

**HB 626-FN - AS INTRODUCED**

2023 SESSION

23-0723

04/10

HOUSE BILL            ***626-FN***

AN ACT                requiring the department of education to administer the education freedom account.

SPONSORS:            Rep. Luneau, Merr. 9; Rep. Myler, Merr. 9

COMMITTEE:          Education

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ANALYSIS

This bill changes the administration of the education freedom account program under RSA 194-F from scholarship organizations to the department of education.

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Explanation:          Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT requiring the department of education to administer the education freedom account.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Paragraph; Education Freedom Accounts; Definition; Commissioner. Amend RSA 194-  
2 F:1 by inserting after paragraph I the following new paragraph:

3 I-a. "Commissioner" means the commissioner of the department of education.

4 2 Definition; EFA. Amend RSA 194-F:1, IV to read as follows:

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

8 3 Definition; State Board. RSA 194-F:1, XII is repealed and reenacted to read as follows:

9 XII. "State board" means the state board of education.

10 4 Program; Funds Transfer. Amend RSA 194-F:2, I to read as follows:

11 I. The commissioner of the department of education shall transfer to the [~~scholarship  
12 organization~~] **student's EFA** the per pupil adequate education grant amount under RSA 198:40-a,  
13 plus any differentiated aid that would have been provided to a public school for that eligible student.  
14 The transfers shall be made in accordance with the distribution of adequate education grants under  
15 RSA 198:42.

16 5 Qualifying Expenses. Amend RSA 194-F:2, II(o) to read as follows:

17 (o) Any other educational expense approved by the [~~scholarship organization~~] **state  
18 board**.

19 6 Unused Funds. Amend RSA 194-F:2, VII to read as follows:

20 VII. An EFA shall remain in force, and any unused funds shall roll over from quarter-to-  
21 quarter and from year-to-year until the parent withdraws the EFA student from the EFA program,  
22 **the student becomes ineligible**, or until the EFA student graduates from high school, unless the  
23 EFA is closed because of a substantial misuse of funds. Any unused funds shall revert to the  
24 education trust fund established in RSA 198:39 [~~and be allocated to fund other EFAs~~]. **Unused  
25 funds that roll over from year-to-year may not exceed the amount of one quarterly  
26 distribution into the student's EFA and any excess year-to-year roll over funds shall be  
27 returned to the education trust fund.**

28 7 Education Freedom Accounts. Amend RSA 194-F:3 to read as follows:

29 194-F:3 Application for an Education Freedom Account.

1 I. A parent may apply to the ~~[scholarship organization]~~ **department** to establish an EFA for  
2 an eligible student. The ~~[scholarship organization]~~ **department** shall accept and approve  
3 applications for the fall and spring semesters each year and shall establish procedures for approving  
4 applications in an expeditious manner.

5 II. The ~~[scholarship organization]~~ **department** shall create a standard form that parents  
6 can submit to establish their student's eligibility for the EFA program and shall ensure that the  
7 application is publicly available and may be submitted through various sources, including the  
8 Internet.

9 III. The ~~[scholarship organization]~~ **department** shall approve an application for an EFA if:

10 (a) The parent submits an application for an EFA in accordance with application  
11 procedures established by the ~~[scholarship organization]~~ **department**.

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

13 (c) Funds are available for the EFA.

14 (d) The parent signs an agreement with the ~~[scholarship organization]~~ **department**:

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

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

21 (3) To provide an annual record **to the department** of educational attainment by:

22 (A) ~~[Having the student take a nationally standardized, norm-referenced~~  
23 ~~achievement test and to provide the results to the scholarship organization by the end of each school~~  
24 ~~year which the scholarship organization shall make available to the department as aggregate scores;~~

25 ~~or~~

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

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

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

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

36 IV. The signed agreement between the parent and the ~~[scholarship organization]~~  
37 **department** shall satisfy the compulsory school attendance requirements of RSA 193:1.

1 V. The ~~[scholarship organization]~~ **department** shall annually renew a student's EFA if  
2 funds are available.

3 VI. Upon notice to the ~~[scholarship organization]~~ **department**, an EFA student may choose  
4 to stop receiving EFA funding and enroll full-time in a public school.

5 (a) Enrolling as a full-time student in the resident district public school shall result in  
6 the immediate suspension of payment of additional funds into the student's EFA, **termination of**  
7 **the EFA, and the transfer of any remaining funds by the department back to the education**  
8 **trust fund.** ~~[However, an EFA that has been open for at least one full school year shall remain open~~  
9 ~~and active for the parent to make qualifying expenditures to educate the student from funds~~  
10 ~~remaining in the EFA. When no funds remain in the student's EFA, the scholarship organization~~  
11 ~~may close the EFA.]~~

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

15 8 Authority and Responsibilities of the Department. Amend RSA 194-F:4 to read as follows:

16 194-F:4 Authority and Responsibilities of the ~~[Scholarship Organization]~~ **Department**. The  
17 ~~[scholarship organization]~~ **department** shall have the following additional duties, obligations, and  
18 authority:

19 I. The ~~[scholarship organization]~~ **department** shall maintain an updated list of education  
20 service providers and shall ensure that the list is publicly available through various sources,  
21 including the ~~[Internet]~~ **department's website**.

