

Introduced by

Representatives Kading, Louser, Meier, Schatz, Strinden

Senators Dwyer, Larson, Myrdal

1 A BILL for an Act to create and enact chapter 15.1-39 of the North Dakota Century Code,  
2 relating to the establishment of an education empowerment program; and to provide an  
3 appropriation.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 15.1-39 of the North Dakota Century Code is created and enacted as  
6 follows:

7 **15.1-39-01. Definitions.**

8 For purposes of this chapter, unless the context otherwise requires:

- 9 1. "Account" means an education empowerment account established under the program.
- 10 2. "Course documentation" means records from a qualified provider or school indicating  
11 course completion.
- 12 3. "Curriculum" means a complete course of study for a particular content area or grade  
13 level.
- 14 4. "Instructional material" means any supplemental materials required to administer a  
15 curriculum.
- 16 5. "Parent" means a resident of this state who is a parent, conservator, legal guardian,  
17 custodian, or other individual with legal authority to act on behalf of a program  
18 participant.
- 19 6. "Program" means the education empowerment program created under this chapter.
- 20 7. "Program participant" means a child participating in the program.
- 21 8. "Qualified provider" means an educational service provider or vendor, including a  
22 nonpublic school or a tutor, licensed or accredited by a state, regional, or national  
23 accrediting organization if applicable, which accepts education empowerment funds,  
24 from an approved vendor list as determined by the superintendent of public instruction.

1        **15.1-39-02. Program and account establishment and management.**

2        1. The superintendent of public instruction shall establish and administer the program to  
3        provide funds for qualified education expenses of program participants.

4        2. The superintendent of public instruction shall create and fund an account to pay  
5        qualified providers on behalf of a program participant who is eligible for the program.

6        3. For each year of program participation by a program participant enrolled in public or  
7        nonpublic school, the superintendent of public instruction shall disburse payments  
8        from the account as checks payable to the parents of an eligible student. The  
9        superintendent shall mail the checks to the qualifying school at which the eligible  
10       student is enrolled. The parent of the eligible student shall endorse the check before  
11       the check is deposited. The superintendent shall provide the parents with an amount  
12       up to:

13       a. Fifty percent of the per-student payment rate reduced by the state average  
14       percentage of local revenue required to be subtracted to determine state aid  
15       payments under section 15.1-27-04.1 for the prior fiscal year; or

16       b. Fifty percent of the per-student payment rate reduced by the state average  
17       percentage of local revenue required to be subtracted to determine state aid  
18       payments under section 15.1-27-04.1 for the prior fiscal year weighted to the  
19       state's funding formula, if the participant has an active individualized education  
20       plan.

21       4. A parent of a program participant under subsection 3 may choose any education  
22       method, including nonpublic school, private tutor, online learning, or other qualified  
23       provider, which best serves the needs of the program participant.

24       5. The superintendent of public instruction may contract with a third party to administer  
25       the program and manage accounts for the program. The superintendent of public  
26       instruction shall oversee and audit the contractor.

27       6. The superintendent of public instruction shall provide information regarding the  
28       program to the public, including through the superintendent of public instruction's  
29       website. The superintendent of public instruction shall ensure parents of children who  
30       have disabilities or educational disadvantages are aware of the program.

1       **15.1-39-03. Program eligibility.**

2       A child is eligible for the program if the child is eligible to attend kindergarten through grade  
3 five at a public school in this state.

4       **15.1-39-04. Qualified education expenses.**

5       1. Program funds may be used to pay the following qualified education expenses:

6           a. Tuition, books, instructional materials, and fees at an accredited nonpublic  
7 school.

8           b. Textbook purchases.

9           c. Curriculum purchases.

10          d. Computer and any other hardware purchases that may be approved by the  
11 program administrator every three years.

12          e. Instructional material purchases.

13          f. Professional fees of a private tutor or teaching services.

14          g. Professional fees of a practitioner or provider of educational therapies or  
15 services.

16          h. Fees for a nationally standardized, norm-referenced achievement test or  
17 examination.

18          i. Educational services purchased from a public school, but which do not qualify the  
19 participant to be counted in daily attendance at the school.

20       2. Program funds may not be used for the purchase of food or child care provided before  
21 or after school hours or during holidays and vacations.

22       3. This section does not limit the ability of a program participant to pay a qualified  
23 provider with funds other than program funds for educational courses, materials,  
24 supplies, or services not covered by the program.

25       **15.1-39-05. Application for program.**

26       1. A parent may enroll an eligible child in the program for the next school year at any time  
27 during a calendar year.

28       2. The superintendent of public instruction shall use a standardized enrollment form to  
29 determine a child's eligibility for the program. The superintendent of public instruction  
30 shall make the enrollment form readily available through various sources, including the  
31 superintendent of public instruction's website, fax, and mail.

1       3. The superintendent of public instruction shall provide to each applicant and annually to  
2       each program participant information that describes the operation of the program  
3       including the list of qualified education expenses; expense reporting requirements; a  
4       list of qualified providers, including nonpublic schools participating in the program; and  
5       a description of the responsibilities of program participants and the superintendent of  
6       public instruction.

