

Rep. Umberger, Carr. 2  
Rep. Kurk, Hills. 2  
Rep. Ladd, Graf. 4  
Rep. T. Wolf, Hills. 7  
March 8, 2018  
2018-1031h  
04/10

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 Statement of Purpose. The education savings account program established in RSA 194-E is to  
8 enable parents or guardians of eligible students currently enrolled in a public school the choice to  
9 apply for funds to purchase approved educational options that best serve the student.

10 2 New Chapter; Education Savings Accounts. Amend RSA by inserting after chapter 194-D the  
11 following new chapter:

12

CHAPTER 194-E

13

EDUCATION SAVINGS ACCOUNTS

14

194-E:1 Definitions. In this chapter:

15

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

17

II. "Child with a disability" means a child with a disability as defined by 34 C.F.R. section  
18 300.8 and RSA 186-C:2.

19

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

20

IV. "Department" means the department of education.

21

V. "Eligible student" means a New Hampshire resident who:

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(a) Is at least 6 years of age but not more than 20 years of age; and

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(b) Has not graduated from high school or completed an alternate diploma or other high

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school equivalency credential; and

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(c)(1) Has attended a New Hampshire public school or a chartered public school for a

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minimum of one school year, excluding kindergarten; or

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(2) Has received an education savings account in the prior year; and

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(d)(1) Has an annual household income in the student's initial year of the program

29

which is less than or equal to 185 percent of the federal poverty guidelines as updated annually in

30

the Federal Register by the United States Department of Health and Human Services under the

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1 authority of 42 U.S.C. section 9902(2), provided the student's annual household income does not  
2 exceed 300 percent of such federal poverty guidelines during the student's participation in the  
3 program; or

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

6 VI. "Nonpublic school" shall mean any public academy as defined in RSA 194:23, II, or  
7 private school in New Hampshire accredited through a department-recognized independent  
8 accreditation agency, school approved by a state education agency having an interstate compact  
9 with New Hampshire, or other school located in New Hampshire approved for school attendance  
10 pursuant to rules authorized by RSA 21-N:9, II(o) and RSA 186:11, XXIX. A nonpublic school shall:

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

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

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

19 VII. "Parent" means the biological or adoptive parent, parents, or legal guardian of a  
20 scholarship student.

21 VIII. "Parent-directed education" means instruction in science, mathematics, language,  
22 government, history, health, reading, writing, spelling, the history of the constitutions of New  
23 Hampshire and the United States and an exposure to and appreciation of art and music. Such  
24 education shall be provided by a parent for his or her own child and may include, at the discretion  
25 of the parent, any of the services and materials set forth in RSA 194-E:2, II.

26 IX. "Postsecondary program" means Running Start, e-Start, Early College, or a dual and  
27 concurrent enrollment program approved by the community college system of New Hampshire, the  
28 university system of New Hampshire, or the department.

29 X. "Program" means the education savings account program established in this chapter that  
30 will begin not earlier than the 2019-2020 school year.

31 XI. "Recognized independent accreditation agency" means an accrediting organization such  
32 as the New England Association of Schools and Colleges, National Association of Independent  
33 Schools, Independent Schools Association of Northern New England, Northern New England  
34 Conference of Seventh-day Adventists, Inc., or other accrediting agency recognized by the  
35 department that engages member schools in a comprehensive peer review accreditation process that  
36 provides assurance of quality academic standards and criteria, and measures academic  
37 improvement.

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1           XII. "Resident school district" means the public school district in which the eligible student  
2 resides.

3           XIII. "Scholarship organization" means a charitable organization incorporated or qualified  
4 to do business in this state that:

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

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

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

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

11           XIV. "Scholarship student" means a student in whose name an account has been opened.

12           XV. "Service provider" means a licensed professional who contracts with an education  
13 savings account recipient to provide educational instruction or other professional services.

14           XVI. "Treasurer" means the treasurer of the state of New Hampshire.

15           XVII. "Tutor" means an individual whose qualifications include skills, competencies, and  
16 knowledge to be demonstrated by evidence such as but not limited to college course work,  
17 documented professional experience, letters of recommendation, and professional development  
18 hours.

19           194-E:2 Program.

