

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1860

H.P. 1190

House of Representatives, May 2, 2023

An Act to Create the Educational Opportunity Account Program

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


ROBERT B. HUNT
Clerk

Presented by Representative LIBBY of Auburn.
Cosponsored by Senator BRAKEY of Androscoggin and
Representatives: BOYER of Poland, DRINKWATER of Milford.

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

2 **Sec. 1. 20-A MRSA §5001-A, sub-§2, ¶D**, as amended by PL 2009, c. 330, §2, is
3 further amended to read:

4 D. A person who has matriculated and is attending an accredited, ~~post-secondary~~
5 postsecondary, degree-granting institution as a full-time student. An exception to
6 attendance in public school under this paragraph must be approved by the
7 commissioner; ~~or~~

8 **Sec. 2. 20-A MRSA §5001-A, sub-§2, ¶E**, as amended by PL 2015, c. 448, §9, is
9 further amended to read:

10 E. A person enrolled in an online learning program or course, unless the person is
11 enrolled in a virtual public charter school as defined in section 2401, subsection 11-; or

12 **Sec. 3. 20-A MRSA §5001-A, sub-§2, ¶F** is enacted to read:

13 F. A person participating in the educational opportunity account program established
14 under chapter 613.

15 **Sec. 4. 20-A MRSA c. 613** is enacted to read:

16 **CHAPTER 613**

17 **EDUCATIONAL OPPORTUNITY ACCOUNTS**

18 **§17201. Definitions**

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

21 **1. Education service provider.** "Education service provider" means a person or
22 organization that receives a payment from an educational opportunity account to provide
23 educational goods and services to participating students.

24 **2. Educational opportunity account.** "Educational opportunity account" means an
25 account established under this chapter.

26 **3. Eligible student.** "Eligible student" means a resident of this State who is eligible to
27 enroll in an elementary or secondary public school.

28 **4. Participating student.** "Participating student" means a student who is participating
29 in the program.

30 **5. Program.** "Program" means the Educational Opportunity Account Program
31 established under section 17202.

32 **§17202. Educational Opportunity Account Program**

33 **1. Establishment of program.** The department shall establish the Educational
34 Opportunity Account Program to create educational opportunity accounts to which money
35 is deposited by the department as described in subsection 3.

36 **2. Use of educational opportunity accounts.** A parent or legal guardian of a
37 participating student may withdraw money from an educational opportunity account to pay

1 for education expenses to educate the participating student as provided by this subsection.
2 A parent or legal guardian of a participating student must agree to use the money deposited
3 in the student's educational opportunity account for only the following expenses to educate
4 the student:

5 A. Tuition and fees at a private school;

6 B. Tuition and fees for nonpublic online learning programs;

7 C. Tutoring services provided by an individual or a tutoring facility;

8 D. Services contracted for and provided by a school administrative unit, a public charter
9 school as defined in section 2401 or a magnet school as defined in section 8203,
10 subsection 2, including, but not limited to, individual classes and extracurricular
11 activities and programs;

12 E. Textbooks, curriculum materials or other instructional materials, including, but not
13 limited to, supplemental materials or associated online instruction required by an
14 education service provider;

15 F. Computer hardware or other technological devices that are primarily used to help
16 meet a participating student's educational needs;

17 G. Educational software and applications;

18 H. School uniforms;

19 I. Fees for nationally standardized assessments, advanced placement examinations,
20 examinations related to college or university admission and tuition and fees for
21 preparatory courses for the examinations;

22 J. Tuition and fees for summer education programs and specialized after-school
23 education programs, but not after-school child care;

24 K. Tuition, fees, instructional materials and examination fees for career and technical
25 education;

26 L. Educational services and therapies, including, but not limited to, occupational,
27 behavioral, physical, speech-language and audiology therapies;

28 M. Tuition and fees at a postsecondary institution of higher education;

29 N. Fees for transportation paid to a fee-for-service transportation provider for the
30 student to travel to and from an education service provider; and

31 O. Any other education expense approved by the department.

32 Money in an educational opportunity account may not be refunded or rebated to or shared
33 with a parent or legal guardian of a participating student or a participating student. A refund
34 or rebate for goods or services purchased with money from an educational opportunity
35 account must be credited directly to that educational opportunity account.

