

115TH CONGRESS
1ST SESSION

S. 2163

To expand school choice in the District of Columbia.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 28, 2017

Mr. CRUZ (for himself and Mr. LEE) introduced the following bill; which was
read twice and referred to the Committee on Finance

A BILL

To expand school choice in the District of Columbia.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Educational Freedom
5 Accounts Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ADMINISTERING ENTITY.**—The term “ad-
9 ministering entity” means the entity that receives
10 the contract under section 3(a) for a fiscal year.

1 (2) CHIEF FINANCIAL OFFICER.—The term
2 “chief financial officer” means the Chief Financial
3 Officer of the District of Columbia.

4 (3) ELIGIBLE CHILD.—The term “eligible
5 child” means a child—

6 (A) who is a resident of the District of Co-
7 lumbia;

8 (B) who is eligible to receive a free public
9 education in the District of Columbia;

10 (C) who—

11 (i) was enrolled in a public school or
12 preschool program of the District of Co-
13 lumbia, including a charter school, during
14 the previous school year;

15 (ii) received an education savings ac-
16 count under this Act for the preceding
17 school year;

18 (iii) received an opportunity scholar-
19 ship under section 3007(a) of the Scholar-
20 ships for Opportunity and Results Act for
21 the preceding school year; or

22 (iv) is entering prekindergarten or
23 kindergarten;

24 (D) whose parent chooses to not enroll the
25 child in a public elementary school, secondary

1 school, or prekindergarten program for the
 2 school year for which the child will receive a
 3 scholarship under section 4; and

4 (E) whose parent does not submit a notifi-
 5 cation of home schooling described in section
 6 5202 of title 5, Code of the District of Colum-
 7 bia Regulations (or any successor notification)
 8 to the Office of the State Superintendent of
 9 Education of the District of Columbia for any
 10 year for which the parent enters into an agree-
 11 ment under section 4(a)(2)(B).

12 (4) INSTITUTION OF HIGHER EDUCATION.—The
 13 term “institution of higher education” has the
 14 meaning given the term in section 102 of the Higher
 15 Education Act of 1965 (20 U.S.C. 1002).

16 (5) PARENT.—The term “parent” means the
 17 guardian, custodian, or other person with the au-
 18 thority to act on behalf of a child.

19 (6) PARTICIPATING PROVIDER.—The term
 20 “participating provider” means an entity that—

21 (A) is—

22 (i) a nonpublic school located in the
 23 District of Columbia that provides edu-
 24 cation to prekindergarten, elementary
 25 school, or secondary school students;

1 (ii) a public school, including a char-
2 ter school, located in the District of Co-
3 lumbia, except only with respect to pro-
4 viding individual courses or extracurricular
5 activities described in section 4(c)(1)(E) or
6 transportation described in section
7 4(c)(1)(I) to such services;

8 (iii) a tutor or tutoring facility;

9 (iv) a nonpublic provider of distance
10 or online learning;

11 (v) a therapy center or other provider
12 of special education or disability services;

13 (vi) an institution of higher education
14 located in the District of Columbia; or

15 (vii) an entity that provides edu-
16 cational services or products;

17 (B) notifies the administering entity of the
18 entity's intent to become a participating pro-
19 vider; and

20 (C) agrees, as a condition of receiving
21 funds from an education savings account estab-
22 lished under section 4, to comply with the re-
23 quirements of this Act.

1 **SEC. 3. CONTRACT AUTHORIZED.**

2 (a) IN GENERAL.—Beginning with the 2018–2019
3 school year, the Chief Financial Officer shall carry out this
4 Act for each school year by awarding a contract to 1 entity
5 described in subsection (b) to enable the administering en-
6 tity to carry out the program under section 4 for all eligi-
7 ble children in the District of Columbia.

8 (b) ELIGIBILITY.—In order to be eligible for a con-
9 tract under this section, an entity shall be—

10 (1) exempt from Federal income tax pursuant
11 to 501(c)(3) of the Internal Revenue Code of 1986;

12 (2) based within the District of Columbia; and

13 (3) able to demonstrate an ability to meet all
14 requirements of this Act.

