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## SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair  
2017 - 2018 Regular

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<b>Bill No:</b>	SB 1344	<b>Hearing Date:</b>	April 4, 2018
<b>Author:</b>	Moorlach		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Ian Johnson		

**Subject:** Education expenses: Education Savings Account Act of 2020

**NOTE:** This bill has been referred to the Committees on Education, Governance and Finance, and Judiciary. A "do pass" motion should include referral to the Committee on Governance and Finance.

### SUMMARY

This bill establishes the Education Savings Account Act of 2020 and restricts the University of California (UC) and California State University (CSU) from admitting nonresident students, as specified, only if a Senate Constitutional Amendment is approved as part of the November 2018 election.

### BACKGROUND

The UC and CSU are responsible for setting specific admission criteria intended to reflect their respective eligibility pools. As a minimum criterion, both systems require resident high school students to complete a series of college preparatory courses known as the "A–G" series. While out-of-state and international students (nonresidents) are recognized as enhancing the college experience by bringing a diversity of backgrounds and perspectives to campuses, the state does not provide funding for nonresident students. Current law allows each segment to set nonresident enrollment levels and fees, requiring that nonresident fees, at a minimum, cover marginal costs.

Subdivision (b) of Section 8 of Article XVI of the California Constitution requires the state to spend a minimum amount of funding on school districts and community colleges every fiscal year, based on specific calculations built on a percentage of General Fund revenues or prior-year education appropriations, enrollment, and economic growth.

In 2013, the Local Control Funding Formula (LCFF) was enacted. The LCFF establishes per-pupil funding targets, with adjustments for different student grade levels, and includes supplemental funding for local educational agencies (LEA) serving students who are low-income, English learners, or foster youth. The LCFF replaced almost all sources of state funding for LEAs, including most categorical programs, with general purpose funding including few spending restrictions.

### ANALYSIS

This bill establishes the Education Savings Account Act of 2020 and restricts the UC and CSU from admitting nonresident students, as specified, only if a Senate Constitutional Amendment is approved as part of the November 2018 election.

Specifically, this bill adds the following to the Education Code:

- 1) Specifies that no nonresident who applies to either the University of California (UC) or California State University (CSU) for admission at the freshman or sophomore level shall be admitted until the trustees or the regents, as appropriate, determine that there are no resident applicants from the groups specified in Education Code Section 66202 who meet the eligibility requirements for admission to that segment.
- 2) Entitles every child enrolled in kindergarten, or in an elementary or secondary school, in any of grades 1 to 12, inclusive, to an Education Savings Account (ESA) for K-12 and college tuition, and education-related expenses.
- 3) Commencing with the 2019–20 fiscal year, on July 1 of each year, requires the Department of Finance to determine the annual ESA deposit amount for the upcoming school year. The deposit amount would be calculated as the total amount budgeted for K–12 and community college education in the current fiscal year as required by Proposition 98, divided by the number of pupils enrolled in kindergarten or in any of grades 1 to 12, inclusive.
- 4) For each school year, requires the Controller to transfer an amount from the General Fund to the ESA Trust equal to the ESA deposit amount multiplied by the number of accounts established for each student. The Controller shall report to the Department of Finance the total transfer amount on or before June 15 of each school year.
- 5) Establishes two funds within the Education Savings Account (ESA) Trust—the ESA Trust Program Fund and the ESA Trust Administrative Fund. The ESA Trust Program Fund would be continuously appropriated, without regard to fiscal years, to the ESA Trust Board. Funds in the ESA Trust Administrative Fund would be available upon appropriation.
- 6) Establishes the ESA Trust Board, consisting of members of the Scholarshare Investment Board (SIB) and the Superintendent of Public Instruction (SPI), with all the powers and duties provided to the SIB.
- 7) Requires that funds transferred by the Controller shall be segregated by the ESA Trust Board into the program fund and administrative fund. All costs of administration of the ESA Trust shall be paid out of the administrative fund, which shall not exceed, on an annual basis, one percent of the total amount of the program fund.
- 8) Requires the SPI to create an online application for a parent or legal guardian to request an ESA and a participation agreement. The application and agreement shall also be accepted by the SPI by mail.
- 9) Requires the deadline for submission of an application and execution of a participation agreement for the next succeeding school year to be June 1. The SPI shall establish at least one additional deadline for submission of an application and execution of a participation agreement during the school year.