36 **3. Deposits into educational opportunity accounts.** The department shall deposit in
37 quarterly installments into an educational opportunity account an amount equal to the
38 average amount spent by the State on public school students. For participating students
39 with disabilities and who are English language learners, homeless students and low-income
40 students, the department shall deposit an additional amount that includes any weighted

1 funding that would have been provided to a public school for that student. A parent or legal
2 guardian may not contribute directly to an educational opportunity account.

3 Money deposited in an educational opportunity account does not constitute taxable income
4 for the parent or legal guardian of the participating student or the participating student for
5 the purposes of state income taxes.

6 **§17203. Application for program**

7 **1. Application allowed.** A parent or legal guardian of an eligible student may apply
8 to the department to establish an educational opportunity account for the eligible student.
9 The department shall accept applications year round and shall establish procedures for
10 approving applications in a timely manner.

11 **2. Application form.** The department shall create a standard application form that the
12 parent or legal guardian of an eligible student can submit to apply for the program. The
13 department shall make the application publicly available and shall allow a parent or legal
14 guardian of an eligible student to submit an application by multiple means, including by
15 use of the Internet.

16 **3. Approval.** The department shall approve an application for an educational
17 opportunity account if:

18 A. The parent or legal guardian submits an application for an educational opportunity
19 account in accordance with application procedures established by the department;

20 B. The application is for an educational opportunity account to be created for an eligible
21 student; and

22 C. The application includes an agreement on a form prescribed by the department
23 signed by the parent or legal guardian:

24 (1) To provide an education for the participating student in at least the subjects of
25 reading, language, mathematics, science and social studies;

26 (2) Not to enroll the participating student as a full-time student in a public school
27 while participating in the program;

28 (3) To use the money in the educational opportunity account only for expenses
29 described in section 17202, subsection 2; and

30 (4) To comply with the rules and requirements of the program.

31 **§17204. Closure of educational opportunity accounts**

32 **1. Enrollment in public school.** On notice to the department, a parent or legal
33 guardian of a participating student may choose to stop receiving deposits into an
34 educational opportunity account and enroll the student full-time in a public school. On
35 enrollment as a full-time student in a public school, the department shall close the
36 educational opportunity account of the former participating student and money in the
37 educational opportunity account at the time of closure reverts to the department to be
38 deposited in other educational opportunity accounts.

39 **2. Other conditions for closure.** The department shall close an educational
40 opportunity account if:

1 A. The parent or legal guardian of the participating student withdraws the participating
2 student from the program; or

3 B. The participating student or a parent or legal guardian of a participating student
4 engages in a substantial misuse of money withdrawn from an educational opportunity
5 account.

6 If any of the conditions of this subsection are met, money remaining in the educational
7 opportunity account at the time of closure reverts to the department to be deposited into
8 other educational opportunity accounts.

9 **§17205. Department powers and duties**

10 **1. Directory of education service providers.** The department shall implement a cost-
11 effective and easily accessible Internet-based directory of education service providers that
12 allows parents and legal guardians of participating students to rate, review and share
13 information about education service providers. The department shall link the directory to
14 the payment system described in subsection 6.

15 **2. Information required to be provided.** The department shall provide parents and
16 legal guardians of participating students with:

17 A. A written explanation of the allowable uses of money in an educational opportunity
18 account;

19 B. The responsibilities of parents and legal guardians of participating students with
20 regard to the program and the duties of the department with regard to the program; and

21 C. The role of any private financial management firms or other private organizations
22 that the department may contract with to administer any aspect of the program.