22 II. The ~~[scholarship organization]~~ **department** shall provide parents with a written  
23 explanation of the allowable uses of EFA funds, the responsibilities of parents, the duties of the  
24 ~~[scholarship organization]~~ **department**, and the role of any financial management firms that the  
25 ~~[scholarship organization]~~ **department** may contract with to administer any aspect of the EFA  
26 program.

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

31 IV. The ~~[scholarship organization]~~ **department** shall~~[- in cooperation with the department,]~~  
32 determine eligibility for differentiated aid subject to any applicable state and federal laws.

33 ~~[V. The scholarship organization may withhold from deposits or deduct from EFAs an~~  
34 ~~amount to cover the costs of administering the EFA program, up to a maximum of 10 percent~~  
35 ~~annually.]~~

1           ~~[VI.]~~ **V.** The ~~[scholarship organization]~~ **department** shall implement a commercially viable  
2 system for payment of services from EFAs to education service providers by electronic or online  
3 funds transfer.

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

10           (b) ~~[A scholarship organization]~~ **The department** may contract with a private  
11 institution or organization to develop the payment system.

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

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

24           ~~[IX.]~~ **VIII.** The ~~[scholarship organization]~~ **department** shall continue making deposits into  
25 a student's EFA until:

26           (a) The ~~[scholarship organization]~~ **department** determines that the EFA student is no  
27 longer an eligible student.

28           (b) The ~~[scholarship organization]~~ **department** determines that there was substantial  
29 misuse of the 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.]~~ **IX.** The ~~[scholarship organization]~~ **department** may conduct or contract for the  
34 auditing of individual EFAs, and shall at a minimum conduct random audits of EFAs on an annual  
35 basis.

36           ~~[XI.]~~ **X.** The ~~[scholarship organization]~~ **department** may make any parent or EFA student  
37 ineligible for the EFA program in the event of intentional and substantial misuse of EFA funds.

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

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

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

10 (d) A parent or EFA student may appeal the ~~[scholarship organization's]~~ **department's**  
11 decision to deny eligibility for the EFA program to the ~~[department]~~ **state board**.

12 ~~[XII.]~~ **XI.** The ~~[scholarship organization]~~ **department** may bar an education service provider  
13 from accepting payments from EFAs if the ~~[scholarship organization]~~ **department**  
14 determines that the education service provider has:

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

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

18 ~~[XIII.]~~ **XII.** The ~~[scholarship organization]~~ **department** shall create procedures to ensure  
19 that a fair process exists to determine whether an education service provider may be barred from  
20 receiving payments from EFAs.

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

24 (b) Education service providers may appeal the ~~[scholarship organization's]~~  
25 **department's** decision to bar them from receiving payments from the EFA to the ~~[department]~~  
26 **state board**.

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

29 ~~[XV.]~~ **XIII.** The department shall adopt rules that are necessary for the administration of  
30 this chapter.

31 ~~[XVI. The scholarship organization shall adopt policies or procedures that are necessary for  
32 the administration of this chapter.]~~ This may include **rules for** policies or procedures:

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

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

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

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

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

4 ~~[XVII.]~~ **XIV.** The ~~[scholarship organization]~~ **department** shall not exclude, discriminate  
5 against, or otherwise disadvantage any education provider with respect to programs or services  
6 under this section based in whole or in part on the provider's religious character or affiliation,  
7 including religiously based or mission-based policies or practices.

8 9 Advisory Commission. Amend RSA 194-F:5 to read as follows:

9 194-F:5 Parent and Education Service Provider Advisory Commission.

10 I. There is established the parent and education service provider advisory commission to  
11 assist the ~~[scholarship organization]~~ **department** by providing recommendations about  
12 implementing, administering, and improving the EFA program.

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

20 III. The ~~[scholarship organization]~~ **department** may request the commission to meet, in  
21 person or virtually, to review appeals of education service provider denials pursuant to RSA 194-F:4,  
22 ~~[XI] X~~ and to provide a recommendation to the ~~[scholarship organization]~~ **department** as to whether  
23 an education service provider should be allowed to receive, or continue receiving, payments from  
24 EFAs.

25 10 Education Service Providers. Amend RSA 194-F:6 to read as follows:

26 194-F:6 Requirements for Education Service Providers.

27 I. The ~~[scholarship organization]~~ **department** may approve education service providers on  
28 its own initiative, at the request of parents, or by notice to the ~~[scholarship organization]~~  
29 **department** provided by prospective education service providers.

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

32 (a) Submit notice to the ~~[scholarship organization]~~ **department** that it wishes to receive  
33 payments from EFAs.

34 (b) Agree not to refund, rebate, or share EFA funds with parents or EFA students in any  
35 manner, except that funds may be remitted or refunded to an EFA in accordance with procedures  
36 established by the ~~[scholarship organization]~~ **department**.

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

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**- Page 7 -**

1           11 Liability. Amend RSA 194-F:9, II to read as follows:

2           II. No liability shall arise on the part of the [~~scholarship organization~~] **department** or the  
3 state or of any public school or school district based on the award of or use of an EFA pursuant to  
4 this chapter.

5           12 Effective Date. This act shall take effect July 1, 2023.



LBA  
23-0723  
1/10/23

**HB 626-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT requiring the department of education to administer the education freedom account.

**FISCAL IMPACT:**

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, **as introduced**, at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

**AGENCIES CONTACTED:**

Department of Education