

Rep. Umberger, Carr. 2
Rep. Ladd, Graf. 4
Rep. Kurk, Hills. 2
Rep. T. Wolf, Hills. 7
February 23, 2018
2018-0840h
04/05

Draft Amendment to SB 193-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT establishing education savings accounts for students.

4

5 Amend the bill by replacing all after the enacting clause with the following:

6

7 1 New Chapter; Education Savings Accounts. Amend RSA by inserting after chapter 194-D the
8 following new chapter:

9

CHAPTER 194-E

10

EDUCATION SAVINGS ACCOUNTS

11

194-E:1 Definitions. In this chapter:

12

I. "Account" means an education savings account (ESA) established for an eligible student
13 pursuant to this chapter.

14

II. "Commissioner" means the commissioner of the department of education.

15

III. "Department" means the department of education.

16

IV. "Eligible student" means a New Hampshire resident who is at least 6 years of age and
17 not more than 20 years of age, who has completed the first grade, who has not graduated from high
18 school, and

19

(a)(1) Who is currently attending a New Hampshire public school, including a chartered
20 public school, for a minimum of one year; or

21

(2) Who received an account in the prior year; and

22

(b)(1) Whose annual household income in the student's initial year of the program is
23 less than or equal to 185 percent of the federal poverty guidelines as updated annually in the
24 Federal Register by the United States Department of Health and Human Services under the
25 authority of 42 U.S.C. section 9902(2), provided the student's annual household income does not
26 exceed 300 percent of such federal poverty guidelines during the student's participation in the
27 program; or

28

(2) Who is assigned to a school that for 2 consecutive years has been unable to
29 demonstrate that it provides the opportunity for an adequate education pursuant to RSA 193-E:3-b.

30

V. "Nonpublic school" shall mean any public academy pursuant to RSA 194:23, II, or

1 private school in New Hampshire accredited through a department recognized independent
2 accreditation agency, school approved by a state education agency having an interstate compact
3 with New Hampshire, or other school located in New Hampshire approved for school attendance
4 pursuant to rules authorized by RSA 21-N:9, II(o) and RSA 186:11, XXIX. A nonpublic school shall:

5 (a) Comply with statutes and regulations relating to agency approvals such as health,
6 fire safety, and sanitation;

7 (b) Be incorporated under the laws of New Hampshire or the United States; and

8 (c) Administer an annual assessment in reading and language arts, mathematics, and
9 science. The assessment may be any nationally recognized standardized assessment used to
10 measure student academic achievement, shall be aligned to the school's academic standards, and
11 shall satisfy the requirements of RSA 193-C:6. The annual assessment results for each student who
12 has a program account shall be submitted to the commissioner and to the scholarship organization.

13 VI. "Parent" means the natural or adoptive parent, parents, or legal guardian of a
14 scholarship student.

15 VII. "Postsecondary program" means Running Start, e-Start, Early College, or a dual and
16 concurrent enrollment program approved by the community college system New Hampshire, the
17 university system of New Hampshire, or the department.

18 VIII. "Program" means the education savings account program established in this chapter
19 that will begin in the 2019-2020 school year.

20 IX. "Recognized independent accreditation agency" means an accrediting organization such
21 as the New England Association of Schools and Colleges, National Association of Independent
22 Schools, Independent Schools Association of Northern New England, Northern New England
23 Conference of Seventh-day Adventists, Inc., or other accrediting agency recognized by the
24 department that engages member schools in a comprehensive peer review accreditation process that
25 provides assurance of quality academic standards and criteria, and measures academic
26 improvement.

27 X. "Scholarship organization" means a charitable organization incorporated or qualified to
28 do business in this state that:

29 (a) Is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal
30 Revenue Code;

31 (b) Complies with applicable state and federal anti-discrimination and privacy laws;

32 (c) Is registered with the department of justice, director of charitable trusts; and

33 (d) Is selected by the department using an RFP or other state-adopted procurement
34 process.

35 XI. "Scholarship student" means a student in whose name an account has been opened.

36 XII. "Service provider" means a licensed professional who contracts with an Education
37 Savings Account recipient to provide educational instruction.

1 XIII. "Treasurer" means the treasurer of the state of New Hampshire.

2 194-E:2 Program.

3 I. There is established an education savings account program, for which a parent of an
4 eligible student shall receive an account from a scholarship organization to either enroll the student
5 in a public or non-public school, or to provide the student with parent-directed education.

6 (a) For accounts for scholarship students enrolled in a public or non-public school, the
7 parent is responsible for the student's enrollment application and agrees to meet the applicable
8 requirements set forth in this chapter.

9 (b) For accounts for scholarship students receiving parent-directed education, the
10 parent agrees to provide an education for the student in science, mathematics, language,
11 government, history, health, reading, writing, spelling, the history of the constitutions of New
12 Hampshire and the United States, and an exposure to and appreciation of art and music. The
13 parent further agrees to meet the applicable requirements set forth in this chapter.