- 10) Requires the parent or legal guardian of an eligible child to identify the eligible child as the beneficiary of the account and execute the participation agreement.
- 11) Specifies that, so long as the beneficiary remains eligible to receive the Education Savings Account (ESA) deposit, funds in the account shall remain in the account for the benefit of the beneficiary and no additional application or agreement shall be required.
- 12) Requires the Superintendent of Public Instruction (SPI) to create an online process for a parent or legal guardian, public school district, eligible school, or any other person, to report that a child is no longer eligible or no longer enrolled in an eligible school. Upon receipt of a report, the SPI shall confirm the eligibility status of the child. Such a determination may be appealed by the parent or legal guardian on behalf of the child, pursuant to the Administrative Procedure Act.
- 13) Requires the SPI to create an online application for a school to become eligible to receive funds from an ESA account, and publish, and periodically update, a list of eligible schools by name and address; provide contact information for each eligible school; and post the tuition charged for each grade level.
- 14) Requires the SPI to create an online process for a parent or legal guardian, public school district, eligible school, or any other person, to report that a school is no longer eligible to receive funds from an ESA account. Upon receipt of such a report, the SPI shall confirm the eligibility status of the school. Such determination may be appealed by the school pursuant to the Administrative Procedure Act.
- 15) Requires the ESA Trust Board to (1) provide for the creation of accounts within the program fund for each eligible child who has requested an account from the SPI, (2) enter into participation agreements pursuant to the program, (3) credit each account with the appropriate ESA deposit amount for each eligible child, and (4) credit investment earnings of the program fund to each account, as appropriate.
- 16) Requires the ESA Trust Board to provide parents and legal guardians with secure online review of account activity, including account deposits or credits, investment earnings, and disbursements to an eligible school on behalf of the beneficiary. The board shall protect the privacy of parents, legal guardians, and the beneficiary of an account.
- 17) Requires the ESA Trust Board, pursuant to the terms of the participation agreement, to distribute funds on behalf of the beneficiary to an eligible school on a monthly basis. However, the board may, by agreement with an eligible school, provide for a different distribution schedule.
- 18) Requires the ESA Trust Board to provide for the random audit of funds distributed from accounts to ensure student eligibility, student enrollment, student attendance, and school eligibility.

- 19) Require the Education Savings Account (ESA) Trust Board to provide a uniform participation agreement for use by the Superintendent of Public Instruction (SPI), the board, and parents and legal guardians. An eligible school identified in a participation agreement shall be a third-party beneficiary of the agreement.
- 20) Requires the ESA Trust Board to adopt regulations to implement the program.
- 21) Deems the following schools as eligible to receive funds from an account under the program:
  - a) A public school, including, but not necessarily limited to, campuses of the California Community Colleges (CCC), the California State University (CSU), and the University of California (UC).
  - b) A full-time charter school operating as a nonprofit public benefit corporation.
  - c) A full-time private school, accredited by a regional accrediting agency recognized by the state or the United States Department of Education, and operating as a nonprofit public benefit corporation.
  - d) A private college or university accredited by a regional accrediting agency recognized by the state or the United States Department of Education and operating as a nonprofit public benefit corporation.
  - e) A vocational education or training institution accredited by a regional accrediting agency recognized by the state or the United States Department of Education.
- 22) Prohibits the state from imposing any condition on the eligibility of any private school, college, or university to receive funds other than the following:
  - a) Periodic certification that an eligible child is enrolled in and attending the school.
  - b) Periodic certification that the amount paid is only used for tuition and eligible education expenses.
  - c) Current accreditation.
  - d) The general health and safety standards applicable to all private schools operating in California.
- 23) Requires the CCCs, the CSU, and the UC, and each campus, branch, and function thereof, to accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account admitted to the school.
- 24) Allows a school district to choose, by majority vote of the governing board, to allow for open school enrollment of any school in the district and provide for the distribution of money based on the enrollment of an eligible child in a school.

Public school districts may choose, by majority vote of the governing board of that school district, to provide a rebate of up to one thousand dollars (\$1,000) per school year, to all eligible pupils who enroll in one or more district schools. This rebate shall be credited to the eligible account for future college or vocational education tuition and education-related expenses.