15 (c) APPLICATION.—An eligible entity desiring a con-
16 tract under this section shall submit an application to the
17 Chief Financial Officer at such time, in such manner, and
18 containing such information as the Chief Financial Officer
19 may require.

20 (d) ADMINISTRATIVE EXPENSES.—From the
21 amounts made available under the contract described in
22 subsection (a), the administering entity may reserve an
23 amount that is not greater than the sum of 5 percent of
24 the funds allocated under section 4(a)(4) for each eligible
25 child with an education savings account, to be used by the

1 administering entity for the administrative expenses asso-
 2 ciated with the program under this Act.

3 **SEC. 4. UNIVERSAL EDUCATIONAL CHOICE FOR DISTRICT**
 4 **OF COLUMBIA STUDENTS.**

5 (a) BASIC ELEMENTS OF PARENTAL CHOICE IN
 6 EDUCATION.—

7 (1) EDUCATIONAL CHOICE.—Except as pro-
 8 vided in paragraph (6), the parent of any eligible
 9 child may enter into an agreement under paragraph
 10 (2)(B) with the administering entity for any year
 11 during which the eligible child will be in a grade for
 12 which the District of Columbia provides free public
 13 education.

14 (2) PROVISION OF EDUCATION SAVINGS AC-
 15 COUNTS.—

16 (A) IN GENERAL.—Beginning with the
 17 2018–2019 school year, the administering enti-
 18 ty shall provide, to each eligible child whose
 19 parent enters into or renews an agreement de-
 20 scribed in subparagraph (B) with the admin-
 21 istering entity for the school year, an education
 22 savings account described in paragraph (3),
 23 into which scholarship amounts for the year
 24 shall be deposited in accordance with paragraph
 25 (4).

1 (B) AGREEMENT.—The agreement re-
2 quired under this subparagraph shall be in a
3 manner and on a form determined by the ad-
4 ministering entity and shall provide that—

5 (i) the eligible child will receive an
6 education savings account described in
7 paragraph (3) and the administering entity
8 will deposit a scholarship into the account
9 for each year that the agreement is in ef-
10 fect, in accordance with paragraph (4);

11 (ii) the eligible child may be educated
12 pursuant to any of the methods described
13 in subparagraphs (A) through (G) of sub-
14 section (c)(1);

15 (iii) the parent shall direct the use of
16 the funds provided in the education savings
17 account for educational expenses described
18 in subsection (c), and the administering
19 entity shall distribute such funds in ac-
20 cordance with paragraph (3)(B);

21 (iv) the parent agrees to the terms
22 and conditions of the education savings ac-
23 count, including any participation nec-
24 essary for the accountability activities re-
25 quired under subsection (d)(3); and

(v) with respect to an eligible child who is a child with a disability (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)), the parent agrees that participation in the program under this section shall have the same effect as parental placement of child under section 612(a)(10)(A) of such Act (20 U.S.C. 1412(a)(10)(A)).

(3) EDUCATION SAVINGS ACCOUNT.—An education savings account described in this paragraph means a parent-controlled account, established exclusively for the purpose of paying for the educational expenses described in subsection (c) for an eligible child who is the designated beneficiary of the account, that meets the following requirements:

(A) No funds shall be deposited into the account unless the funds are—

(i) a disbursement of an annual scholarship from the administering entity as provided under paragraph (2)(A); or

(ii) a deposit of opportunity scholarship funds, in accordance with section 3007(a)(2) of the Scholarships for Oppor-

1 tunity and Results Act (D.C. Code, sec.
2 38–1853.07(a)(2)).

3 (B) The funds in the account shall be dis-
4 tributed by the administering entity on behalf
5 of the eligible child to one or more participating
6 providers, upon direction by the parent, at the
7 appropriate time.

