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## EXECUTIVE SUMMARY

### Approve Interim Rule: Ed 324 – Education Freedom Accounts Program

Submitted to the State Board of Education, July 15, 2021:

**A. ACTION NEEDED**

A vote is needed by the State Board of Education to approve the proposed interim rule for Ed 324 regarding Education Freedom Accounts Program.

**B. RATIONALE FOR ACTION**

- HB 2 enacted RSA 194-F effective August 27, 2021. Interim rulemaking is allowable in circumstances where a new codified state statute requires rulemaking, provided that the rulemaking notice is published no later than 120 days after the effective date of the new statute.
- RSA 194-F establishes education freedom accounts which permits the transfer of an amount equal to adequate education grants, plus any differentiated aid that would have been provided to a public school, to a scholarship organization for disbursement to parents to be used for certain educational purposes.
- RSA 194-F requires rules necessary for the administration of 194-F.

**C. EFFECTS OF THIS ACTION**

RSA 194-F goes into effect on August 27, 2021. The interim rule will allow adoption of rules to coincide with the effective date of the statute. Regular rulemaking for Ed 324 will begin in September 2021.

**D. POSSIBLE MOTION**

I move that the State Board of Education approve the proposed interim rule for Ed 324 regarding Education Freedom Accounts Program.

## PART Ed 324 EDUCATION FREEDOM ACCOUNTS PROGRAM

Ed 324.01 Purpose. The purpose of these rules is to ensure uniform application of RSA 194-F in the establishment and administration of the education freedom accounts (EFA) program (“program”).

Ed 324.02 Scope. The program shall allow a scholarship organization, as defined therein, to provide the option for a parent or guardian to better meet the individual educational needs of his or her eligible student by establishing an education freedom account for the funding of qualifying education expenses provided by education service providers.

Ed 324.03 Applicability. The following rules elaborate on and clarify the application of RSA 194-F. Such rules are consistent with and do not extend beyond RSA 194-F.

Ed 324.04 Definitions. In addition to the definitions in RSA 194-F:1, the following definitions shall apply to Ed 324:

- (a) “Board” shall mean the New Hampshire state board of education;
- (b) “Commissioner” shall mean the commissioner of the department of education;
- (c) “Days” shall mean calendar days; and
- (c) “State fiscal year” shall mean the period from July 1 to June 30 of every calendar year.

Ed 324.05 Applications.

(a) Scholarship organizations shall develop a comprehensive application for potential participants in the program, which, at a minimum, satisfies the requirements for approval enumerated in RSA 194-F:3.

(b) Scholarship organizations shall develop a comprehensive agreement for signature by the parent or guardian, and the student, if the student is in a secondary education program, to include, at a minimum:

- (1) Any required disclosures enumerated in RSA 194-F, including an explanation of allowable uses of EFA funds, the responsibilities of parents or guardians, the duties of scholarship organizations, and the role of any financial management firms that scholarship organizations may contract with to administer any aspect of the EFA program;
- (2) An assurance, separately signed by the parent/guardian, that they shall, to the best of their ability, comply with the terms of the program, including certification that internet and technology purchased with EFA account funds shall be primarily used to help meet the EFA student’s education needs;
- (3) A certification signed by the parent stating that, under a parental placement in a non-profit non-public school, they have IDEA rights to child find and potentially equitable services and that, under IDEA, students who are not enrolled in a public school do not have a right to a free, appropriate public education (“FAPE”); and
- (4) A certification signed by the parent stating that eligible students enrolled full-time in a non-resident public school through an EFA shall retain a FAPE.

(c) Eligible students enrolled full-time in a non-resident public school through an EFA shall retain a FAPE.

(d) Eligible students shall not have attained a high school diploma and not be older than 21 years of age.

(e) Scholarship organizations shall submit the application materials to the department for review prior to any publication.

(f) The department shall review and provide input regarding the content of the application.

(g) The department shall provide written notification of a completed review to scholarship organizations within 90 days of receipt of a request for review.

(h) The written notification in (g) above shall not constitute an approval or denial of scholarship organizations' student application.

(i) After receipt of written notification in (h) above, the application materials and procedures for review and approval of applications shall be made publicly available on scholarship organizations websites for electronic or paper submission.

(j) Scholarship organizations shall accept rolling admissions into the program.

(k) Within 30 days of receipt of a completed student application, scholarship organizations shall notify the parent or guardian in writing that the application is approved or denied in accordance with the approval criteria set forth in RSA 198-F:3.

Ed 324.06 EFA Disbursement

(a) For the first year of the program funding shall be disbursed 4 times during state fiscal year 2022, pursuant to the adjusted amounts determined using RSA 198:40-a based on an enrollment count of the verified student applications received by the department from scholarship organizations no later than the date indicated in Table 324-1, and in accordance with the state fiscal year 2022 EFA disbursement schedule in Table 324-1 below:

Table 324-1 State Fiscal Year 2022 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	October 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(b) Beginning in state fiscal year 2023 and every year after, funding shall be disbursed 4-times per state fiscal year, in accordance with RSA 198:40-a in accordance with the EFA disbursement schedule in Table 324-2 below:

Table 324-2 EFA Disbursement Schedule

EFA Funds Available	Allocated funds to be disbursed per state fiscal year	Student Application Verified and Reported to the Department by:
September 1	20%	August 2
November 1	20%	October 2
January 1	30%	December 2
April 1	30%	March 2

(c) Parent agreements in Ed 324.05(b) may be submitted at any time during the application process, but shall be in place before a parent, guardian, or EFA student has access to EFA account funds.

