

2024 South Dakota Legislature

House Bill 1250**AMENDMENT 1250B
FOR THE INTRODUCED BILL**

1 **An Act to provide for the creation and use of South Dakota educational**
2 **empowerment accounts.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That a NEW SECTION be added:**

5 Terms used in this chapter mean:

- 6 (1) "Institution of higher education," an institution under the control of the Board of
7 Regents, an institution under the control of the South Dakota Board of Technical
8 Education, or an accredited private postsecondary institution in this state;
9 (2) "Parent," a resident of this state who is the parent, stepparent, or legal guardian
10 of a student; and
11 (3) "Student," a resident of this state who is eligible to enroll in a school district in this
12 state.

13 **Section 2. That a NEW SECTION be added:**

14 To open a South Dakota educational empowerment account, the parent of a
15 student shall file a request with the Department of Education. The request must be on a
16 form developed by the department and available on the department's website. The form
17 must be signed by the parent and contain an acknowledgement that:

- 18 (1) As a condition of being able to access money in the account, the student may not,
19 during the ensuing school year:
20 (a) Enroll in a school district in this state; or
21 (b) Have on file an alternative instruction notification as provided for in § 13-
22 27-3;
23 (2) Any money in the account may be used only for the purposes permitted under
24 section 3 of this Act; and

- 1 (3) Upon the student's graduation from high school, the department shall close the
2 student's account and shall transfer any money remaining in the account to the
3 general fund in the state treasury.

4 **Section 3. That a NEW SECTION be added:**

5 Money available in the student's South Dakota educational empowerment account
6 may be used only for:

- 7 (1) Tuition and fees payable for:
8 (a) Enrollment in a nonpublic elementary or secondary school in this state;
9 (b) Enrollment in a nonpublic elementary or secondary online learning program;
10 or
11 (c) Enrollment in an institution of higher education;
12 (2) Textbooks, curricula, and other instructional materials and supplies, which are:
13 (a) Required or recommended by the student's nonpublic school;
14 (b) Required or recommended for a course taken by the student at an
15 institution of higher education; or
16 (c) Necessary for the provision of instruction;
17 (3) Tutoring services provided by:
18 (a) A person who is certified to teach in this state;
19 (b) A person who is certified or licensed to teach in another state; or
20 (c) A person who, by education, training, or experience, is uniquely qualified to
21 provide tutoring services;
22 (4) Educational therapies provided by a licensed, certified, or accredited practitioner;
23 (5) Registration fees for:
24 (a) A nationally standardized achievement test;
25 (b) An advanced placement examination; or
26 (c) Any other test or examination related to postsecondary admission;
27 (6) Public transportation services between the student's residence and:
28 (a) The nonpublic school in which the student is enrolled; or
29 (b) The institution of higher education at which the student takes a course; and
30 (7) Technological devices, instruments, and equipment necessary for the student to
31 participate in any form of educational pursuit listed in this section.

32 **Section 4. That a NEW SECTION be added:**

1 Upon receipt of the signed form described in section 2 of this Act, the Department
2 of Education shall transfer the per student equivalent amount, as calculated in accordance
3 with § 13-13-10.1, into the student's South Dakota educational empowerment account
4 and forward to the parent a debit card for use in accordance with section 3 of this Act.

5 The funding required under this section must be budgeted and expended through
6 the General Appropriations Act, pursuant to chapter 4-7.

7 **Section 5. That a NEW SECTION be added:**

8 If a parent elects to utilize the South Dakota educational empowerment account
9 for a second or subsequent year, the parent must notify the Department of Education by
10 completing a renewal form that is available on the department's website. The renewal
11 form must be signed by the parent and contain the same acknowledgements required on
12 an initial request form under section 2 of this Act.

13 Upon receipt of the renewal form, the department shall transfer ~~three thousand~~
14 ~~five hundred dollars the per student equivalent amount, as calculated in accordance with~~
15 ~~§ 13-13-10.1,~~ into the student's South Dakota educational empowerment account.
16 The funding required under this section must be budgeted and expended through the
17 General Appropriations Act, pursuant to chapter 4-7.

18 If a parent fails to return a renewal form to the department prior to September
19 first, the department must provide a reminder notice to the parent, using the parent's last
20 known e-mail address.

21 On October first, the department shall transfer, to the state general fund, any
22 money remaining in an account for which a parent has not requested renewal and shall
23 close the account.

24 **Section 6. That a NEW SECTION be added:**

25 If any goods are purchased with money from a student's South Dakota educational
26 empowerment account and returned for a refund, or if any contracted or purchased
27 services are voided and a refund is required, the refund must be credited to the student's
28 account.

29 Any person who violates this section is guilty of a Class 1 misdemeanor.

30 **Section 7. That a NEW SECTION be added:**

1 The Department of Education shall conduct random audits of South Dakota
2 educational empowerment accounts to ensure compliance with section 3 of this Act.