8 (C) Except as provided in subparagraph
9 (D), any amount in the account that is attrib-
10 utable to a deposit provided under paragraph
11 (2)(A) or a deposit of any opportunity scholar-
12 ship funds awarded under section 3007 of the
13 Scholarships for Opportunity and Results Act
14 (D.C. Code, sec. 38–1853.07) may be paid or
15 distributed out of the account only for the pur-
16 pose of paying education expenses described in
17 subsection (c) for the eligible child.

18 (D) Any balance remaining in the account
19 shall be returned to the Chief Financial Officer
20 on the last day of the period covered by an
21 agreement described in paragraph (2)(B) if—

22 (i) such agreement is broken or ended
23 by the parent during the agreement period;

24 (ii) the parent of the eligible child
25 does not renew the agreement for the eligi-

ble child for the immediately succeeding
academic year;

(iii) during the most recent year of
the agreement, the parents do not use any
funds in the account for eligible expenses
described in subsection (c); or

(iv) the child no longer qualifies as an
eligible child.

(4) AMOUNT OF SCHOLARSHIP AND TRANSFER
OF FUNDS.—

(A) TRANSFER OF FUNDS.—By not later
than August 1 of each school year—

(i) the administering entity shall no-
tify the Chief Financial Officer of the total
amount calculated under subparagraph (B)
to be provided under this Act for scholar-
ships to eligible children for such school
year; and

(ii) the Chief Financial Officer shall
transfer such amount, from any funds or
revenues available to the District of Co-
lumbia, to the administering entity to en-
able the administering entity to pay for the
scholarships and the administration ex-
penses for the full fiscal year, in accord-

1 ance with subparagraphs (B) and (D) and
2 section 3(d).

3 (B) AMOUNT.—The total amount provided
4 under this section for a full-year scholarship on
5 behalf of an eligible child shall equal—

6 (i) in the case of an eligible child from
7 a family with an income of not more than
8 185 percent of the poverty level described
9 in subparagraph (C) or an eligible child
10 who is a child with a disability, as defined
11 in section 602 of the Individuals with Dis-
12 abilities Education Act (20 U.S.C. 1401),
13 90 percent of the funds that would other-
14 wise be allocated by the District of Colum-
15 bia Public Schools for such child, as deter-
16 mined by the uniform per student funding
17 formula defined in the District of Colum-
18 bia School Reform Act of 1995 (D.C.
19 Code, sec. 38–804.01);

20 (ii) in the case of an eligible child
21 from a family with an income of more than
22 185 percent, and not more than 300 per-
23 cent, of such poverty level, 85 percent of
24 the funds that would otherwise be allocated
25 by the District of Columbia Public Schools

1 for such child as determined by such uni-
 2 form per student funding formula; and

3 (iii) in the case of an eligible child
 4 from a family with an income that equals
 5 or exceeds 300 percent of such poverty
 6 level, 80 percent of the funds that would
 7 otherwise be allocated by the District of
 8 Columbia Public Schools for such child as
 9 determined by such uniform per student
 10 funding formula.

11 (C) CALCULATION OF POVERTY LEVEL.—

12 In determining the poverty level for purposes of
 13 this paragraph, the administering entity shall
 14 use the criteria of poverty used by the Bureau
 15 of the Census in compiling the most recent de-
 16 cennial census, as the criteria have been up-
 17 dated by increases in the Consumer Price Index
 18 for All Urban Consumers, published by the Bu-
 19 reau of Labor Statistics.

20 (D) QUARTERLY DISBURSEMENT.—The

21 administering entity shall distribute the amount
 22 of a scholarship provided under this section to
 23 an eligible child whose parent has entered into
 24 an agreement under paragraph (2)(B) into the
 25 eligible child's education savings account, which

1 may be through 4 equal quarterly deposits or
2 any other distribution schedule determined ap-
3 propriate by the administering entity.

4 (5) OWNERSHIP OF THE EDUCATION SAVINGS
5 ACCOUNT.—An education savings account estab-
6 lished for an eligible child under this Act, and any
7 funds deposited within the education savings ac-
8 count, shall belong to the eligible child. Funds avail-
9 able in the education savings account shall be used
10 as directed by a parent of the eligible child, on be-
11 half of the child, for education expenses described in
12 subsection (c).

