

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1798

S.P. 723

In Senate, April 25, 2023

An Act to Support School Choice by Establishing Empowerment Scholarship Accounts

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LIBBY of Cumberland.
Cosponsored by Representative MORRIS of Turner and
Senators: KEIM of Oxford, STEWART of Aroostook, Representative: PARRY of Arundel.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 20-A MRSA c. 335** is enacted to read:

3 **CHAPTER 335**

4 **EMPOWERMENT SCHOLARSHIP PROGRAM**

5 **§9941. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms
7 have the following meanings.

8 **1. Child with a disability.** "Child with a disability" has the same meaning as in section
9 7001, subsection 1-B.

10 **2. Eligible postsecondary institution.** "Eligible postsecondary institution" means a
11 college or university of the Maine Community College System or the University of Maine
12 System or an accredited private postsecondary institution.

13 **3. Empowerment scholarship account.** "Empowerment scholarship account" means
14 an account established pursuant to section 9942.

15 **4. Public school.** "Public school" means the Child Development Services System or
16 other public preschool program for children from birth to under 5 years of age with
17 disabilities, a public preschool program, a school administrative unit or a public charter
18 school.

19 **5. Qualified school.** "Qualified school" means a private elementary or secondary
20 school located in this State, a private preschool for children with disabilities located in this
21 State, an entity providing a program of distance learning, a person or entity providing
22 educational tutoring that is accredited by a recognized accrediting organization or a parent
23 or guardian providing home instruction that meets the requirements of section 5001-A,
24 subsection 3, paragraph A, subparagraph (4).

25 **6. Qualified student.** "Qualified student" means a resident of this State who is eligible
26 to enroll in a public school in this State.

27 **§9942. Empowerment scholarship accounts; enrollment; additional requirements**

28 **1. Empowerment scholarship accounts.** The department shall administer the
29 enrollment of qualified students in empowerment scholarship accounts in accordance with
30 this section to provide options for the education of students in this State.

31 **2. Enrollment.** To enroll a qualified student in an empowerment scholarship account,
32 the parent of the qualified student shall sign a contract with the department, which must
33 include that the parent agrees to:

34 A. Use a portion of the funds from the empowerment scholarship account annually to
35 provide an education for the qualified student in at least the subjects of English, social
36 studies, mathematics and science;

37 B. Not enroll the qualified student in a public school;

1 C. Release the public school from all obligations to educate the qualified student,
2 except that the public school that the qualified student previously attended is not
3 relieved from the obligation to conduct an evaluation to determine if the student is
4 eligible for special education and related services;

5 D. Use money in the qualified student's empowerment scholarship account only for the
6 following expenses of the qualified student:

7 (1) Tuition or fees at a qualified school;

8 (2) Textbooks required by a qualified school;

9 (3) Additional services and costs, if eligible, under section 9944;

10 (4) Tutoring or teaching services provided by an individual or facility accredited
11 by a state, regional or national accrediting organization;

12 (5) Curricula and supplementary materials;

13 (6) Tuition or fees for a private online learning program;

14 (7) Fees for a nationally standardized norm-referenced achievement test, an
15 advanced placement examination or any examinations related to college or
16 university admission;

17 (8) Tuition or fees at an eligible postsecondary institution;

18 (9) Textbooks required by an eligible postsecondary institution;

19 (10) Fees to manage the empowerment scholarship account;

20 (11) Fees for services provided by a public school, including individual classes and
21 extracurricular activities;

22 (12) Insurance or surety bond payments;

23 (13) Uniforms purchased through a qualified school;

24 (14) Public transportation services; and

25 (15) Computer hardware and technological devices primarily used for an
26 educational purpose. For the purpose of this subparagraph, "computer hardware
27 and technological devices" includes calculators, personal computers, laptop
28 computers, tablet devices, microscopes, telescopes and printers and does not
29 include entertainment and other primarily noneducational devices such as
30 televisions, telephones, video game consoles and accessories and home theater and
31 audio equipment;

32 E. Not use money deposited in the qualified student's empowerment scholarship
33 account for:

34 (1) Computer hardware or other technological devices, except as permitted under
35 paragraph D, subparagraph (15); or

36 (2) Transportation of the student, except as permitted under paragraph D,
37 subparagraph (14); and

38 F. Beginning in the 2023-2024 school year and each subsequent year, annually have
39 the qualified student, if the student pays tuition as a full-time student at a qualified
40 school and is in grades 3 to 12, take any nationally standardized norm-referenced

1 achievement test, a statewide assessment pursuant to section 6202 or any examination
2 related to college or university admission that assesses reading and mathematics. A
3 parent may meet the requirements of this paragraph by having the qualified student
4 take a test, assessment or examination that is chosen and administered by a qualified
5 school or by choosing a separate test, assessment or examination that is administered
6 outside of the qualified school. The results must be reported to the parent. This
7 paragraph does not apply to a student who is a child with a disability.