23 **3. Notice of rights for students with disabilities.** The department shall notify a parent
24 or legal guardian of a participating student with disabilities that participation in the program
25 may be a parental placement under the federal Individuals with Disabilities Education Act,
26 20 United States Code, Section 1412, including an explanation of the rights that parentally
27 placed students possess under the federal Individuals with Disabilities Education Act and
28 any applicable state laws and rules.

29 **4. Contracting allowed.** The department may contract with a private organization to
30 administer the program or specific functions of the program. This includes, but is not
31 limited to, contracting with private financial management firms to manage educational
32 opportunity accounts.

33 **5. Costs of administration.** The department may withhold from deposits or deduct
34 from an educational opportunity account an amount to cover the costs of administering the
35 program, up to a maximum of 5% annually in the first 2 years that a participating student
36 is participating in the program and up to a maximum of 3% annually thereafter.

37 **6. Payment systems.** The department shall contract with private institutions to
38 develop and implement a cost-effective system for allowing payments to and withdrawals
39 from an educational opportunity account, including by online or electronic funds transfer,
40 direct payments to education service providers and requests for preapproval of and
41 reimbursements for expenses described in section 17202, subsection 2. The system must
42 be Internet-based and easily accessible by parents and legal guardians of participating

1 students. The system may not rely exclusively on requiring parents and legal guardians of
2 participating students to be reimbursed for out-of-pocket expenses.

3 **7. Auditing.** The department shall conduct or contract for the auditing of individual
4 educational opportunity accounts and shall at a minimum conduct random audits of
5 educational opportunity accounts on an annual basis.

6 **8. Gifts and grants.** The department may accept gifts and grants from any source to
7 cover administrative costs, to inform the public about the program or to fund additional
8 educational opportunity accounts.

9 **9. Fraud reporting.** The department may establish or contract for the establishment
10 of an online service for reporting fraud related to the program.

11 **§17206. Misuse of money**

12 **1. Ineligibility.** The department may determine a parent or guardian of a participating
13 student or a participating student ineligible for the program in the event of intentional and
14 substantial misuse of money withdrawn from an educational opportunity account.

15 **2. Process.** The department shall create a fair process to determine whether an
16 intentional and substantial misuse of money withdrawn from an educational opportunity
17 account has occurred.

18 **3. Appeal.** A parent or guardian of a participating student or a participating student
19 may appeal the department's decision of ineligibility reached under the process required by
20 subsection 2.

21 **4. Referral to Attorney General.** The department may refer suspected cases of
22 intentional and substantial misuse of money withdrawn from an educational opportunity
23 account to the Attorney General for investigation if the department has obtained evidence
24 of intentional and substantial misuse of money withdrawn from an educational opportunity
25 account.

26 **5. Innocent participating student.** If a parent or legal guardian of a participating
27 student is determined to be ineligible under subsection 1, and the participating student is
28 free from personal misconduct, that participating student is eligible for an educational
29 opportunity account if the participating student is placed with a different legal guardian.

30 **§17207. Education service providers**

31 **1. Partial payments to education service providers.** If an education service provider
32 requires partial payment of tuition or fees before the start of the academic year to reserve
33 space for a participating student admitted to the education service provider, the department
34 may make the partial payment before the start of the academic year in which the educational
35 opportunity account is opened and deduct the amount of the partial payment in an equitable
36 manner from subsequent quarterly deposits to the educational opportunity account to
37 ensure adequate funds remain available throughout the academic year. If, after a partial
38 payment made under this subsection, a participating student decides not to use the
39 education service provider, the partial payment must be returned to the department by the
40 education service provider and the department shall credit the amount to the participating
41 student's educational opportunity account.

42 **2. Surety bond.** The department may require a surety bond for an education service
43 provider that receives more than \$100,000 through the program.

1 **3. Refunds.** The department shall adopt a procedure for refunding a payment from an
2 education service provider to an educational opportunity account.