20           I. There is established an education savings account program, for which a parent of an  
21 eligible student shall receive an account from a scholarship organization to either enroll the student  
22 in a public or nonpublic school, or to provide the student with parent-directed education or  
23 instruction or services provided by a service provider or tutor. The commissioner shall report the  
24 program implementation date to the oversight commission established in RSA 194-E:9.

25                 (a) For accounts for scholarship students enrolled in a public or nonpublic school, the  
26 parent is responsible for the student's enrollment application and agrees to meet the applicable  
27 requirements set forth in this chapter.

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

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

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

37                 (b) Textbooks, curriculum, supplemental materials, including computer hardware and

1 software required to support the curriculum.

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

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

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

8 (f) Fees for a norm-referenced or criterion-referenced standardized achievement test,  
9 advanced placement test, or any department-approved assessment such as, but not limited to, the  
10 SAT or ACT.

11 (g) Educational instruction or services provided by a service provider or tutor.

12 III. For a child with a disability, participation in the program shall have the same effect as  
13 a parental placement of the child under 20 U.S.C. section 1412(a)(10)(A) of the Individuals with  
14 Disabilities Education Act (IDEA).

15 (a) The child's resident district shall not be liable for the cost of education, including  
16 special education and related services and the cost of a nonpublic school, if the resident district  
17 made a free appropriate public education available to the child and the parent elected to enroll the  
18 child in a public or nonpublic school, or elected to provide parent-directed instruction, funded in full  
19 or in part by an education savings account established pursuant to this chapter.

20 (b) A parent shall not establish and use funding from an education savings account to  
21 pay, in full or in part, tuition to a private school if the parent is in the process of seeking payment  
22 from the child's resident district for the cost of that private school pursuant with 34 C.F.R. section  
23 300.148.

24 (c) A school district in which the private school is located shall develop a services plan  
25 for any child who the school district has designated to receive services pursuant to 34 C.F.R.  
26 sections 300.132 through 300.137, including eligible children who have received an education  
27 savings account. The services plan, which shall be developed and implemented in accordance with  
28 34 C.F.R. sections 300.137 through 300.139 shall describe the specific special education and related  
29 services that the resident school district will make available to the parentally-placed child with a  
30 disability, including the amount and location of the services and any transportation necessary for  
31 the child to benefit from or participate in the services consistent with 34 C.F.R. section 300.139 (b).

32 (d) Pursuant to 34 C.F.R. section 300.137(a), no parentally-placed private school child  
33 with a disability has an individual right to receive some or all of the special education and related  
34 services that the child would receive if enrolled in a public school.

35 (e)(1) The school district in which the private school is located shall be responsible for  
36 conducting all child find activities for children who are enrolled in nonprofit private schools located  
37 within the school district, including the costs of finding and conducting an initial evaluation for any

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1 child who is suspected of being a child with a disability, identifying the child as a child with a  
2 disability, if appropriate; and the costs of conducting reevaluations to determine if an identified  
3 child enrolled in a private school in such school district continues to be a child with a disability.

4 (2) When a child is enrolled in a for-profit school or is receiving parent-directed  
5 instruction, the child's resident school district shall be responsible for conducting child find  
6 activities, including the cost of conducting initial evaluations and reevaluations for a child who is  
7 suspected of, or identified as, being a child with a disability.

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

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

13 VI. Scholarship students may participate in co-curricular programs, as defined in RSA  
14 193:1-c, offered by the resident school district in accordance with local school board policy. A  
15 scholarship student may participate in a curricular course and the local school board may establish  
16 fees for attending these courses. The school district shall not be eligible for reimbursement for  
17 students with an education savings account.

18 194-E:3 Program Accountability.

19 I. The parent shall maintain accountability and responsibility for the education of his or her  
20 scholarship student, establish measurable goals for the student at the outset of each academic year,  
21 and at least twice per year shall measure the student's academic growth.

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

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

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

34 V. The parent shall maintain a copy of all evaluations for at least one year after the student  
35 has exited the program. The scholarship organization shall maintain a student's records for a  
36 minimum of 3 years. If a child leaves the program any records shall be forwarded to the student's  
37 resident school district.

