

**HOUSE BILL NO. 1369**

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. ~~"Financial institution" means a bank, credit union, or savings and loan association~~  
15 ~~organized under state or federal law which has its main office or a branch office in this~~  
16 ~~state.~~

17 ~~5. "Instructional material" means any supplemental materials required to administer a~~  
18 ~~curriculum.~~

19 ~~6.5. "Parent" means a resident of this state who is a parent, conservator, legal guardian,~~  
20 ~~custodian, or other individual with legal authority to act on behalf of a program~~  
21 ~~participant.~~

22 ~~7.6. "Program" means the education empowerment program created under this chapter.~~

23 ~~8.7. "Program participant" means a child participating in the program.~~

1 9.8. "Qualified provider" means an educational service provider or vendor, including a  
2 nonpublic school or a tutor, licensed or accredited by a state, regional, or national  
3 accrediting organization if applicable, which accepts education empowerment funds,  
4 from an approved vendor list as determined by the superintendent of public  
5 instruction.

6 **15.1-39-02. Program and account establishment and management.**

- 7 1. The superintendent of public instruction shall establish and administer the program to  
8 provide funds for qualified education expenses of program participants.
- 9 2. The superintendent of public instruction shall create and fund an account for each to  
10 pay qualified providers on behalf of a program participant, who may use the funds in  
11 the account only as permitted under this chapter who is eligible for the program.
- 12 3. For each year of program participation by a program participant enrolled in public  
13 school, the superintendent of public instruction shall fund the participant's account with  
14 an amount that is:
- 15 ~~a. Twenty percent of the per student payment rate reduced by the state average~~  
16 ~~percentage of local revenue required to be subtracted to determine state aid~~  
17 ~~payments under section 15.1-27-04.1 for the prior fiscal year; or~~
- 18 ~~b. Twenty percent of the per student payment rate reduced by the state average~~  
19 ~~percentage of local revenue required to be subtracted to determine state aid~~  
20 ~~payments under section 15.1-27-04.1 for the prior fiscal year weighted to the~~  
21 ~~state's funding formula, if the participant has an active individualized education~~  
22 ~~plan.~~
- 23 ~~4. For each year of program participation by a program participant enrolled in public or~~  
24 ~~nonpublic school, the superintendent of public instruction shall fund the participant's~~  
25 ~~account~~ disburse payments from the account as checks payable to the parents of an  
26 eligible student. The superintendent shall mail the checks to the qualifying school at  
27 which the eligible student is enrolled. The parent of the eligible student shall endorse  
28 the check before the check is deposited. The superintendent shall provide the parents  
29 with an amount that is up to:

- 1           a. ~~Seventy-five~~Fifty percent of the per-student payment rate reduced by the state  
2           average percentage of local revenue required to be subtracted to determine state  
3           aid payments under section 15.1-27-04.1 for the prior fiscal year; or  
4           b. ~~Seventy-five~~Fifty percent of the per-student payment rate reduced by the state  
5           average percentage of local revenue required to be subtracted to determine state  
6           aid payments under section 15.1-27-04.1 for the prior fiscal year weighted to the  
7           state's funding formula, if the participant has an active individualized education  
8           plan.

9     5.4.   A parent of a program participant under subsection 3 may choose any education  
10    method, including nonpublic school, private tutor, online learning, or other qualified  
11    provider, which best serves the needs of the program participant. ~~A parent who signs~~  
12    ~~an agreement with the superintendent of public instruction under section 15.1-39-04 is~~  
13    ~~deemed to have satisfied the requirements of chapter 15.1-20 with regard to the~~  
14    ~~program participant.~~

15    ~~6.~~    A parent of a program participant under subsection 4 may choose any education  
16    method, including nonpublic school, private tutor, online learning, or other qualified  
17    provider, which best serves the needs of the program participant. ~~A parent who signs~~  
18    ~~an agreement with the superintendent of public instruction under section 15.1-39-04 is~~  
19    ~~deemed to have satisfied the requirements of chapter 15.1-20 with regard to the~~  
20    ~~program participant.~~

21    7.5.   The superintendent of public instruction may contract with a third party to administer  
22    the program and manage accounts for the program. The superintendent of public  
23    instruction shall oversee and audit the contractor.

24    8.6.   The superintendent of public instruction shall provide information regarding the  
25    program to the public, including through the superintendent of public instruction's  
26    website. The superintendent of public instruction shall ensure parents of children who  
27    have disabilities or educational disadvantages are aware of the program.

28    **15.1-39-03. Program eligibility.**

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

~~15.1-39-04. Agreement required.~~

~~Before a program participant may receive funding under this chapter, a parent must agree in writing to:~~

~~1. Spend program funds only on qualified education expenses as provided under section 15.1-39-05.~~

~~2. Notify the superintendent of public instruction immediately if the program participant enrolls in a public or nonpublic school.~~

~~3. Provide course documentation to the superintendent of public instruction to prove the program participant's fulfillment of state graduation requirements.~~

~~15.1-39-05~~ **15.1-39-04. Qualified education expenses.**

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

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

b. Textbook purchases.

c. Curriculum purchases.