14 II. The parent of a scholarship student agrees to use the funds deposited in the student's
15 account for any of the following qualifying educational expenses only:

16 (a) Tuition for course fees at any public school, nonpublic school, or for postsecondary
17 programs.

18 (b) Textbooks, curriculum, supplemental materials, including computer hardware and
19 software required to support the curriculum, and fees for service providers.

20 (c) Fees for transportation to and from a service provider paid to a fee-for-service
21 transportation provider, not to exceed \$750 per school year.

22 (d) Tuition and fees for online K-12 education accredited by a regional association of
23 colleges and schools, or otherwise approved by the department.

24 (e) Assistive devices if a service provider, public school, or non-public school certifies in
25 writing that these items are essential for the student to meet annual, measurable goals.

26 (f) Fees for a nationally standardized norm-referenced achievement test, advanced
27 placement test, or any department-approved assessment such as, but not limited to, the SAT or
28 ACT.

29 III. Participation in the program shall have the same effect as a parental placement of their
30 child under 20 U.S.C. section 1412(a)(10)(A) of the Individuals with Disabilities Education Act
31 (IDEA). The district of residence is not liable for the cost of a nonpublic school if a free and
32 appropriate public education is available in the public school and a parent enrolls and pays for the
33 student to attend a nonpublic school pursuant to 20 U.S.C section 1412(a)(10)(A). A parent who
34 accepts an education savings account for his/her child who is eligible for special education but not
35 currently receiving services due to the child no longer attending the assigned resident public school
36 shall be eligible to receive a "services plan" developed and implemented in accordance with 34
37 C.F.R. sections 300.137 through 300.139 that describes the special education and related services

1 that the resident local education agency will provide to a parentally-placed child with a disability
2 who is enrolled in a nonpublic school and has been designated to receive services, including the
3 location of the services and any transportation necessary consistent with 34 C.F.R. section 300.132.
4 It is also the responsibility of the local education agency in which the private school is located to
5 conduct an individualized education program re-evaluation to determine special education eligibility
6 and to incur associated eligibility costs if the parent requests a 3-year renewal re-evaluation.
7 Students in the special school district within the department of corrections established in RSA
8 194:60 shall not be eligible students.

9 IV. The parent of a scholarship student, the scholarship organization, and the department
10 shall be provided copies of all signed agreements.

11 V. The parent of a scholarship student shall be required to annually renew the agreement
12 to continue participation in the program. The scholarship organization shall conduct an annual
13 program review and eligibility check for each student.

14 VI. Scholarship students may participate in co-curricular programs offered by the school
15 district in which the student resides pursuant to local school board policy.

16 194-E:3 Program Accountability.

17 I. The parent shall maintain accountability and responsibility for the education of his or her
18 scholarship student, establish academic growth goals for the student at the outset of each academic
19 year, and regularly measure the student's academic growth throughout the school year.

20 II. The parent shall provide the scholarship organization with an annual educational
21 evaluation that includes: annual assessment results from either a nationally standardized norm-
22 referenced achievement test, the statewide student assessment test, an evaluation completed by a
23 certified teacher or a teacher currently teaching in a nonpublic school, who is selected by the
24 parent, or other valid measurement tool mutually agreed upon by the parent and the commissioner.

25 III. Composite results at or above the fortieth percentile, or a growth scale value score, or
26 equivalent measure showing learning progress in academic skills as reflected on such test shall be
27 deemed reasonable academic proficiency or satisfactory academic learning growth.

28 IV. Upon receiving an education evaluation for 2 consecutive years that identifies a
29 scholarship student as not making satisfactory academic achievement or growth, the student shall
30 no longer be eligible for the program.

31 V. The parent shall maintain a copy of all evaluations.

32 VI. An agreement shall be automatically terminated if the scholarship student no longer
33 resides in this state or returns to his or her public school of residence. Any funds remaining in the
34 student's account shall be returned to the state treasury for deposit in the education trust fund.

35 VII. The scholarship organization shall notify the department, the parent and the treasurer
36 in writing of any scholarship students who are non-compliant with the program requirements of
37 RSA 194-E:2. The department shall hold a hearing at the request of the parents. The department

1 shall remove any scholarship student from the program if, after any required hearing, it determines
2 the student is non-compliant with the requirements of RSA 194-E:2. Any funds remaining in the
3 account for a student deemed non-compliant shall be sent to the state treasury for deposit in the
4 education trust fund. Parents may appeal the department's decision to the state board of education.

5 194-E:4 Program Funding and Payment.

6 I. The scholarship organization shall notify the commissioner and the treasurer in writing
7 of any eligible student whose parents have signed an agreement under RSA 194-E:2.