3 **4. Approval of education service providers.** The department by rule may approve a
4 type of education service provider for participation in the program on its own initiative, at
5 the request of the parent or legal guardian of a participating student or at the request of a
6 group of similar prospective education service providers. A single education service
7 provider seeking to receive payment under the program shall:

8 A. Submit an application to the department; and

9 B. Agree not to refund, rebate or share money paid to the education service provider
10 under the program with a parent or legal guardian of a participating student or a
11 participating student, except that money may be remitted or refunded to an educational
12 opportunity account in accordance with procedures established by the department.

13 **5. Independence.** This chapter may not be interpreted to:

14 A. Limit the independence or autonomy of an education service provider;

15 B. Make the actions of an education service provider the actions of the State
16 Government;

17 C. Expand the regulatory authority of the State, its officers or any school administrative
18 unit to impose any additional regulation of education service providers beyond those
19 necessary to enforce the requirements of the program; or

20 D. Require the education service provider to alter the education service provider's
21 creed, practices, admissions policy or curriculum to receive payment under the
22 program.

23 **6. Barring education service providers.** The department may prohibit an education
24 service provider from participating in the program if the department determines that the
25 education service provider has:

26 A. Intentionally and substantially misrepresented information about the education
27 services provided or failed to refund an overpayment in a timely manner; or

28 B. Routinely failed to provide students with promised educational goods or services.

29 The department shall create a fair process to determine whether an education service
30 provider may be prohibited from participating in the program.

31 If the department prohibits an education service provider from participating in the program,
32 the department shall notify parents and legal guardians of participating students served by
33 the education service provider no later than 5 days after the prohibition is determined.

34 An education service provider may appeal the department's decision made under this
35 subsection.

36 **§17208. Parent Review Commission**

37 **1. Commission created.** The Parent Review Commission, referred to in this section
38 as "the commission," is created in the department for the purpose of advising the
39 department on:

40 A. Whether money withdrawn from an educational opportunity account was used for
41 a purpose described by section 17202, subsection 2. The commission may by majority

1 vote recommend to the department that a questionable expenditure be denied or
2 approved;

3 B. Whether an education service provider should be allowed to receive or continue
4 receiving payments under the program; and

5 C. How to implement, administer and improve the program.

6 **2. Membership; appointment; terms; chair.** The commission consists of 7 parents
7 or legal guardians of participating students, appointed by the commissioner for 2-year
8 terms. A parent or legal guardian's term as a member ends on the last day of the academic
9 year in which the participating student of the parent or legal guardian ceases participation
10 in the program. The members must represent at least 4 counties in the State. Members may
11 be reappointed. The commissioner, or the commissioner's designee, serves as the nonvoting
12 chair of the commission. The commission may meet virtually.

13 **§17209. Miscellaneous provisions**

14 **1. Records.** A public school or public charter school that previously enrolled a
15 participating student shall provide a private school that is an education service provider and
16 that has enrolled the participating student with a complete copy of the participating
17 student's school records, while complying with the Family Educational Rights and Privacy
18 Act of 1974, 20 United States Code, Section 1232g.

19 **2. Intervention.** If any part of this chapter is challenged in a state court as violating
20 either the Constitution of Maine or the United States Constitution, a parent or legal guardian
21 of an eligible student or participating student may intervene in the lawsuit for the purposes
22 of defending the program's constitutionality. A court may require that all parents or legal
23 guardians file a joint brief, as long as they are not required to join any brief filed on behalf
24 of any named state defendant.

25 **3. Burden of proof.** In a legal proceeding challenging an action taken by the
26 department under a rule adopted by the department toward an education service provider,
27 the State has the burden of establishing that the rule is necessary and does not impose an
28 undue burden on the education service provider.

29 **4. Enrollment not required.** Nothing in this chapter may be construed to require that
30 a participating student must be enrolled, full-time or part-time, in either a private school or
31 nonpublic online school.

32 **§17210. Rules**

33 The department shall adopt rules to implement this chapter. Rules adopted pursuant to
34 this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter
35 2-A.

36 **SUMMARY**

37 This bill establishes a program in the Department of Education to create educational
38 opportunity accounts for participating students to be funded by the State and used to pay
39 certain educational expenses, including expenses paid to education service providers.