3 The department, after a hearing in accordance with chapter 1-26, may remove any
4 parent or student from eligibility for a South Dakota educational empowerment account if
5 the parent or student:

6 (1) Fails to comply with:

7 (a) The terms and conditions set forth in the request for an account or for the
8 renewal of an account, as acknowledged by the parent's signature; or

9 (b) Any applicable laws or rules;

10 (2) Knowingly misuses money deposited in the account; or

11 (3) Knowingly engages in any act or omission with fraudulent intent.

12 Upon a finding of ineligibility under this section, the student's account must be
13 closed, and no other transactions may be allowed or disbursements made. The department
14 shall transfer, to the state general fund, any money remaining in the account.

15 Upon a finding of ineligibility under this section, the parent may not be permitted
16 to open another account.

17 The department may forward any evidence of misuse or fraud to the attorney
18 general for the purpose of collection and for the purpose of a criminal investigation.

19 **Section 8. That a NEW SECTION be added:**

20 The Department of Education shall develop and implement an online service for
21 the anonymous reporting of fraud or the misuse of South Dakota educational
22 empowerment accounts.

23 **Section 9. That a NEW SECTION be added:**

24 The Department of Education shall develop and post on its website a participant
25 handbook that includes information relating to the implementation and use of South
26 Dakota educational empowerment accounts.

27 **Section 10. That a NEW SECTION be added:**

28 The Department of Education shall promulgate rules, in accordance with chapter
29 1-26, to:

30 (1) Develop the forms for opening an initial South Dakota educational empowerment
31 account and for the renewal of an existing account;

- 1 (2) Provide for the distribution and monitoring of debit cards linked to each account;
 2 (3) Establish criteria for verifying the qualifications of tutors;
 3 (4) Establish criteria for verifying the qualifications of persons providing educational
 4 therapies;
 5 (5) Establish criteria for determining the necessity of technological devices,
 6 instruments, and equipment in relation to a student's educational pursuit;
 7 (6) Establish parameters for conducting random audits, as required under section 7 of
 8 this Act;
 9 (7) Develop and implement online and telephonic fraud and misuse reporting services;
 10 and
 11 (8) Establish parameters for investigating and addressing allegations of fraud or
 12 misuse.

13 **Section 11. That a NEW SECTION be added:**

14 Nothing in this Act authorizes the Department of Education or any school district
 15 in this state to exercise any additional control or supervision, other than that set forth in
 16 this title, or to impose any additional requirements or restrictions, other than those set
 17 forth in this title, over any nonpublic school, nonpublic school student, the parent of any
 18 nonpublic school student, or any parent providing or student receiving alternative
 19 education.

20 **Section 12. That § 13-27-1 be AMENDED:**

21 **13-27-1.** Any person having control of a child, who is not younger than five or
 22 older than six years old by the first day of September, or any child who, by the first day
 23 of September, is at least six years old, but who has not exceeded the age of eighteen,
 24 shall cause the child to regularly attend school, either a public school, attend a nonpublic
 25 school, or receive alternative instruction as set forth in § 13-27-3, or receive a
 26 personalized education funded through an educational empowerment account, as provided
 27 for in sections 1 to 10, inclusive, of this Act, until the child reaches the age of eighteen
 28 years, unless the child has graduated or is excused as provided in this chapter. However,
 29 the The requirements of this section are met if a child who is at least sixteen years of age
 30 enrolls in a high school equivalency test preparation program and the child successfully
 31 completes the test or reaches the age of eighteen years.

32 A child is eligible to enroll in a school-based or school-contracted high school
 33 equivalency test preparation program or take the high school equivalency test if the child

1 is sixteen or seventeen years of age, and the child presents written permission from the
2 child's parent or guardian and one of the following:

- 3 (1) Verification from a school administrator that the child will not graduate with the
4 child's cohort class because of credit deficiency;
- 5 (2) Authorization from a court services officer;
- 6 (3) A court order requiring the child to enter the program;
- 7 (4) Verification that the child is under the direction of the Department of Corrections;
8 or
- 9 (5) Verification that the child is enrolled in Job Corps as authorized by Title I-C of the
10 Workforce Investment Act of 1998, as amended to January 1, 2009.

11 Any child who is sixteen or seventeen years of age and who completes the high
12 school equivalency test preparation program may take a high school equivalency test
13 immediately following release from the school program or when ordered to take the test
14 by a court. Any such child who fails to successfully complete the test shall re-enroll in the
15 school district and may continue the high school equivalency preparation program or other
16 suitable program as determined by the school district.

17 All children shall attend kindergarten prior to age seven. Any child who transfers
18 from another state may proceed in a continuous educational program without interruption
19 if the child has not previously attended kindergarten.