13 (6) INTERACTION WITH OPPORTUNITY SCHOL-
14 ARSHIPS.—Notwithstanding paragraph (2)(A) or
15 any other provision of this Act, a child who receives
16 an opportunity scholarship under section 3007 of the
17 Scholarships for Opportunity and Results Act (D.C.
18 Code, sec. 38–1853.07) for a school year shall not
19 be eligible for a scholarship under this Act for the
20 same school year. Upon the request of any parent of
21 an eligible child who receives an opportunity scholar-
22 ship and the completion of an agreement described
23 in paragraph (2)(B), the Secretary shall establish an
24 education savings account described in paragraph
25 (3) for the child, in order for the parent to deposit

1 any amount of an opportunity scholarship under sec-
2 tion 3007 of the Scholarships for Opportunity and
3 Results Act (D.C. Code, sec. 38–1853.07) into the
4 education savings account.

5 (b) CONTINUED AVAILABILITY OF FUNDS.—Any bal-
6 ance in an educational savings account established for an
7 eligible child under this section that is not used during
8 an academic year shall remain available in the education
9 savings account of the eligible child for future education
10 expenses described in subsection (c), as long as an agree-
11 ment described in subsection (a)(2)(B) remains in effect
12 for the eligible child.

13 (c) ELIGIBLE EDUCATION EXPENSES.—

14 (1) IN GENERAL.—Funds available in an edu-
15 cation savings account established under this section
16 for an eligible child shall only be used on behalf of
17 such child for one or more of the following edu-
18 cational purposes:

19 (A) The costs of tuition and fees at a non-
20 public school, or distance education, provided
21 through a participating provider.

22 (B) Tutoring services offered by a partici-
23 pating provider.

24 (C) The costs of curricula or online
25 courses, or virtual learning environments, in-

cluding any supplemental materials, textbooks, or supplies necessary to administer the curriculum or to complete the course, offered by a participating provider or purchased for self-study.

(D) Fees for any special education or related services provided through a participating provider.

(E) The costs of tuition and fees required to complete individual courses or extracurricular activities at a public school, including a charter school, within the District of Columbia.

(F) The costs of tuition and fees required to complete any dual credit courses, which are courses that qualify for both secondary and postsecondary education credit, from a participating provider in the District of Columbia.

(G) The costs of a career and technical education course offered by a participating provider.

(H) Fees for any—

(i) national norm-referenced achievement examination;

(ii) advanced placement or similar examination; or

1 (iii) standardized examination re-
2 quired for admission to an institution of
3 higher education.

4 (I) Transportation required for the eligible
5 child to travel to and from a participating pro-
6 vider, except that not more than \$2,000 per
7 year from the education savings account may be
8 used for this purpose.

9 (J) A contribution to a qualified tuition
10 program (as defined in section 529(b) of the In-
11 ternal Revenue Code of 1986) with respect to
12 which the eligible child is a designated bene-
13 ficiary or a contribution to a Coverdell edu-
14 cation savings account (as defined in section
15 530(b) of such Code) with respect to which the
16 eligible child is a designated beneficiary, except
17 that not more than a total of \$2,000 per year
18 may be used for contributions under this sub-
19 paragraph.

20 (K) Any other education expenses ap-
21 proved and determined by the administering en-
22 tity to be similar to the expenses described in
23 subparagraphs (A) through (J).

24 (2) RULE OF CONSTRUCTION.—Nothing in this
25 subsection shall be construed to require an eligible

1 child to attend a nonpublic school or a program of
 2 distance education described in paragraph (1)(A) in
 3 order to receive an academic scholarship under this
 4 section to be used for other eligible education ex-
 5 penses described in paragraph (1).