- 25) Allows a full-time charter school, operating as a nonprofit public benefit corporation, to choose to become an eligible school upon application filed with the Superintendent of Public Instruction (SPI) and may accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account admitted to the school. A charter school may choose to provide a rebate each school year to all eligible pupils who enroll in the charter school. This rebate shall be credited to the eligible account for future college or vocational education tuition and undergraduate education-related expenses.
- 26) Allows a full-time private school, including a private college or university, operating as a nonprofit public benefit corporation to choose to become an eligible school upon application filed with the SPI and may accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account and admitted to the school.
- 27) Allows a vocational education or training school to choose to become an eligible school upon application filed with the SPI and may accept funds from an account for the tuition and eligible educational expenses of the beneficiary of that account and admitted to the school.
- 28) Prohibits an eligible school from sharing, refunding, or rebating any funds received from an account with or to the parent, legal guardian, or eligible pupil in any manner.
- 29) Authorizes the Education Savings Account (ESA) Trust Board to terminate and suspend an account and participation agreement if the parent, legal guardian, or eligible pupil fails to comply with the terms of the participation agreement with the intent to defraud or misuse the funds distributed on behalf of a beneficiary. The determination may be appealed by the parent, legal guardian, or eligible pupil pursuant to the Administrative Procedure Act

This bill adds the following to the Revenue and Taxation Code:

- 1) For each taxable year beginning on or after January 1, 2021, there shall be allowed as a credit against the "net tax," an amount equal to the contribution made by a taxpayer into a Coverdell education savings account subject to the maximum contribution limit per designated beneficiary under Section 530 of the Internal Revenue Code, relating to Coverdell education savings accounts.
- 2) Annually requires the Franchise Tax Board, in consultation with the Department of Finance, to determine the gross reduction in state revenue resulting from the tax credit established in this section for the purpose of calculating the effect of the tax credit on the minimum funding guarantee for schools required by Section 8 of Article XVI of the California Constitution and provide that determination to

- the Legislature. The Legislature shall annually appropriate an amount necessary to offset any reduction in the minimum funding guarantee for schools caused by the tax credit.
- 3) Allows the Franchise Tax Board to adopt regulations as necessary.
  - 4) For taxable years beginning January 1, 2019, excludes the following from the gross income of a beneficiary or parent or legal guardian of a beneficiary:
    - a) Any distribution or earnings under an Education Savings Account participation agreement.
    - b) Any contribution to an education savings account.
  - 5) Amends the term “school” in Section 530(b)(3)(B) of the Internal Revenue Code to include an eligible school under the Education Savings Account Act of 2020.
  - 6) Requires the Attorney General (AG) to defend against any action challenging, in whole or in part, the validity of this act, and gives an unconditional right to intervene in any action to defend the validity of this act. If the AG declines to defend the validity of the act in any action, the AG shall nonetheless file an appeal from, or seek review of, any judgment of any court that determines that the act is invalid, in whole or in part, if necessary or appropriate to preserve the state’s standing to defend the law in conformity with the AG’s constitutional duty to see that the laws of the state are adequately enforced.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Senate Constitutional Amendment 16 and Senate Bill 1344 are companion measures that establish the California Education Savings Account Act of 2020.”

“These bills will empower students to enroll in schools better suited for their educational needs. If approved, this legislation will provide financial stability for families as students will have access to a newly created Education Savings Account Trust. This trust provides a pathway to college by helping students save for college and avoid costly student loan debt, allowing the average student to save from \$24,000 to \$48,000. This is enough to attend a CSU campus with little or no student loan debt.”

“California public schools are funded with local, state and federal dollars which follow the student to the school site through per pupil spending formulas. Students are assigned a local school based on geography, and options are limited in selecting another public school, with charter schools providing only a small number of spots for students seeking an alternative educational opportunity. Many parents believe the current system has created an environment where many California public schools are failing and that many K-12 students who graduate are not college ready.”

- 2) ***Is this a voucher program?*** Voucher programs generally allow public funds to be used for private school tuition. Education Savings Accounts (ESAs) are a type of voucher program, but they are structured differently in that, in addition to private school tuition, ESA funds can be used to purchase other educational services, such as tutoring, textbooks, or online course fees. Under this bill, the state would use all of the funding currently apportioned to K-14 local educational agencies as required by the Proposition 98 Guarantee and award vouchers to parents who could then use the funding to cover tuition and other services at an eligible public or private school. The policy changes and state and local mechanisms required to implement this bill and its companion constitutional amendment are very complex and would profoundly change how public (and private) education is currently funded. Given that no one knows how many parents and schools would apply for vouchers or move their children from public to private schools, it is difficult to assess the impact of this bill with any meaningful precision.
- 3) ***Voucher programs in other states.*** The first publicly-funded voucher program in the country was started in Milwaukee in 1990—the Milwaukee Parental Choice Program. Currently, there are 25 voucher programs in 14 states, including the District of Columbia. The number of voucher programs has grown steadily since 2010, as has the scope of existing programs.

