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91:431 New Chapter; Education Freedom Accounts. Amend RSA by inserting after chapter 194-E the following new chapter:

CHAPTER 194-F

EDUCATION FREEDOM ACCOUNTS

194-F:1 Definitions. In this chapter:

I. "Adequate education grant" means the grant calculated under RSA 198:41.

II. "Curriculum" means the lessons and academic content taught in a specific course, program, or grade level.

III. "Department" means the department of education.

IV. "Education freedom account" or "EFA" means the account to which funds are allocated by the scholarship organization to the parent of an EFA student in order to pay for qualifying education expenses to educate the EFA student under this chapter.

V. "Education service provider" means a person or organization that receives payments from education freedom accounts to provide educational goods and services to EFA students.

VI. "Eligible student" means a resident of this state who is eligible to enroll in a public elementary or secondary school and whose annual household income at the time the student applies for the program is less than or equal to 300 percent of the federal poverty guidelines as updated annually in the Federal Register by the United States Department of Health and Human Services under 42 U.S.C. section 9902(2). No income threshold need be met in subsequent years, provided the student otherwise qualifies. Students in the special school district within the department of corrections established in RSA 194:60 shall not be eligible students.

VII. "EFA student" means an eligible student who is participating in the EFA program.

VIII. "Full-time" means more than 50 percent of instructional time.

IX. "Remote or hybrid" shall mean any public school that is not providing instruction in-person where the student or the educator are both not physically present in the traditional classroom due to full-time or part-time classroom closure.

X. "Parent" means a biological or adoptive parent, legal guardian, custodian, or other person with legal authority to act on behalf of an EFA student.

XI. "Program" means the education freedom account program established in this chapter.

XII. "Scholarship organization", means a scholarship organization approved under RSA 77:G, that administers and implements the EFA Act.

194-F:2 Program.

I. The commissioner of the department of education shall transfer to the scholarship organization the per pupil adequate education grant amount under RSA 198:40-a, plus any differentiated aid that would have been provided to a public school for that eligible student. The

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1 transfers shall be made in accordance with the distribution of adequate education grants under RSA
2 198:42.

3 II. Parents of an EFA student shall agree to use the funds deposited in their student's EFA
4 only for the following qualifying expenses to educate the EFA student:

5 (a) Tuition and fees at a private school.

6 (b) Tuition and fees for non-public online learning programs.

7 (c) Tutoring services provided by an individual or a tutoring facility.

8 (d) Services contracted for and provided by a district public school, chartered public
9 school, public academy, or independent school, including, but not limited to, individual classes and
10 curricular activities and programs.

11 (e) Textbooks, curriculum, or other instructional materials, including, but not limited to,
12 any supplemental materials or associated online instruction required by either a curriculum or an
13 education service provider.

14 (f) Computer hardware, Internet connectivity, or other technological services and
15 devices, that are primarily used to help meet an EFA student's educational needs.

16 (g) Educational software and applications.

17 (h) School uniforms.

18 (i) Fees for nationally standardized assessments, advanced placement examinations,
19 examinations related to college or university admission or awarding of credits and tuition and/or fees
20 for preparatory courses for such exams.

21 (j) Tuition and fees for summer education programs and specialized education programs.

22 (k) Tuition, fees, instructional materials, and examination fees at a career or technical
23 school.

24 (l) Educational services and therapies, including, but not limited to, occupational,
25 behavioral, physical, speech-language, and audiology therapies.

26 (m) Tuition and fees at an institution of higher education.

27 (n) Fees for transportation paid to a fee-for-service transportation provider for the
28 student to travel to and from an education service provider.

29 (o) Any other educational expense approved by the scholarship organization.

30 III. The funds in an EFA may only be used for educational purposes in accordance with
31 paragraph II.

32 IV. EFA funds shall not be refunded, rebated, or shared with a parent or EFA student in
33 any manner. Any refund or rebate for goods or services purchased with EFA funds shall be credited
34 directly to the student's EFA.