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

e. Instructional material purchases.

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

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

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

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

~~j. Professional fees of a financial institution that manages the participant's account.~~

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

3. ~~A qualified provider shall give a parent a receipt for each qualifying education expense charged by the qualified provider.~~

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

4 **15.1-39-0615.1-39-05. Application for program.**

- 5 1. A parent may enroll an eligible child in the program for the next school year at any time  
6 during a calendar year.
- 7 2. The superintendent of public instruction shall use a standardized enrollment form to  
8 determine a child's eligibility for the program. The superintendent of public instruction  
9 shall make the enrollment form readily available through various sources, including the  
10 superintendent of public instruction's website, fax, and mail.
- 11 3. The superintendent of public instruction shall provide to each applicant and annually to  
12 each program participant information that describes the operation of the program  
13 including the list of qualified education expenses; expense reporting requirements; a  
14 list of qualified providers, including nonpublic schools participating in the program; and  
15 a description of the responsibilities of program participants and the superintendent of  
16 public instruction.

17 **15.1-39-0715.1-39-06. Achievement testing.**

- 18 1. A parent shall arrange for the program participant to be administered a nationally  
19 recognized norm-referenced achievement test each year unless the program  
20 participant is attending a nonpublic school and the school administers the program  
21 participant a national norm-referenced assessment.
- 22 2. The parent shall report the results of the assessment to an independent researcher  
23 selected by the superintendent of public instruction through procurement practices,  
24 including a request for proposals. The independent researcher shall aggregate the test  
25 scores for all program participants and produce an annual report containing the  
26 aggregated results. Each report of the independent researcher must document  
27 changes in assessment scores of program participants. The first report must be  
28 produced three years after the program commences.
- 29 3. The requirements of subsection 1 do not apply if the parent notifies the school district  
30 in which the program participant resides, and the independent researcher selected by

the superintendent of public instruction, that the parent has a philosophical, moral, or religious objection to the use of norm-referenced achievement tests.

**15.1-39-0815.1-39-07. Administration of accounts.**

1. The superintendent of public instruction shall issue a request for proposals if the superintendent of public instruction chooses to hire a contractor to manage accounts under the program. The contractor shall establish an account ~~for each program participant. A program participant may pay qualified expenses with program funds by using debit cards, online payment services, or other methods.~~

~~2. Program funds must be transferred to each program participant's account in quarterly installments of equal amounts to be made by September fifteenth, December fifteenth, March fifteenth, and June fifteenth, unless a parent negotiates a different schedule with the superintendent of public instruction.~~

~~3. The superintendent of public instruction may deduct from each quarterly transfer of funds an amount not to exceed three percent of the transferred funds to cover the superintendent of public instruction's cost of overseeing accounts and administering the program.~~

~~4. The superintendent of public instruction shall approve reasonable fees a contractor may charge for managing accounts under the program. The fees must be based on market rates as a qualified provider.~~

**5.2.** Any funds remaining in ~~an~~the account at the end of a school year revert to the state general fund.

**15.1-39-0915.1-39-08. Auditing of accounts.**

To ensure compliance with applicable law and the requirements of the program, the superintendent of public instruction annually ~~shall~~may audit a sufficient number of program accounts ~~chosen randomly, as determined by the superintendent of public instruction. An audit may include verification of account information and a review of student attendance records.~~

**15.1-39-1015.1-39-09. Suspension of accounts.**

The superintendent of public instruction shall suspend ~~the account of~~payment for any program participant who fails to comply with applicable law or the requirements of the program ~~or who commits a substantial misuse of program funds.~~ The superintendent of public instruction shall notify the program participant in writing the ~~account~~payment has been suspended ~~and no~~

~~further transactions are allowed on or disbursements made from the account.~~ The notification must specify the grounds for the suspension and state the program participant has ten business days to respond and take any corrective action ordered by the superintendent of public instruction. Following the expiration of the ten-day period, the superintendent of public instruction shall:

1. Order permanent ~~closure of the suspended account and declare the-~~ ~~program~~suspension of payment to the qualified provider for the participant ineligible for the program;
2. Order temporary reinstatement of the ~~account~~payment, conditioned on the performance of specified action by the program participant; or
3. Order full reinstatement of the ~~account~~payments.

**~~15.1-39-11~~15.1-39-10. Rates and rebates - Restrictions.**

A qualified provider may not:

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

**~~15.1-39-12~~15.1-39-11. Referral to the attorney general.**

If the superintendent of public instruction obtains evidence of any fraudulent use of ~~an-~~ ~~account~~payments, the superintendent of public instruction shall refer the matter to the attorney general for investigation and prosecution.

**~~15.1-39-13~~15.1-39-12. Limitation on regulation of qualified providers.**

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

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

~~15.1-39-14~~**15.1-39-13. Student records.**

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

~~15.1-39-15~~**15.1-39-14. Annual survey.**

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

~~15.1-39-16~~**15.1-39-15. Rules.**

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

~~15.1-39-17~~**15.1-39-16. Applicability.**

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

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

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