the Americans with Disabil-  
9 ities Act of 1990 (42 U.S.C. 12101 et seq.),  
10 section 1232g of this title (commonly referred  
11 to as the “Family Educational Rights and Pri-  
12 vacy Act of 1974”), and part B of the Individ-  
13 uals with Disabilities Education Act (20 U.S.C.  
14 1411 et seq.);

15 (I) is a school to which parents choose to  
16 send their children, and that—

17 (i) admits students on the basis of a  
18 lottery, consistent with section  
19 4303(c)(3)(A) of the Elementary and Sec-  
20 ondary Education Act of 1965 (20 U.S.C.  
21 7221b(c)(3)(A)), if more students apply  
22 for admission than can be accommodated;  
23 or

24 (ii) automatically enrolls students who  
25 are enrolled in the immediate prior grade

1 level of Bureau-funded schools and, for any  
2 additional student openings or student  
3 openings created through regular attrition  
4 in student enrollment in the affiliated  
5 charter school and the enrolling school, ad-  
6 mits students on the basis of a lottery as  
7 described in clause (i);

8 (J) agrees to comply with the same Fed-  
9 eral audit requirements as do other Bureau-  
10 funded schools, unless such Federal audit re-  
11 quirements are waived by the Bureau of Indian  
12 Education;

13 (K) meets all applicable Federal health  
14 and safety requirements;

15 (L) operates in accordance with Federal  
16 law;

17 (M) has a written performance contract  
18 with the Bureau of Indian Education that in-  
19 cludes a description of how student perform-  
20 ance will be measured in charter schools pursu-  
21 ant to assessments that are required of other  
22 schools and pursuant to any other assessments  
23 mutually agreeable to the Bureau of Indian  
24 Education, tribe(s) served, and the charter  
25 school; and

1 (N) may serve students in early childhood  
2 education programs.

3 (2) DEVELOPER.—The term “developer” means  
4 an individual or group of individuals (including a  
5 public, private, or tribal nonprofit organization),  
6 which may include teachers, administrators and  
7 other school staff, parents, or other members of the  
8 local community in which a charter school project  
9 will be carried out.

10 **SEC. 5. GAO STUDY.**

11 Not later than 3 years after the date of enactment  
12 of this Act, the Comptroller General of the United States  
13 shall—

14 (1) conduct a review of the implementation of  
15 the programs established by this Act during the pre-  
16 ceding 3-year period, including any factors impact-  
17 ing increased participation in education savings ac-  
18 count programs established pursuant to the amend-  
19 ments made by this Act;

20 (2) submit a report describing the results of the  
21 review under paragraph (1) to—

22 (A) the Committee on Indian Affairs of the  
23 Senate; and

24 (B) the Subcommittee on Indian, Insular  
25 and Alaska Native Affairs of the Committee on



1           Natural Resources of the House of Representa-  
2           tives; and

3           (3) make the report described in paragraph (2)  
4           publicly available.

5 **SEC. 6. SEVERABILITY.**

6           If any provision of this Act, or an amendment made  
7 by this Act, or the application of such provision or amend-  
8 ment to any person or circumstance, is held to be invalid,  
9 the remainder of this Act, or an amendment made by this  
10 Act, or the application of such provision to other persons  
11 or circumstances, shall not be affected.

○