35 V. Parents may make payments for the costs of educational goods and services not covered
36 by the funds in their student's EFA. However, personal deposits into an EFA shall not be permitted.

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1 VI. Funds deposited in an EFA shall not constitute taxable income to the parent or the EFA
2 student.

3 VII. An EFA shall remain in force, and any unused funds shall roll over from quarter-to-
4 quarter and from year-to-year until the parent withdraws the EFA student from the EFA program or
5 until the EFA student graduates from high school, unless the EFA is closed because of a substantial
6 misuse of funds. Any unused funds shall revert to the education trust fund established in RSA
7 198:39 and be allocated to fund other EFAs.

8 VIII. Nothing in this chapter shall be construed to require that an EFA student must be
9 enrolled, full- or part-time, in either a private school or nonpublic online school.

10 IX. A home education program pursuant to RSA 193-A:5 is terminated upon the
11 commencement of a student's participation in an EFA program. A parent shall provide notification
12 pursuant to RSA 193-A:5 when a student starts participating in an EFA program.

13 194-F:3 Application for an Education Freedom Account.

14 I. A parent may apply to the scholarship organization to establish an EFA for an eligible
15 student. The scholarship organization shall accept and approve applications for the fall and spring
16 semesters each year and shall establish procedures for approving applications in an expeditious
17 manner.

18 II. The scholarship organization shall create a standard form that parents can submit to
19 establish their student's eligibility for the EFA program and shall ensure that the application is
20 publicly available and may be submitted through various sources, including the Internet.

21 III. The scholarship organization shall approve an application for an EFA if:

22 (a) The parent submits an application for an EFA in accordance with application
23 procedures established by the scholarship organization.

24 (b) The student on whose behalf the parent is applying is an eligible student.

25 (c) Funds are available for the EFA.

26 (d) The parent signs an agreement with the scholarship organization:

27 (1) To provide an education for the eligible student in the core knowledge domains
28 that include science, mathematics, language, government, history, health, reading, writing, spelling,
29 the history of the constitutions of New Hampshire and the United States, and an exposure to and
30 appreciation of art and music.

31 (2) Not to enroll the eligible student as a full-time student in their resident district
32 public school while participating in the EFA program.

33 (3) To provide an annual record of educational attainment by:

34 (A) Having the student take a nationally-standardized, norm-referenced
35 achievement test and to provide the results to the scholarship organization by the end of each school
36 year which the scholarship organization shall make available to the department as aggregate scores;
37 or

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(B) Having the student take the statewide student assessment test pursuant to RSA 193-C:6; or

(C) Maintaining a portfolio including, but not limited to, a log which designates by title the reading materials used; samples of writings, worksheets, workbooks, or creative materials used or developed by the student. The parent shall have a certified teacher or a teacher currently teaching in a nonpublic school, who is selected by the parent, evaluate the student's educational progress upon review of a portfolio and discussion with the parent or student.

(4) To use the funds in the EFA only for qualifying expenses to educate the eligible student as established by the EFA program.

(5) To comply with the rules and requirements of the EFA program.

IV. The signed agreement between the parent and the scholarship organization shall satisfy the compulsory school attendance requirements of RSA 193:1.

V. The scholarship organization shall annually renew a student's EFA if funds are available.

VI. Upon notice to the scholarship organization, an EFA student may choose to stop receiving EFA funding and enroll full-time in a public school.

(a) Enrolling as a full-time student in the resident district public school shall result in the immediate suspension of payment of additional funds into the student's EFA. However, an EFA that has been open for at least one full school year shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the EFA. When no funds remain in the student's EFA, the scholarship organization may close the EFA.

(b) If an eligible student decides to return to the EFA program, payments into the student's existing EFA may resume if the EFA is still open and active. A new EFA may be established if the student's EFA was closed.

194-F:4 Authority and Responsibilities of the Scholarship Organization. The scholarship organization shall have the following additional duties, obligations, and authority:

I. The scholarship organization shall maintain an updated list of education service providers and shall ensure that the list is publicly available through various sources, including the Internet.