6 (d) GOVERNMENTAL AND ADMINISTERING ENTITY
 7 RESPONSIBILITIES.—

8 (1) NO EXTENSION OF REGULATORY AUTHOR-
 9 ITY.—The creation of the program under this Act
 10 does not expand the regulatory authority of the
 11 Mayor of the District of Columbia, the officers of
 12 the District of Columbia, the District of Columbia
 13 Public Schools, or the Federal Government to im-
 14 pose any additional regulations on nonpublic schools
 15 beyond the regulations necessary to enforce the re-
 16 quirements of this Act.

17 (2) ANNUAL LIST OF PARTICIPATING PRO-
 18 VIDERS.—

19 (A) CREATION OF LIST.—Beginning in
 20 academic year 2017–2018, and each year there-
 21 after, the administering entity shall ensure that
 22 all eligible children, and their parents, are in-
 23 formed of the schools participating in the pro-
 24 gram under this Act for the next academic year
 25 by providing to the Chief Financial Officer, and

1 making publicly available, a list of participating
2 providers each school year.

3 (B) INCLUSION ON CFO'S WEBSITE.—The
4 Chief Financial Officer shall ensure that the
5 annual list of participating providers prepared
6 by the administering entity under subparagraph
7 (A) is made publicly available on the website of
8 the Chief Financial Officer.

9 (3) UPDATED INFORMATION REGARDING EDU-
10 CATIONAL EXPENSES.—The administering entity
11 shall timely notify parents of eligible children of any
12 categories that the entity has determined are edu-
13 cational expenses under subsection (c)(1)(K) by pro-
14 viding notification through the parent handbook,
15 program website, or other primary method used by
16 the administering entity to educate parents about
17 the program.

18 (4) ACCOUNTABILITY.—The administering enti-
19 ty and the Chief Financial Officer shall take such
20 steps as are necessary to ensure the proper imple-
21 mentation of this Act, including—

22 (A) conducting periodic audits of education
23 savings accounts established under this section;

1 (B) ensuring that the funds disbursed
2 from education savings accounts are used ap-
3 propriately and in accordance with this Act;

4 (C) freezing or revoking the education sav-
5 ings account of an eligible child if fraud is de-
6 tected;

7 (D) providing a process through which—

8 (i) parents whose expenses have been
9 denied may ask the administering entity to
10 review and reverse the denial; and

11 (ii) the administering entity shall con-
12 duct a review and respond to the parental
13 request to reverse the denial within 30
14 days; and

15 (E) if appropriate, referring parents or
16 participating providers found to be using edu-
17 cation savings account funds for unlawful pur-
18 poses for criminal prosecution.

19 (5) EXCHANGE OF RECORDS.—Upon request by
20 the administering entity, the District of Columbia
21 Public Schools shall provide, to any participating
22 provider that is a school and that has admitted an
23 eligible child who previously attended a public
24 school, a complete copy of the child's school records,
25 following the standard procedures established by the

1 administering entity for purposes of the program
2 under this Act.

3 (e) PARTICIPATING PROVIDER REQUIREMENTS AND
4 RIGHTS.—

5 (1) REFUND AND REBATE LIMITATIONS.—

6 (A) GENERAL PROHIBITION.—A partici-
7 pating provider that receives scholarship funds
8 provided under this Act for an eligible child
9 shall not—

10 (i) refund or provide a rebate, of all
11 or any portion of such funds, to the eligible
12 child or a parent of the eligible child; and

13 (ii) share such funds with such eligi-
14 ble child or parent in any manner.

15 (B) REFUND PROCEDURES.—Any refund
16 that is needed for an item that is being re-
17 turned or an item or service that has not been
18 provided shall be provided to the administering
19 entity and deposited into the education savings
20 account from which the money refunded was
21 originally paid.

22 (2) ADMISSIONS.—A participating provider may
23 enforce the admission requirements of the school or
24 program offered by the provider and may accept the
25 students best qualified to attend the school, except

1 that a participating school may not discriminate on
2 the basis of race, color, national origin, or sex, in ac-
3 cordance with subsection (f).

4 (3) TRANSFER OF DOCUMENTS.—Each partici-
5 pating provider that is a school shall agree, as a con-
6 dition of participation in the program under this
7 Act, to provide the complete academic records of an
8 eligible child attending the school who receives an
9 education savings account under this Act to any
10 other nonpublic school or public school to which the
11 child transfers.