7       **15.1-39-06. Achievement testing.**

- 8       1. A parent shall arrange for the program participant to be administered a nationally  
9       recognized norm-referenced achievement test each year unless the program  
10       participant is attending a nonpublic school and the school administers the program  
11       participant a national norm-referenced assessment.
- 12       2. The parent shall report the results of the assessment to an independent researcher  
13       selected by the superintendent of public instruction through procurement practices,  
14       including a request for proposals. The independent researcher shall aggregate the test  
15       scores for all program participants and produce an annual report containing the  
16       aggregated results. Each report of the independent researcher must document  
17       changes in assessment scores of program participants. The first report must be  
18       produced three years after the program commences.
- 19       3. The requirements of subsection 1 do not apply if the parent notifies the school district  
20       in which the program participant resides, and the independent researcher selected by  
21       the superintendent of public instruction, that the parent has a philosophical, moral, or  
22       religious objection to the use of norm-referenced achievement tests.

23       **15.1-39-07. Administration of accounts.**

- 24       1. The superintendent of public instruction shall issue a request for proposals if the  
25       superintendent of public instruction chooses to hire a contractor to manage accounts  
26       under the program. The contractor shall establish an account as a qualified provider.
- 27       2. Any funds remaining in the account at the end of a school year revert to the state  
28       general fund.

29       **15.1-39-08. Auditing of accounts.**

30       To ensure compliance with applicable law and the requirements of the program, the  
31       superintendent of public instruction annually may audit a sufficient number of program

1 accounts, as determined by the superintendent of public instruction. An audit may include  
2 verification of account information and a review of student attendance records.

3 **15.1-39-09. Suspension of accounts.**

4 The superintendent of public instruction shall suspend payment for any program participant  
5 who fails to comply with applicable law or the requirements of the program. The superintendent  
6 of public instruction shall notify the program participant in writing the payment has been  
7 suspended. The notification must specify the grounds for the suspension and state the program  
8 participant has ten business days to respond and take any corrective action ordered by the  
9 superintendent of public instruction. Following the expiration of the ten-day period, the  
10 superintendent of public instruction shall:

- 11 1. Order permanent suspension of payment to the qualified provider for the participant  
12 ineligible for the program;
- 13 2. Order temporary reinstatement of the payment, conditioned on the performance of  
14 specified action by the program participant; or
- 15 3. Order full reinstatement of the payments.

16 **15.1-39-10. Rates and rebates - Restrictions.**

17 A qualified provider may not:

- 18 1. Charge a program participant an amount greater than the standard rate charged to  
19 nonparticipants for the item or service provided.
- 20 2. Share with or refund, credit, or rebate to a parent or program participant, or any  
21 person on behalf of a parent or program participant, any program funds paid or owed  
22 by the program participant to the qualified provider.

23 **15.1-39-11. Referral to the attorney general.**

24 If the superintendent of public instruction obtains evidence of any fraudulent use of  
25 payments, the superintendent of public instruction shall refer the matter to the attorney general  
26 for investigation and prosecution.

27 **15.1-39-12. Limitation on regulation of qualified providers.**

- 28 1. The program does not expand the regulatory authority of the superintendent of public  
29 instruction, or any school district to impose additional regulations on a qualified  
30 provider under the program beyond what is necessary by the superintendent of public  
31 instruction to enforce the financial and administrative requirements of the program.

1           The superintendent of public instruction and school districts may not regulate the  
2           educational program of a qualified provider under the program.

3           2. A qualified provider may not be required to alter its creed, practices, admissions policy,  
4           or curriculum to accept a student whose parent pays tuition or fees from an education  
5           empowerment account or to participate as a qualified provider.

6           **15.1-39-13. Student records.**

7           Upon request, a school district a program participant otherwise would attend shall provide  
8           the parent or the participating nonpublic school the program participant attends a complete copy  
9           of the program participant's school records. This section does not require or authorize the  
10          release of information except in conformity with the Family Educational Rights and Privacy Act  
11          of 1974 [20 U.S.C. 1232g].

12          **15.1-39-14. Annual survey.**

13          The superintendent of public instruction annually may request a parent to complete a  
14          written survey that solicits the parent's overall satisfaction with the program and opinion on  
15          specified topics and issues relevant to the effectiveness of the program.

16          **15.1-39-15. Rules.**

17          The superintendent of public instruction shall adopt rules, procedures, and forms necessary  
18          to implement the program.

19          **15.1-39-16. Applicability.**

20          Funds must be available to program participants starting with the 2022-23 school year.

21          **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general  
22          fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the  
23          sum as may be necessary, to the department of public instruction for the purpose of providing  
24          salaries for temporary administrators of the program under section 1 of this Act, for the  
25          biennium beginning July 1, 2021, and ending June 30, 2023.

26          **SECTION 3. APPROPRIATION.** There is appropriated out of any moneys in the general  
27          fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the  
28          sum as may be necessary, to the department of public instruction for the purpose of funding  
29          program participants of the education empowerment program under subsection 4 of section  
30          15.1-39-02, for the biennium beginning July 1, 2021, and ending June 30, 2023.