II. The scholarship organization shall provide parents with a written explanation of the allowable uses of EFA funds, the responsibilities of parents, the duties of the scholarship organization, and the role of any financial management firms that the scholarship organization may contract with to administer any aspect of the EFA program.

III. The scholarship organization shall ensure that parents of students with disabilities receive notice that participation in the EFA program is a parental placement under 20 U.S.C. section 1412, Individuals with Disabilities Education Act (IDEA), along with an explanation of the rights that parentally placed students possess under IDEA and any applicable state laws.

IV. The scholarship organization shall, in cooperation with the department, determine eligibility for differentiated aid subject to any applicable state and federal laws.

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1 V. The scholarship organization may withhold from deposits or deduct from EFAs an
2 amount to cover the costs of administering the EFA program, up to a maximum of 10 percent
3 annually.

4 VI. The scholarship organization shall implement a commercially viable system for payment
5 of services from EFAs to education service providers by electronic or online funds transfer.

6 (a) The scholarship organization shall not adopt a system that relies exclusively on
7 requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum
8 flexibility to parents by facilitating direct payments to education service providers. Scholarship
9 organizations may pre-approve requests for reimbursements for qualifying expenses, including
10 expenses pursuant to RSA 194-F:2, II, but shall not disperse funds to parents without receipt that
11 such pre-approved purchase has been made.

12 (b) A scholarship organization may contract with a private institution or organization to
13 develop the payment system.

14 VII. The scholarship organization may also seek to implement a commercially viable system
15 for parents to publicly rate, review, and share information about education service providers, ideally
16 as part of the same system that facilitates the electronic or online funds transfers.

17 VIII. If an education service provider requires partial payment of tuition or fees prior to the
18 start of the academic year to reserve space for an EFA student admitted to the education service
19 provider, such partial payment may be paid by the scholarship organization, if funds are available,
20 prior to the start of the school year in which the EFA is awarded and deducted in an equitable
21 manner from subsequent quarterly EFA deposits to ensure adequate funds remain available
22 throughout the school year; but if an EFA student decides not to use the education service provider,
23 the partial reservation payment shall be returned to the scholarship organization by such education
24 service provider and credited to the student's EFA.

25 IX. The scholarship organization shall continue making deposits into a student's EFA until:

26 (a) The scholarship organization determines that the EFA student is no longer an
27 eligible student.

28 (b) The scholarship organization determines that there was substantial misuse of the
29 funds in the EFA.

30 (c) The parent or EFA student withdraws from the EFA program.

31 (d) The EFA student enrolls full-time in the resident district public school.

32 (e) The EFA student graduates from high school.

33 X. The scholarship organization may conduct or contract for the auditing of individual EFAs,
34 and shall at a minimum conduct random audits of EFAs on an annual basis.

35 XI. The scholarship organization may make any parent or EFA student ineligible for the
36 EFA program in the event of intentional and substantial misuse of EFA funds.

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1 (a) The scholarship organization shall create procedures to ensure that a fair process
2 exists to determine whether an intentional and substantial misuse of EFA funds has occurred.

3 (b) If an EFA student is free from personal misconduct, that student shall be eligible for
4 an EFA in the future if placed with a new guardian or other person with the legal authority to act on
5 behalf of the student.

6 (c) The scholarship organization may refer suspected cases of intentional and
7 substantial misuse of EFA funds to the attorney general for investigation if evidence of fraudulent
8 use of EFA funds is obtained.

9 (d) A parent or EFA student may appeal the scholarship organization's decision to deny
10 eligibility for the EFA program to the department.

11 XII. The scholarship organization may bar an education service provider from accepting
12 payments from EFAs if the scholarship organization determines that the education service provider
13 has:

14 (a) Intentionally and substantially misrepresented information or failed to refund any
15 overpayments in a timely manner.

16 (b) Routinely failed to provide students with promised educational goods or services.

17 XIII. The scholarship organization shall create procedures to ensure that a fair process
18 exists to determine whether an education service provider may be barred from receiving payments
19 from EFAs.