20 **Section 13. That § 13-27-11 be AMENDED:**

21 **13-27-11.** Any person having control of a child of compulsory school age who fails
22 to have the child attend school, as required by the provisions of this title, ~~or~~ provide
23 alternative instruction pursuant to § 13-27-3, or provide a personalized education funded
24 through an educational empowerment account, as provided for in sections 1 to 10,
25 inclusive, of this Act, is guilty of a Class 2 misdemeanor for the first offense. For each
26 subsequent offense, a violator of this section is guilty of a Class 1 misdemeanor.

27 **Section 14. That § 13-27-16 be AMENDED:**

28 **13-27-16.** Each school board shall warn noncompliant parents or persons in
29 control of children of compulsory school age that the children must ~~enter:~~

- 30 (1) Enter school and attend regularly, ~~or enroll;~~
- 31 (2) Enroll in a high school equivalency test preparation program in accordance with §
32 13-27-1, ~~or comply;~~
- 33 (3) Comply with § 13-27-3, ~~and;~~ or

1 (4) Be provided with a personalized education funded through an educational
2 empowerment account, as provided for in sections 1 to 10, inclusive, of this Act.

3 The board shall report the parents or persons in control of the children to the
4 truancy officer for the district if the warning is not heeded. All school board members,
5 superintendents, and teachers shall cooperate in the enforcement of the school attendance
6 laws.

7 **Section 15. That § 13-27-18 be AMENDED:**

8 **13-27-18.** Any superintendent or school board president who fails to make prompt
9 reports on attendance as required by law; any person who harbors or employs a child of
10 compulsory school age who is not legally excused during the school term—~~or,~~ being
11 provided alternative instruction pursuant to § 13-27-3, or receiving a personalized
12 education funded through an educational empowerment account, as provided for in
13 sections 1 to 10, inclusive, of this Act; the members of any school board who neglect or
14 refuse to provide school facilities for children enrolled in their school district for at least
15 nine months during the school year, or neglect to perform any other duties enumerated
16 under the compulsory school attendance laws of this state; any truancy officer who
17 neglects to perform the duties of his or her office; or any person who hampers or hinders
18 a child of compulsory school age from attending a school in which the child is enrolled that
19 meets all legal requirements, or who interferes or attempts to interfere with the child's
20 attendance at the school in which the child is enrolled is guilty of a Class 2 misdemeanor.

21 **Section 16. That § 13-27-20 be AMENDED:**

22 **13-27-20.** Each truancy officer shall make and file truancy complaints for children
23 who are enrolled in the school district. Any teacher, school officer, or citizen may make
24 and file a truancy complaint, before a circuit court judge, against any person having
25 control of a child of compulsory school age who is not being provided with alternative
26 instruction—~~or,~~ receiving a personalized education funded through an educational
27 empowerment account, as provided for in sections 1 to 10, inclusive, of this Act, attending
28 school or whose attendance at school is irregular. The complaint must state the name of
29 the parent, guardian, or person responsible for the control of the child. The complaint
30 must be verified by oath upon belief of the complainant. A truancy complaint that, together
31 with any accompanying affidavit, does not establish probable cause must be dismissed
32 upon motion of the defendant to the circuit court judge.

1 **Section 17. That § 13-27-29 be AMENDED:**

2 **13-27-29.** If a child of compulsory school age who has been attending an
3 unaccredited school in another state or country ~~or has been~~, receiving alternative
4 instruction pursuant to § 13-27-3, or receiving a personalized education funded through
5 an educational empowerment account, as provided for in sections 1 to 10, inclusive, of
6 this Act, enrolls in a public school in this state, the child ~~shall~~ must be placed at the child's
7 demonstrated level of proficiency as established by one or more standardized tests.
8 However, a child's placement may be in one grade level higher than warranted by the
9 child's chronological age assuming entry into the first grade at age six and annual grade
10 advancement thereafter. After initial placement, the child may be advanced according to
11 the child's demonstrated performance. If a child of secondary school age who has been
12 attending an unaccredited school in another state or country ~~or has been~~, receiving
13 alternative instruction pursuant to § 13-27-3, or receiving a personalized education
14 funded through an educational empowerment account, as provided for in sections 1 to 10,
15 inclusive, of this Act, enrolls in a public school in this state, the child shall be placed in
16 English and math at the level of achievement demonstrated by one or two standardized
17 tests, and in all other subjects on a review of transcripts according to the policy formally
18 adopted by the school board. The child's placement may be in one grade level higher than
19 warranted by the child's chronological age assuming entry into the first grade at age six
20 and annual grade advancement thereafter. After initial placement the child may be
21 advanced according to his demonstrated performance.

22 Any parent or guardian who is dissatisfied with the placement of his child may
23 appeal it to the secretary of the Department of Education.