8 **3. Requirement for qualified schools enrolling 50 or more qualified students.** A
9 qualified school that enrolls 50 or more qualified students shall annually make available to
10 the parents of an enrolled or prospective qualified student the aggregate test scores of either
11 all students enrolled in the qualified school or all qualified students who are enrolled in the
12 qualified school on all of the following tests, examinations and assessments by school site
13 and grade level:

14 A. Any nationally standardized norm-referenced achievement test;

15 B. The statewide assessment pursuant to section 6202; and

16 C. Any examination related to college or university admission that assesses reading
17 and mathematics.

18 **4. Department administration; fund established.** The empowerment scholarship
19 account fund is established within the department. The department shall administer the
20 fund. Money in the fund must be used for the department's costs under this chapter. The
21 fund is nonlapsing.

22 **5. Attendance.** A student attending a qualified school pursuant to a signed contract
23 under this section satisfies the school attendance requirements of section 5001-A.

24 **6. Prohibition.** A qualified school or a provider of services may not share, refund or
25 rebate any empowerment scholarship account money with or to the parent or qualified
26 student in any manner, except as established by rule for a parent or guardian providing
27 home instruction that meets the requirements of section 5001-A, subsection 3, paragraph
28 A, subparagraph (4).

29 **7. Audit.** The department shall conduct or contract for annual audits of empowerment
30 scholarship accounts to ensure compliance with subsection 2, paragraph C.

31 **8. Compliance; removal.** The department may remove any parent or qualified student
32 from eligibility for an empowerment scholarship account if the parent or qualified student
33 fails to comply with the terms of the contract executed pursuant to this section or applicable
34 laws or rules or knowingly misuses money or knowingly fails to comply with the terms of
35 the contract with intent to defraud. Upon removal under this subsection, the department
36 shall notify the Treasurer of State, who shall suspend the account. The department shall
37 establish by rule an appeal process for the suspension of an account under this subsection.

38 **§9943. Treasurer of State; establishment; oversight**

39 The Treasurer of State, in consultation with the department, shall, in accordance with
40 this section, establish individual empowerment scholarship accounts to carry out the
41 purposes of section 9942.

42 **1. Administration.** Upon the parent's agreement to the criteria established in section
43 9942, the department shall notify the Treasurer of State and deposit into the active

1 empowerment scholarship account 90% of the state subsidy attributable to the qualified
2 student for whom the account is established that would otherwise have been provided to
3 the qualified student's school administrative unit under chapter 606-B. The department
4 shall also direct that school administrative unit to deposit into the account 90% of the school
5 administrative unit's required contribution to the unit's total cost of education attributable
6 to that qualified student.

7 **2. Renewal.** The Treasurer of State may annually renew an empowerment scholarship
8 account and deposit funds into the account in accordance with subsection 1 if the parent at
9 whose request the account was established applies for a renewal and the Treasurer of State
10 finds that the requirements of this chapter and rules adopted under this chapter have been
11 met.

12 **3. Closure.** The Treasurer of State shall close a qualified student's empowerment
13 scholarship account and provide all funds in the account to the State Controller, who shall
14 transfer the funds to the unappropriated surplus of the General Fund:

15 A. If a parent at whose request the empowerment scholarship account was established
16 does not apply for a renewal or the Treasurer of State finds that the requirements of
17 this chapter or rules adopted under this chapter have not been met; or

18 B. On the qualified student's graduation from a postsecondary institution or after any
19 period of 4 consecutive years after secondary school graduation in which the student is
20 not enrolled in an eligible postsecondary institution, but not before this time as long as
21 the empowerment scholarship account holder continues using a portion of account
22 money for eligible expenses each year and is in good standing.