20 (a) If the scholarship organization bars an education service provider from receiving
21 payments from EFAs, it shall notify parents and EFA students of its decision as quickly as possible.

22 (b) Education service providers may appeal the scholarship organization's decision to bar
23 them from receiving payments from the EFA to the department.

24 XIV. The scholarship organization may accept gifts and grants from any source to cover
25 administrative costs, to inform the public about the EFA program, or to fund additional EFAs.

26 XV. The department shall adopt rules that are necessary for the administration of this
27 chapter.

28 XVI. The scholarship organization shall adopt policies or procedures that are necessary for
29 the administration of this chapter. This may include policies or procedures:

30 (a) Establishing or contracting for the establishment of an online anonymous fraud
31 reporting service.

32 (b) Establishing an anonymous telephone number for fraud reporting.

33 (c) Requiring a surety bond for education service providers receiving more than \$100,000
34 in EFA funds.

35 (d) Refunding payments from education service providers to EFAs.

36 (e) Ensuring appropriate use and rigorous oversight of all funds expended under this
37 program.

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1 XVII. The scholarship organization shall not exclude, discriminate against, or otherwise
2 disadvantage any education provider with respect to programs or services under this section based
3 in whole or in part on the provider's religious character or affiliation, including religiously based or
4 mission-based policies or practices.

5 194-F:5 Parent and Education Service Provider Advisory Commission.

6 I. There is established the parent and education service provider advisory commission to
7 assist the scholarship organization by providing recommendations about implementing,
8 administering, and improving the EFA program.

9 II. The commission shall consist of 7 members who shall be parents of EFA students or
10 education service providers and shall represent no fewer than 4 counties in the state. The members
11 shall be appointed by the director of the scholarship organization and serve at the director's pleasure
12 for one calendar year after which they may be reappointed. The director of the scholarship
13 organization, or designee, shall serve as a non-voting chairperson of the commission. The
14 commissioner of the department of education, or designee, shall serve as a non-voting member of the
15 commission.

16 III. The scholarship organization may request the commission to meet, in person or
17 virtually, to review appeals of education service provider denials pursuant to RSA 194-F:4, XI and to
18 provide a recommendation to the scholarship organization as to whether an education service
19 provider should be allowed to receive, or continue receiving, payments from EFAs.

20 194-F:6 Requirements for Education Service Providers.

21 I. The scholarship organization may approve education service providers on its own
22 initiative, at the request of parents, or by notice to the scholarship organization provided by
23 prospective education service providers.

24 II. A prospective education service provider that wishes to receive payments from EFAs
25 shall:

26 (a) Submit notice to the scholarship organization that it wishes to receive payments from
27 EFAs.

28 (b) Agree not to refund, rebate, or share EFA funds with parents or EFA students in any
29 manner, except that funds may be remitted or refunded to an EFA in accordance with procedures
30 established by the scholarship organization.

31 (c) Comply with all state and federal anti-discrimination laws.

32 194-F:7 Independence of Education Service Providers.

33 I. Nothing in this chapter shall be deemed to limit the independence or autonomy of an
34 education service provider or to make the actions of an education service provider the actions of the
35 state government.

36 II. Education service providers shall be given maximum freedom to provide for the
37 educational needs of EFA students without governmental control.

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1 III. Nothing in this chapter shall be construed to expand the regulatory authority of the
2 state, its officers, or any school district to impose any additional regulation of education service
3 providers beyond those necessary to enforce the requirements of the EFA program.

4 IV. Any education service provider that accepts payment from an EFA under this chapter is
5 not an agent of the state or federal government.

6 V. An education service provider shall not be required to alter its creed, practices,
7 admissions policy, or curriculum in order to accept payments from an EFA.

8 194-F:8 Responsibilities of Public Schools and School Districts. A public school, or school
9 district, that previously enrolled an EFA student shall provide a private school that is also an
10 education service provider and that has enrolled an EFA student with a complete copy of the ESA
11 student's school records, in a timely manner, while complying with 20 U.S.C. section 1232g, the
12 Family Educational Rights and Privacy Act of 1974.