Ed 324.07 Qualifying EFA Expenses. The following shall apply to EFA expenses enumerated in RSA 194-F:2, II:

(a) “Services contracted for” as described in RSA 194-F:2, II(d), provided by a district public school shall include fees for full time enrollment in any non-resident public school;

(b) Internet connectivity shall not include any additional cost for media streaming or cable media options that are not part of an online learning program or online instructional materials;

(c) Computer hardware shall be limited to a single computer device per student every three years, unless otherwise pre-approved by scholarship organizations as a necessary educational resource including assistive devices and accessible educational hardware and materials; and

(d) Scholarship organizations shall publish on its website a policy for pre-approval of qualifying educational expenses consistent with RSA 194-F:2, II(d) and this section.

Ed 324.08 Education Service Providers.

(a) Scholarship organizations shall publish on their website a standard application form and procedures for review and approval of new education service providers. Such application shall include, but not be limited to:

- (1) Procedures for employee background checks; and
- (2) Certification that the education service provider shall comply with nondiscrimination policies set forth in 42 USC 1981 as applicable.

(b) Online and paper applications for education service providers shall be accepted by scholarship organizations for review on a rolling basis throughout the year.

(c) The EFA program shall utilize a wide variety of curricular materials to meet the educational needs of the students. Parents and guardians shall make textbook, curriculum, and instructional material decisions for their own students in the program.

(d) Scholarship organizations shall determine only that the materials selected are qualifying materials pursuant to RSA 194-F, II(e) and that the materials fall within the core knowledge domains described in RSA 194-F:3, III(d)(1).

(e) Education service providers shall not refund, rebate, or share EFA funds directly with parents. EFA funds shall only be returned to an eligible student's EFA account. Nothing in these rules shall prohibit education service providers from refunding, rebating, or sharing parent, guardian, and eligible student personal funds to the parent or guardian. If an eligible service provider is unable to verify whether a refund, rebate, or service is related to an EFA account funds or student personal funds, the eligible service provider shall assume such funds are EFA funds.

(f) A list of all approved education service providers shall be posted on scholarship organizations' websites, reported to the department, and made easily accessible to the public to include education service provider name, eligible services, fee amounts received for services, and number of EFA students served.

(g) A directory of all education service providers approved by a scholarship organization shall be made available on the department's website.

(h) Approval by a scholarship organization of an education service provider shall serve as statewide approval of such provider for purposes of the program.

Ed 324.09 Scholarship Organizations.

(a) A scholarship organization shall meet the qualifications enumerated in RSA 77-G.

(b) The department shall utilize one or more qualified scholarship organizations in the operation of this program.

(c) A scholarship organization shall make reasonable good faith efforts to provide access to all types of qualifying educational expenses enumerated in RSA 194-F:2, II(a-n).

(d) Failure by a scholarship organization to provide a comprehensive offering of qualifying educational expenses as described in (c) above shall disqualify a scholarship organization from participation in the program by the department.

(e) A scholarship organizations shall electronically file with the department completed and approved student data to the department at least 30 days prior to the funding date, as described in Table 324-1 and Table 324-2. Failure to meet the application deadline may result in delayed or unavailable funding.

(f) Approved applications shall, at a minimum, verify that:

(1) The eligible student meets all eligibility criteria as described in RSA 194-F:1, IV;

(2) An EFA agreement has been signed by the parent or guardian, and the student if the student is in a secondary education program, as a condition of approval of an eligible student's participation in the program; and

(3) The student, parent, guradian, or both have not been disqualified from participation in the program due to funds misuse or other disqualifying criteria as enumerated in RSA 194-F.

(g) Scholarship organizations shall submit a roster of approved EFA students pursuant to the department collection requirements for AOY, BOY, EOY, F&R, SPED Enroll, and EFA Accountability as defined in the iDefine department data dictionary which shall include the student's:

- (1) Information on the student's school of attendance, if applicable;
  - (2) Eligibility information;
  - (3) Qualifying differentiated aid eligibility, including, but not limited to:
    - a. Free and reduced price meal, as determined by income data collected by scholarship organizations;
    - b. Special education services, as determined by existence of an IEP if previously enrolled in a public school or as certified by a licensed medical professional in a qualifying disability as defined under 34 CFR 300.8;
    - c. English learner; and
    - d. Third grade proficiency;
  - (4) Whether student is a current or new participant in program;
  - (5) The cumulative amount of EFA funds received for each student and the amount of EFA funds remaining in each student's account;
  - (6) Use of funds organized by types of qualifying expenses in 194-F:2 (II)(a-n); and
  - (7) A total EFA funds requested.
- (h) The elements and format of the data submission described in (g) above shall be subject to adjustment by scholarship organizations at the reasonable request of the department. Nothing in this rule shall preclude the department from seeking additional information during the startup of the program.
- (i) Scholarship organizations shall meet all reasonable requests for information by the department relative to the program implementation and operation.
- (j) Scholarship organizations shall have access to confidential student information including the SASID under the following conditions:
- (1) Scholarship organizations shall implement all customary commercial data security procedures and protocols to protect such information; and
  - (2) Scholarship organizations shall exercise all best and reasonable efforts to verify a student SASID number for any student applying for an EFA prior to requesting a new SASID.
- (k) Scholarship organizations shall make EFA student account balances readily accessible, through a technology interface with real-time or near real time balance information, transaction history, including transaction date, amount deposited or withdrawn, and the name of the education service provider.
- (l) Each participating scholarship organization shall create a Parent and Education Service Provider Advisory Commission responsible for appeals of education service provider denials and new educational expenses approved by scholarship organizations under 194-F:2 (II)(o).

(m) Scholarship organizations shall contract with an unaffiliated auditor to conduct a risk-based audit of EFA accounts in consultation with and approved by the department on, at a minimum, an annual basis.

(n) None of the services shall be subcontracted by scholarship organizations without prior written notice and consent of the State. The state is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

(o) Scholarship organizations may withhold from deposits or deduct ratably throughout the year from EFAs an amount to cover the cost of administering the EFA program, up to a maximum total of 10% annually. All remaining funds shall be made available to eligible students for allowable uses.

(p) Scholarship organizations shall develop a records retention policy to be approved by the department.

Ed 324.10 Responsibilities of Public Schools and School Districts. The public school or public school district in which an eligible student was most recently enrolled shall provide to the parent their child's state assigned student identification (SASID) as required under 193-F:5.

Ed 324.11 Adjudication.

(a) An EFA account shall only be dissolved with written consent of the parent or guardian, unless an EFA student graduates high school or there is an intentional misuse of funds.

(b) Unless otherwise noticed in writing by the parent that roll-over EFA account funds are forfeited, written consent of dissolution shall note the parent's understanding that the rolled-over EFA account funds may continue to be utilized, even if the student is attending a public school and no longer participating in the program, or until the former EFA student graduates high school.

(c) A scholarship organization shall develop, in consultation with the department, and make publicly available on its website, the process for the determination of a parent, guardian, or EFA student's intentional misuse of EFA funds.

(d) The department shall be notified within 5 days any time an EFA account is suspended, or if student is otherwise deemed ineligible.

(e) Within 5 days, suspected cases of intentional misuse of EFA funds shall be reported to the department, the board, the attorney general, and, for cases exceeding the amount of a class B felony, the local or state law enforcement agency.

(f) A parent, guardian, or EFA student may appeal a scholarship organizations' decisions to the department pursuant to Ed 200.

(g) Scholarship organizations shall notify the department by August 1 of each calendar year of any existing EFA student that has not met the accountability requirements.

(h) Scholarship organizations shall develop, in consultation with the department and Parent and Education Service Provider Advisory Commission, a process for the determination or disqualification of an education service provider. Such process shall include, at a minimum, conditions for:

- (1) Intentional misrepresentation of information;
- (2) Failure to refund any overpayments in a timely manner or within 30 days or the request for a refund; and
- (3) Routine failure to provide students with promised educational goods or services.

(i) A list of all disqualified education service providers shall be posted on a scholarship organizations' websites and made easily accessible to the public.

(j) Within 5 days of disqualification, scholarship organizations shall notify parents, guardians, EFA students, and the department in writing or electronically of an education service provider disqualification.

(k) Education service providers disqualified by any scholarship organization shall be disqualification from participation in the Program and a list of disqualified providers shall be posted on the Department's website.

(l) An education service provider may appeal a scholarship organization's decision to the department pursuant to Ed 200.

(m) If, at any point, a scholarship organization no longer meets the eligibility requirements under RSA 77:G, the commissioner shall:

- (1) Issue a written notice of noncompliance that gives scholarship organizations a reasonable time to meet the requirements; or
- (2) Issue a notice of proposed action to suspend a scholarship organization or to remove a scholarship organization from the list of eligible scholarship organizations where the health, safety, or welfare of students is involved, or a scholarship organization has failed to meet the requirements specified in a notice of noncompliance pursuant to (1) above.

(n) Scholarship Organizations suspended or removed pursuant to subsection (1) or (2) above shall have 15 days from receipt of the notice of proposed action to file with the department's governance unit a request for a proceeding pursuant to ED 200. All resulting proceedings shall be conducted in accordance with ED 200.

Ed 324. 12 Legislative Oversight Committee Established.

(a) The commissioner and the director of each participating scholarship organization or their designee shall attend committee meetings and provide requested information.

(b) The first-named senate member may convene the committee in person or virtually.