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

4 VII. The scholarship organization shall notify the department, the parent and the treasurer  
5 in writing of any scholarship students who are non-compliant with the program requirements of  
6 RSA 194-E:2. The department shall hold a hearing at the request of the parent. The department  
7 shall remove any scholarship student from the program if, after any required hearing, it determines  
8 the student is non-compliant with the requirements of RSA 194-E:2. Any funds remaining in the  
9 account for a student deemed non-compliant shall be sent to the state treasury for deposit in the  
10 education trust fund. Parents may appeal the department's decision to the state board of education.

11 194-E:4 Program Funding and Payment.

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

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

16 (a) For students enrolled in a public or nonpublic school:

17 (1) The base cost of an opportunity for an adequate education as provided in RSA  
18 198:40-a, II(a); and

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

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

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

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

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

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

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

37 VIII. The scholarship organization shall conduct audits of scholarship accounts, using

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1 procedures evaluated and approved by the department, to ensure compliance with this chapter.

2 IX. At the time of the eligible student's graduation from high school or completion of an  
3 alternate diploma or other high school equivalency credential, the eligible student's account shall be  
4 closed, the parents notified, and any remaining funds shall be returned to the state treasurer for  
5 deposit in the education trust fund.

6 X. The scholarship organization in consultation with the commissioner shall prohibit a  
7 participating nonpublic school or service provider from the program and notify the department if  
8 the scholarship organization establishes that the participating school or service provider has:

9 (a) On 2 or more occasions has failed to comply with the accountability standards  
10 established in this chapter; or

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

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

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

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

20 XIV. A tutor shall provide evidence of his or her qualifications to a scholarship  
21 organization. If the scholarship organization determines that, based on the evidence provided, the  
22 tutor is competent to provide the requested services, the scholarship organization shall make  
23 payment to the tutor from the eligible student's account.

24 194-E:5 Scholarship Organization; Requirements. A scholarship organization shall:

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

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

28 III. Provide the unique pupil identifier and date of birth for each eligible student to the  
29 department, if available.

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

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

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

36 (c)(1) Accept applications and establish accounts for eligible students at any time during  
37 the year if, upon written request from the applicant, the commissioner grants an exception, and the

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

3 (2) Any applicant aggrieved by the commissioner's decision not to grant an  
4 exception pursuant to subparagraph (c)(1) may appeal in writing to the state board of education no  
5 later than 15 days following the date of the commissioner's decision.

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

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

8 VII. Provide an annual report to the speaker of the house of representatives, the president  
9 of the senate, the chairmen of the house education and finance committees, the chairmen of the  
10 senate education and finance committees, the governor, the joint legislative oversight commission  
11 pursuant to RSA 194-E:9, and the department, including:

12 (a) The number of scholarship students.

13 (b) A list of public schools, nonpublic schools, service providers, and tutors, including  
14 the number of scholarship students served by each school, service provider, and tutor, and the  
15 dollar amount of each type of service provided by each school, service provider, and tutor.

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

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

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

21 (f) The number of students leaving nonpublic schools and returning to public schools  
22 and the reason, if known.

23 (g) Scholarships or other financial aid provided by public or nonpublic schools if the  
24 account did not cover the entire tuition and other related costs, if available.

25 VIII. Conduct a survey of at least 25 percent of parents of eligible students with accounts.  
26 The survey shall include, but not be limited to, the number of years the parent has been in the  
27 program, the relative satisfaction of the parent with the program, and suggestions of the parent for  
28 improvement. The survey and its results shall be included in the annual report.

29 IX. Document each recipient who is eligible to receive differentiated aid. All children  
30 eligible for special education, as defined in 34 C.F.R. section 300.8(a), shall be identified and  
31 documented separately. Once this is determined, the scholarship organization shall notify the  
32 department.

33 X. When the parent of a child with a disability submits an application for an education  
34 savings account:

35 (a) Inform the parent that, pursuant to 34 C.F.R. section 300.137(a), the child with a  
36 disability will no longer have any individual right to receive some or all of the special education and  
37 related services the child would have received if enrolled in a public school.