13 194-F:9 Legal Proceedings.

14 I. In any legal proceeding challenging the application of this chapter to an education service
15 provider, the state bears the burden of establishing that the law is necessary and does not impose
16 any undue burden on the education service provider.

17 II. No liability shall arise on the part of the scholarship organization or the state or of any
18 public school or school district based on the award of or use of an EFA pursuant to this chapter.

19 III. If any part of this chapter is challenged in a state court as violating either the state or
20 federal constitutions, parents of eligible and/or EFA students shall be permitted to intervene as of
21 right in such lawsuit for the purposes of defending the EFA program's constitutionality. However,
22 for the purposes of judicial administration, a court may require that all parents file a joint brief, so
23 long as they are not required to join any brief filed on behalf of any named state defendant.

24 IV. If any provision of this chapter, or the application thereof to any person or
25 circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this
26 chapter which can be given effect without the invalid provision or application, and to this end the
27 provisions of this chapter are declared to be severable.

28 194-F:10 Phase-Out Grants.

29 I. For each school district, the commissioner shall calculate the amount of the reduction in
30 adequate education grants pursuant to RSA 194-F:2, I for each student receiving an EFA under this
31 chapter. In the first year of the grant reduction, the commissioner shall calculate 50 percent of the
32 reduction for each student and shall disburse that amount to the district as a district funding
33 phaseout grant. In the second year of the grant reduction, the commissioner shall calculate 25
34 percent of the reduction for each student and shall disburse that amount to the district as a district
35 funding phase-out grant. All district funding phase-out grants shall be included in the September 1
36 disbursement required pursuant to RSA 198:42.

37 II. The phase-out grants will terminate for new EFA students receiving an EFA effective

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1 July 1, 2026.

2 194-F:11 Appropriation From Education Trust Fund. The amount necessary to fund any grants
3 or transfers of funds authorized under this chapter is hereby appropriated to the department from
4 the education trust fund created under RSA 198:39. The governor is authorized to draw a warrant
5 from the education trust fund to satisfy the state's obligation under this section. Such warrant for
6 payment shall be issued regardless of the balance of funds available in the education trust fund. If
7 the balance in the education trust fund, after the issuance of any such warrant, is less than zero, the
8 comptroller shall transfer sufficient funds from the general fund to eliminate such deficit. The
9 commissioner of the department of administrative services shall inform the fiscal committee and the
10 governor and council of such balance. This reporting shall not in any way prohibit or delay the
11 distribution of any grant or transfer of funds authorized under this chapter.

12 194-F:12 Legislative Oversight Committee Established. There is established an education
13 freedom savings account oversight committee.

14 I. The members of the committee shall be as follows:

15 (a) Two members of the senate, one of whom shall be a member of the majority party
16 and one of whom shall be a member of the minority party, appointed by the president of the senate.

17 (b) Three members of the house of representatives, one of whom shall be a member of
18 the majority party and one of whom shall be a member of the minority party, appointed by the
19 speaker of the house of representatives.

20 II. Members of the committee shall receive mileage at the legislative rate when attending to
21 the duties of the committee.

22 III. The committee shall monitor the implementation of RSA 194-F, including the impact of
23 state education funding to local district schools, and make recommendations for any legislative
24 changes to the education freedom savings account program.

25 IV. The members of the study committee shall elect a chairperson from among the members.
26 The first meeting of the committee shall be called by the first-named senate member. The first
27 meeting of the committee shall be held within 45 days of the effective date of this section. Three
28 members of the committee shall constitute a quorum.

29 V. The committee shall submit a report on or before November 30, 2022, and each year
30 thereafter, to the general court including findings, recommendations, and any corrective or technical
31 improvements that the education freedom account program may require.

32 91:432 Duty of Parent; Compulsory Attendance by Pupil. Amend RSA 193:1, I(g) and (h) to read
33 as follows:

34 (g) The pupil has been accepted into an accredited postsecondary education program;

35 [~~or~~]