8 II. The commissioner shall calculate and the treasurer shall transfer from the education
9 trust fund the following amounts to the scholarship organization:

10 (a) For students enrolled in a public or non-public school:

11 (1) The base cost of an opportunity for an adequate education as provided in RSA
12 198:40-a, II(a); and

13 (2) Any differentiated aid the student is eligible for as provided in RSA 198:40-a,
14 II(b)-(d).

15 (b) For students receiving parent directed education, the amount shall be as provided in
16 RSA 77-G:2, I(b).

17 III. A scholarship organization shall receive up to 5 percent from amounts transferred
18 pursuant to subparagraphs II(a)(1) and II(b), for administrative expenses. After deducting amounts
19 distributed to scholarship organizations pursuant to this paragraph, the remaining amounts
20 transferred pursuant to paragraph II shall be credited to each student's education scholarship
21 account.

22 IV. It is the responsibility of the parent or guardian to submit education expense invoices to
23 the scholarship organization for approval and payment.

24 V. Funds received pursuant to this program shall not be included as annual household
25 income under RSA 194-E:1, IV(b)(1).

26 VI. Pursuant to RSA 194-E:2, the state treasurer shall transfer funding to the scholarship
27 student's account. The transfers shall be made in accordance with the distribution of adequate
28 education grants under RSA 198:42.

29 VII. All scholarship students' accounts shall be held in institutions qualified by the state
30 treasurer.

31 VIII. The scholarship organization shall conduct audits of scholarship accounts, using
32 procedures evaluated and approved by the department, to ensure compliance with this chapter.

33 IX. At the time of the eligible student's graduation from high school, the eligible student's
34 account shall be closed, the parents notified, and any remaining funds shall be returned to the state
35 treasury for deposit in the education trust fund.

36 X. The scholarship organization in consultation with the commissioner shall prohibit a
37 participating nonpublic school or service provider from the program and notify the department if

1 the scholarship organization establishes that the participating school or service provider has:

2 (a) Routinely failed to comply with the accountability standards established in this
3 chapter; or

4 (b) Failed to provide the scholarship student with the educational services funded by
5 the account.

6 XI. The scholarship organization shall notify the department and the commissioner shall
7 refer cases of fraudulent misuse of funds to the attorney general for investigation and shall
8 immediately suspend all payments from the account.

9 XII. A nonpublic school or service provider pursuant to RSA 194-E:2 shall not share,
10 refund, or rebate any program funds with the parent or scholarship student in any manner.

11 XIII. Parents may make payments for the any costs not covered by the funds in their
12 scholarship students' accounts.

13 XIV. The recipient of an education savings program account is not eligible to receive an
14 education tax credit pursuant to RSA 77-G.

15 194-E:5 Scholarship Organization; Requirements. A scholarship organization shall:

16 I. Develop and maintain agreement forms in cooperation with the department.

17 II. Provide copies of agreements signed by parents of scholarship students to the
18 department and the treasurer.

19 III. Provide the unique pupil identifier and date of birth for each eligible student to the
20 department if available.

21 IV. Accept and review all applications for scholarships under this chapter.

22 (a) Applications may be accepted through May 1 for the upcoming school year.

23 (b) Accounts shall be awarded and districts notified no later than June 30 for the
24 upcoming school year. In consultation with the department, notification to school districts shall
25 include whether the scholarship student is eligible for differentiated aid under RSA 198:40-a, II(c)-
26 (d).

27 (c) Accept applications and award accounts to eligible students at any time during the
28 year if:

29 (1) Upon written request from the applicant, the commissioner grants an exception,
30 and

31 (2) The student would not be leaving a school or school district that has already
32 been capped for program participation in current school year pursuant to RSA 194-E:7.

33 V. Comply with all federal and state laws regarding student privacy.

34 VI. Review all receipts for fees and services pursuant to RSA 194-E:2, II.

35 VII. Provide an annual report to the speaker of the house of representatives, the president
36 of the senate, the chairman of the house education and finance committees, the chairmen of the
37 senate education and finance committees, the governor, the joint legislative oversight commission

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1 pursuant to RSA 194-E:9, and the department, including:

2 (a) The number of scholarship students.

3 (b) A list of public schools, nonpublic schools, and service providers, including the
4 number of scholarship students served by school and service provider and the dollar amount of each
5 type of service provided by each school and each service provider.

6 (c) The dollar amount of scholarship student account funds utilized for non-tuition
7 services during the year.

8 (d) Subject to federal and state student privacy regulations, an analysis of student
9 growth and achievement for scholarship students compared to peer groups.

10 (e) The school district each student left and the reason, if known.

11 (f) The number of students leaving non-public schools and returning to public schools
12 and the reason, if known.

13 (g) Scholarships or other financial aid provided by public or non-public schools if the
14 account did not cover the entire tuition and other related costs.