12 (f) NONDISCRIMINATION AND OTHER PROVISIONS.—

13 (1) IN GENERAL.—A participating provider
14 shall not discriminate against program participants
15 or applicants on the basis of race, color, national ori-
16 gin, or sex.

17 (2) APPLICABILITY AND SINGLE SEX SCHOOLS,
18 CLASSES, OR ACTIVITIES.—

19 (A) IN GENERAL.—Notwithstanding any
20 other provision of law, the prohibition of sex
21 discrimination in paragraph (1) shall not apply
22 to a participating provider that is operated by,
23 supervised by, controlled by, or connected to a
24 religious organization to the extent that the ap-
25 plication of such paragraph is inconsistent with

1 the religious tenets or beliefs of the partici-
 2 pating provider.

3 (B) SINGLE SEX SCHOOLS, CLASSES, OR
 4 ACTIVITIES.—Notwithstanding paragraph (1) or
 5 any other provision of law, a parent may choose
 6 and a participating provider may offer a single
 7 sex school, class, or activity.

8 (3) RELIGIOUSLY AFFILIATED PARTICIPATING
 9 PROVIDERS.—

10 (A) IN GENERAL.—Notwithstanding any
 11 other provision of law, a participating provider
 12 that is operated by, supervised by, controlled
 13 by, or connected to a religious organization may
 14 exercise its right in matters of employment con-
 15 sistent with title VII of the Civil Rights Act of
 16 1964 (42 U.S.C. 2000e et seq.), including the
 17 exemptions in such title.

18 (B) MAINTENANCE OF PURPOSE.—Not-
 19 withstanding any other provision of law, funds
 20 made available through education savings ac-
 21 counts established under this section to eligible
 22 children, which are used for a participating pro-
 23 vider as a result of the choice of the parents of
 24 such children, shall not, consistent with the

first amendment of the Constitution of the
United States—

(i) necessitate any change in the participating provider's teaching mission;

(ii) require any participating provider to remove religious art, icons, scriptures, or other symbols; or

(iii) preclude any participating provider from retaining religious terms in its name, selecting its board members on a religious basis, or including religious references in its mission statements and other chartering or governing documents.

(4) RULES OF CONSTRUCTION.—

(A) TREATMENT OF ASSISTANCE.—For purposes of any Federal law, assistance provided under this section shall be considered assistance to the child and shall not be considered assistance to the participating provider that enrolls the child in a school or program. The amount of any scholarship under this section shall not be treated as income of the child or the parents of the child for purposes of Federal tax laws or for determining eligibility for any other Federal program.

1 (B) NO ABILITY TO CONTROL THE CUR-
2 RICULUM.—Nothing in this section shall be con-
3 strued to authorize any officer or employee of
4 the Federal Government, through grants, con-
5 tracts, or other cooperative agreements, to man-
6 date, direct, or control the curriculum, program
7 of instruction, instructional content, specific
8 academic standards, assessments, or allocation
9 of resources, of the District of Columbia or of
10 any school in the District of Columbia.

11 (g) TRANSITION.—The Chief Financial Officer and
12 the administering entity shall take steps to ensure a
13 smooth transition to the program under this Act, in order
14 to ensure that academic scholarships and education sav-
15 ings accounts under this section are available to eligible
16 children attending nonpublic schools through participating
17 providers beginning for the 2018–2019 school year. The
18 Chief Financial Officer shall allow nonpublic schools to be-
19 come participating providers beginning on September 1,
20 2018.

21 (h) CONFORMING AMENDMENT.—Section 3007(a)(2)
22 of the Scholarships for Opportunity and Results Act (D.C.
23 Code, sec. 38–1853.07(a)(2)) is amended by adding before
24 the period at the end the following: “, or deposited in an
25 education savings account established under section 4 of

1 the Educational Freedom Accounts Act to be used for edu-
2 cation expenses described in subsection (c) of such sec-
3 tion”.

○