23 **4. Oversight.** The Treasurer of State shall review all expenditures from empowerment
24 scholarship accounts to ensure that they are in accordance with the requirements of this
25 chapter and rules adopted under this chapter. If at any time the Treasurer of State finds that
26 expenditures from an empowerment scholarship account are not in accordance with the
27 requirements of this chapter or rules adopted under this chapter, the Treasurer of State shall
28 notify the parent of the qualified student for whom the empowerment scholarship account
29 is established and if, after an opportunity for hearing, the department determines that there
30 was in fact a misuse of the funds, the Treasurer of State shall close the account and provide
31 all funds in the account to the State Controller, who shall transfer the funds to the
32 unappropriated surplus of the General Fund.

33 **5. Income tax.** Money received pursuant to this chapter does not constitute taxable
34 income to the parent of the qualified student.

35 **6. Contracts.** The Treasurer of State may contract with private financial management
36 firms to manage empowerment scholarship accounts.

37 **§9944. Additional services and extended eligibility for child with disability**

38 **1. Additional services.** If a qualified student is a child with a disability as determined
39 by a public school or by an independent 3rd party, a parent may use money in the qualified
40 student's empowerment scholarship account for the following additional services:

41 A. Educational therapies from a licensed or accredited practitioner or provider,
42 including and up to any amount not covered by insurance if the expense is partially
43 paid by a health insurance policy for the qualified student;

- 1 B. A licensed or accredited paraprofessional or education technician;
- 2 C. Tuition for vocational and life skills education approved by the department; and
- 3 D. Associated goods and services that include educational and psychological
- 4 evaluations, assistive technology rentals and Braille translation goods and services
- 5 approved by the department.

6 **2. Extended eligibility.** If a qualified student is a child with a disability and the
7 qualified student is in the 2nd year prior to the final year of a contract executed pursuant to
8 section 9942, a parent may use money in the qualified student's empowerment scholarship
9 account for costs associated with an individualized education program conducted by an
10 independent evaluation team. The department shall prescribe minimum qualifications for
11 independent evaluation teams pursuant to this subsection and factors that teams must use
12 to determine whether the qualified student is eligible to continue to receive money pursuant
13 to this chapter through the school year in which the qualified student reaches 22 years of
14 age. An independent evaluation team that provides an individualized education program
15 pursuant to this subsection shall submit a written report that summarizes the results of the
16 evaluation to the parent of the qualified student and the department no later than July 31st.
17 The written report is valid for one year. If the department determines that the qualified
18 student meets the eligibility criteria prescribed in the individualized education program, the
19 qualified student is eligible to continue to receive money pursuant to this chapter until the
20 qualified student reaches 22 years of age, subject to the annual review. A parent may appeal
21 the department's decision. Prior to a parent signing a qualified student's final-year contract,
22 the department shall provide the following written information to the parent:

23 A. That the qualified student is not eligible to continue to receive money pursuant to
24 this chapter unless the results of an individualized education program conducted
25 pursuant to this subsection demonstrate that the qualified student meets the eligibility
26 criteria prescribed in the individualized education program;

27 B. That the parent is entitled to obtain an individualized education program pursuant
28 to this subsection to determine whether the qualified student meets the eligibility
29 criteria prescribed in the individualized education program; and

30 C. A list of independent evaluation teams that meet the minimum qualifications
31 prescribed by the department.

32 **§9945. Rulemaking**

33 The department and the Treasurer of State shall adopt rules necessary to implement
34 this chapter. Rules adopted by the department and the Treasurer of State pursuant to this
35 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

36 **Sec. 2. 20-A MRSA §15689, sub-§17** is enacted to read:

37 **17. Adjustment for empowerment scholarship accounts.** The commissioner shall
38 reduce the state share of the total allocation to a school administrative unit in any year in
39 which one or more empowerment scholarship accounts under section 9943 are established
40 for students within that school administrative unit. The amount of the reduction must equal
41 the total state subsidy that is attributable to all students in that school administrative unit
42 for whom empowerment scholarship accounts have been established, as determined by the
43 department pursuant to section 9943, subsection 1.

SUMMARY

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This bill directs the Treasurer of State to establish and the Department of Education to administer individual empowerment scholarship accounts, based on similar accounts established in the state of Arizona, which may be used by parents to pay for the education of their children outside of the public school system, including private schools, online schools or home instruction. The funding for these empowerment scholarship accounts comes from shifting 90% of the essential programs and services funding that would otherwise be provided by the State and by the school administrative unit for each child into an empowerment scholarship account. The bill specifies what educational expenditures are permitted, including additional expenditures for children with disabilities, and provides for review of spending from the accounts.