15 VIII. Conduct an annual survey of parents of eligible students with accounts. The survey
16 shall include, but not be limited to, the number of years the parent has been in the program, the
17 relative satisfaction of the parent with the program, and suggestions of the parent for improvement.
18 The survey and its results shall be included in the annual report.

19 IX. Document that each account recipient that receives special education differentiated aid
20 has an individualized education program, as defined in 34 C.F.R. section 300.22, which meets state
21 board of education rule requirements.

22 X. Notify the parent of a special education student at the time of application for an account
23 of the difference between an individualized education program provided in the public school and a
24 service plan provided by the program.

25 194-E:6 School and Service Provider Requirements.

26 I. Public schools, non-public schools, postsecondary institutions, and service providers shall
27 comply with all federal and state laws regarding student privacy.

28 II. Public schools, nonpublic schools, postsecondary institutions, and service providers shall
29 furnish receipts for eligible services pursuant to RSA 194-E:2, II to the parent and the scholarship
30 organization.

31 III. The school district in which the eligible student resides shall provide a participating
32 public school, non-public school, postsecondary institution, or service provider that has admitted an
33 eligible student under this program with a copy of the student's school records, while complying
34 with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. section 1232g, and state
35 policies.

36 194-E:7 Education Savings Account: Assignment, Admission.

37 I.(a) In any one school year, the number of accounts assigned to students leaving a school

1 district shall not exceed:

2 (1) Five percent of a school district's free and reduced meal program average daily
3 membership for the prior year, in a school district with an average daily membership in residence of
4 100 students or less; or

5 (2) Four percent of a school district's free and reduced meal program average daily
6 membership for the prior year, in a school district with an average daily membership in residence
7 between 101 and 300 students; or

8 (3) Three percent of a school district's free and reduced meal program average daily
9 membership for the prior year, in a school district with an average daily membership in residence of
10 301 or more students.

11 (b) The number of accounts assigned to students leaving a school district shall not
12 exceed 5 percent of the average daily membership in residence for any single school. The number of
13 accounts shall be rounded to the next higher whole number.

14 II. If the number of eligible students from any school district would exceed the amounts
15 calculated pursuant to paragraph I, the scholarship organization shall implement a lottery-based
16 selection for admission into the program unless the district's school board votes to exceed said
17 limits.

18 194-E:8 Base Eligibility Adjustment Grant. The commissioner shall calculate an adjustment
19 grant to each municipality based upon the number of students who participated in the program for
20 the first time for the entirety of the previous school year. The commissioner shall determine the
21 municipality in which the student resided prior to participation and distribute a one-time
22 adjustment grant of \$1,500 per student to the municipality, which sum shall be for the use of the
23 municipality's school district or districts.

24 194-E:9 Oversight Commission; Report.

25 I. There is hereby established an education savings account oversight commission. The
26 commission shall meet at least twice a year and shall monitor the implementation of this chapter,
27 and make recommendations for any legislative changes to the program. The commission shall
28 include 2 senators appointed by the president of the senate, 3 members of the house of
29 representatives, including the chairperson of division II of the house finance committee and the
30 chairperson of the education committee, appointed by the speaker of the house of representatives,
31 the commissioner of the department of education or designee, and one member of the state board of
32 education appointed by the chairperson of the state board of education.

33 II. The commission shall provide a report on or before November 1 of each year to the
34 general court, including findings, recommendations, and any corrective or technical improvements
35 that the program may require. The scholarship organization shall develop and implement a plan to
36 be approved by the commission that addresses corrective and technical recommendations made by
37 the oversight commission.

1 III. The commission shall provide an education savings account program review report,
2 which shall be released to the public and the general court on or before November 1, 2022,
3 recommending that:

4 (a) Legislation be submitted to the general court that the education savings account
5 program be renewed in whole; or

6 (b) Legislation be submitted to the general court that the education savings account
7 program be renewed, but with changes to correct findings or any other issues identified during the
8 review process; or

9 (c) Legislation not be submitted to renew the education savings account program and
10 that the program shall be repealed effective July 1, 2024.

11 IV. The commission may require additional information from the scholarship organization
12 in order for it to fulfill its duties. The commission chairman shall inform the scholarship
13 organization of any additional requirements.

14 194-E:10 Severability. If any provision of this chapter or the application thereof to any person
15 or circumstances is held invalid, such invalidity shall not affect other provisions or applications of
16 the chapter which can be given effect without the invalid provision or application, and to this end
17 the provisions of this chapter are declared to be severable.

18 2 Repeal. RSA 194-E, relative to the education savings account program, is repealed.

19 3 Effective Date.

20 I. Section 2 of this act shall take effect July 1, 2024.

21 II. The remainder of this act shall take effect July 1, 2018.

2018-0840h

AMENDED ANALYSIS

This bill establishes an education savings account program for children between 6 and 20 years of age.