

**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. "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. "Program" means the education empowerment program created under this chapter.
- 23 8. "Program participant" means a child participating in the program.

1       9. "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       **15.1-39-02. Program and account establishment and management.**

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

7       2. The superintendent of public instruction shall create and fund an account for each  
8           program participant, who may use the funds in the account only as permitted under  
9           this chapter.

10      3. For each year of program participation by a program participant enrolled in public  
11           school, the superintendent of public instruction shall fund the participant's account with  
12           an amount that is:

13           a. Twenty 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. Twenty 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. For each year of program participation by a program participant enrolled in nonpublic  
22           school, the superintendent of public instruction shall fund the participant's account with  
23           an amount that is:

24           a. Seventy-five percent of the per-student payment rate reduced by the state  
25           average percentage of local revenue required to be subtracted to determine state  
26           aid payments under section 15.1-27-04.1 for the prior fiscal year; or

27           b. Seventy-five percent of the per-student payment rate reduced by the state  
28           average percentage of local revenue required to be subtracted to determine state  
29           aid payments under section 15.1-27-04.1 for the prior fiscal year weighted to the  
30           state's funding formula, if the participant has an active individualized education  
31           plan.

- 1       5. A parent of a program participant under subsection 3 may choose any education  
2       method, including private tutor, online learning, or other qualified provider, which best  
3       serves the needs of the program participant. A parent who signs an agreement with  
4       the superintendent of public instruction under section 15.1-39-04 is deemed to have  
5       satisfied the requirements of chapter 15.1-20 with regard to the program participant.
- 6       6. A parent of a program participant under subsection 4 may choose any education  
7       method, including nonpublic school, private tutor, online learning, or other qualified  
8       provider, which best serves the needs of the program participant. A parent who signs  
9       an agreement with the superintendent of public instruction under section 15.1-39-04 is  
10       deemed to have satisfied the requirements of chapter 15.1-20 with regard to the  
11       program participant.
- 12       7. The superintendent of public instruction may contract with a third party to administer  
13       the program and manage accounts for the program. The superintendent of public  
14       instruction shall oversee and audit the contractor.
- 15       8. The superintendent of public instruction shall provide information regarding the  
16       program to the public, including through the superintendent of public instruction's  
17       website. The superintendent of public instruction shall ensure parents of children who  
18       have disabilities or educational disadvantages are aware of the program.

19       **15.1-39-03. Program eligibility.**

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

22       **15.1-39-04. Agreement required.**

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

- 25       1. Spend program funds only on qualified education expenses as provided under section  
26       15.1-39-05.
- 27       2. Notify the superintendent of public instruction immediately if the program participant  
28       enrolls in a public or nonpublic school.
- 29       3. Provide course documentation to the superintendent of public instruction to prove the  
30       program participant's fulfillment of state graduation requirements.

1       **15.1-39-05. Qualified education expenses.**

- 2       1. Program funds may be used to pay the following qualified education expenses:
- 3           a. Tuition, books, instructional materials, and fees at an accredited nonpublic
- 4           school.
- 5           b. Textbook purchases.
- 6           c. Curriculum purchases.
- 7           d. Computer and any other hardware purchases that may be approved by the
- 8           program administrator every three years.
- 9           e. Instructional material purchases.
- 10          f. Professional fees of a private tutor or teaching services.
- 11          g. Professional fees of a practitioner or provider of educational therapies or
- 12          services.
- 13          h. Fees for a nationally standardized, norm-referenced achievement test or
- 14          examination.
- 15          i. Educational services purchased from a public school, but which do not qualify the
- 16          participant to be counted in daily attendance at the school.
- 17          j. Professional fees of a financial institution that manages the participant's account.
- 18       2. Program funds may not be used for the purchase of food or child care provided before
- 19       or after school hours or during holidays and vacations.
- 20       3. A qualified provider shall give a parent a receipt for each qualifying education expense
- 21       charged by the qualified provider.
- 22       4. 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       **15.1-39-06. 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       **15.1-39-07. 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       **15.1-39-08. 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 for each program  
27       participant. A program participant may pay qualified expenses with program funds by  
28       using debit cards, online payment services, or other methods.
- 29       2. Program funds must be transferred to each program participant's account in quarterly  
30       installments of equal amounts to be made by September fifteenth, December fifteenth,

1           March fifteenth, and June fifteenth, unless a parent negotiates a different schedule  
2           with the superintendent of public instruction.

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

7           4. The superintendent of public instruction shall approve reasonable fees a contractor  
8           may charge for managing accounts under the program. The fees must be based on  
9           market rates.

10          5. Any funds remaining in an account at the end of a school year revert to the state  
11          general fund.

12          **15.1-39-09. Auditing of accounts.**

13          To ensure compliance with applicable law and the requirements of the program, the  
14          superintendent of public instruction annually shall audit a sufficient number of program accounts  
15          chosen randomly.

16          **15.1-39-10. Suspension of accounts.**

17          The superintendent of public instruction shall suspend the account of any program  
18          participant who fails to comply with applicable law or the requirements of the program or who  
19          commits a substantial misuse of program funds. The superintendent of public instruction shall  
20          notify the program participant in writing the account has been suspended and no further  
21          transactions are allowed on or disbursements made from the account. The notification must  
22          specify the grounds for the suspension and state the program participant has ten business days  
23          to respond and take any corrective action ordered by the superintendent of public instruction.

24          Following the expiration of the ten-day period, the superintendent of public instruction shall:

25            1. Order permanent closure of the suspended account and declare the program  
26            participant ineligible for the program;

27            2. Order temporary reinstatement of the account, conditioned on the performance of  
28            specified action by the program participant; or

29            3. Order full reinstatement of the account.

30          **15.1-39-11. Rates and rebates - Restrictions.**

31          A qualified provider may not:

1       1. Charge a program participant an amount greater than the standard rate charged to  
2       nonparticipants for the item or service provided.

3       2. Share with or refund, credit, or rebate to a parent or program participant, or any  
4       person on behalf of a parent or program participant, any program funds paid or owed  
5       by the program participant to the qualified provider.

6       **15.1-39-12. Referral to the attorney general.**

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

10       **15.1-39-13. Limitation on regulation of qualified providers.**

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

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

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

20       **15.1-39-14. Student records.**

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

26       **15.1-39-15. Annual survey.**

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

1        **15.1-39-16. Rules.**

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

4        **15.1-39-17. Applicability.**

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

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

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