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1 (b) Inform the parent of a child with a disability who is enrolled in a nonprofit private  
2 elementary or secondary school that the child with a disability may, but is not entitled to, receive  
3 some services through a service plan in accordance with 34 C.F.R. sections 300.132 through  
4 300.137.

5 (c) Inform the parent that the responsibility for making the decision about whether the  
6 child shall receive services, what services the child will receive, and where the services will be  
7 provided is with the school district in which the child's private school is located and not with the  
8 child's resident school district.

9 (d) Inform the parent that a child with a disability who is enrolled in a for-profit private  
10 school or who is receiving parent-directed instruction has no right to receive any special education  
11 or related services.

12 (e) Provide the parent with the most recent copy of the department model procedural  
13 safeguards handbook and the most recent copy of the New Hampshire special education procedural  
14 safeguard handbook.

15 XI. Comply with the requirements and recommendations of the oversight commission  
16 established in RSA 194-E:9.

17 194-E:6 School and Service Provider Requirements.

18 I. Public schools, nonpublic schools, postsecondary institutions, service providers, and  
19 tutors shall comply with all federal and state laws regarding student privacy.

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

23 III. The eligible child's resident school district shall provide a participating public school,  
24 nonpublic school, postsecondary institution, service provider, or tutor that has admitted or is  
25 providing services to an eligible student under this program with a copy of the student's school  
26 records, while complying with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
27 section 1232g, and state policies.

28 194-E:7 Education Savings Account; Assignment; Admission.

29 I.(a) In any one school year, the number of accounts assigned to students leaving a school  
30 district shall not exceed the greater of 3 students or:

31 (1) Five percent, rounded to the next higher whole number, of a school district's free  
32 and reduced meal program average daily membership for the prior year, in a school district with an  
33 average daily membership in residence of 100 students or less; or

34 (2) Four percent, rounded to the next higher whole number, of a school district's  
35 free and reduced meal program average daily membership for the prior year, in a school district  
36 with an average daily membership in residence between 101 and 300 students; or

37 (3) Three percent, rounded to the next higher whole number, of a school district's

1 free and reduced meal program average daily membership for the prior year, in a school district  
2 with an average daily membership in residence of 301 or more students.

3 (b) In any one school year, the number of accounts assigned to students leaving a school  
4 district shall not exceed 5 percent of the average daily membership in residence for any single  
5 school. The number of accounts shall be rounded to the next higher whole number.

6 II. If the number of eligible students from any school district would exceed the amounts  
7 calculated pursuant to paragraph I, the scholarship organization shall implement a lottery-based  
8 selection for admission into the program. If necessary, the lottery shall be held not later than June  
9 1 to determine selection for admission into the program for the following school year.

10 194-E:8 Base Eligibility Adjustment Grant. The commissioner shall calculate an adjustment  
11 grant to each municipality based upon the number of students who participated in the program for  
12 the first time for the entirety of the previous school year. The commissioner shall determine the  
13 municipality in which the student resided prior to participation and distribute a one-time  
14 adjustment grant of \$1,500 per student to the municipality, which sum shall be for the use of the  
15 municipality's school district or districts.

16 194-E:9 Oversight Commission; Report.

17 I. There is hereby established an education savings account oversight commission. The  
18 commission shall meet at least twice a year and shall monitor the implementation of this chapter,  
19 and make recommendations for any legislative changes to the program. The commission shall  
20 include 2 senators appointed by the president of the senate, 3 members of the house of  
21 representatives, including the chairperson of division II of the house finance committee and the  
22 chairperson of the education committee, appointed by the speaker of the house of representatives,  
23 the commissioner of the department of education or designee, and one member of the state board of  
24 education appointed by the chairperson of the state board of education.

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

30 III. The commission may require additional information from the scholarship organization  
31 in order for it to fulfill its duties. The commission chairman shall inform the scholarship  
32 organization of any additional requirements.

33 194-E:10 Severability. If any provision of this chapter or the application thereof to any person  
34 or circumstances is held invalid, such invalidity shall not affect other provisions or applications of  
35 the chapter which can be given effect without the invalid provision or application, and to this end  
36 the provisions of this chapter are declared to be severable.

37 3 Effective Date. This act shall take effect July 1, 2018.

2018-1031h

AMENDED ANALYSIS

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