Almost all states have eligibility requirements for their voucher programs, with the most common being students with a documented disability or meeting household income requirements. Other eligibility requirements include attending a low-performing school or district, living in certain geographic regions, or some combination therein. There are two states, Arizona and Nevada, which have ESA programs that do not include eligibility requirements. Arizona expanded their already existing ESA program to be universal in 2017, which will phase in over a few years and be capped at 30,000 student participants. Nevada created its universal program in 2013, but the program is on hold following a 2015 court decision declaring the funding mechanism unconstitutional and program funding has not been restored.

Since the passage of Proposition 98, the voters of California have had two opportunities to vote for tax-funded school vouchers—Proposition 174 in 1993 and Proposition 38 in 2000. Both propositions received about 30 percent voter support.

- 4) ***Many existing school choice options for California parents.*** There are two main groups of parents in California already exercising alternative school choice—those that send their children to private school and those that access public school options such as charter schools, magnet schools, or cross-town transfer programs. While the author states that this measure would give parents the option of moving their children from their assigned school to any other accredited school that best meets their needs, state law already provides the following public school options:
- a) ***Charter Schools.*** There are over 1,000 public charter schools in the state that provide instruction in any combination of grades kindergarten through

grade 12. Parents, teachers, or community members may initiate charter petitions, which include the specific goals and operating procedures for the charter school. While most charter schools offer traditional, classroom-based instruction, about 20 percent offer some form of independent study, such as distance learning or home study.

- b) *Magnet Schools.* Magnet schools are designed by local authorities to attract parents, guardians, and students who are free to choose the school in which they enroll. These programs and schools are established by district governing boards that can make a wide range of choices depending on their local needs and resources. Magnet schools and programs include those that provide unique instruction in the arts, in various sciences, and in career education. Others reflect a district strategy to achieve racial and ethnic balance. When one or more magnets are established at a particular school, students from across the district may select a magnet with available space.
- c) *District of Choice (DOC) Program.* This program allows a student to transfer to any district that has deemed itself a DOC and agreed to accept a specified number of transfers. DOC may not use a selective admissions process. Transfer students generally do not need the consent of their home districts.
- d) *Interdistrict Permits.* These allow a student to transfer from one district to another district provided both districts consent to the transfer and the student meets any locally determined conditions. Districts receiving these transfer students may require students to meet certain attendance and/or academic standards.
- e) *Parental employment transfers.* These allow a student to transfer into a district if at least one parent is employed within the boundaries of that district and that district has chosen to accept parental employment transfers. Transfer students generally do not need the consent of their home districts.
- f) *The Open Enrollment Act.* This option, for low-performing schools, allows a student attending a school with low performance on state tests to transfer to another school inside or outside the district that has a higher level of performance and space available. Transfer students generally do not need the consent of their home districts.

Beyond the public school options, about 7.5 percent of California students are enrolled in private schools, a proportion that has gradually dropped over the past two decades from about 10 percent. Interestingly, these are the families that would immediately benefit from this bill because, even though they have already chosen to send their kids to private school, they would be eligible for the same voucher as all other parents.

- 5) ***How would low-income families be affected?*** Based on existing research, low-income families may likely participate in a voucher program, especially given



recent polls that show growing parental support for school choice in disadvantaged communities. However, among these families, it is the better-educated parents, who express strong commitments to education, that most often take advantage of voucher programs. Given that this bill would not target the vouchers to lower-income families in any way, would it be the most disadvantaged children in the state—those from low-income families with minimally educated parents—that would be left behind in struggling public schools with even fewer resources? How does the creation of an unregulated voucher program square with the principles of the Local Control Funding Formula, which targets additional resources to the communities with the highest proportions of English-learning, low-income, and foster youth students?

- 6) ***Available research on the impact of voucher programs on student achievement is mixed at best.*** Research on existing voucher programs is relatively limited because prior to 2010, there were a very small number of programs in the country. Additionally, it is difficult to measure the effects of voucher programs on student performance because there are oftentimes other factors, such as class size, school safety issues, or peer effects, that affect academic progress. Finally, the research tends to lack any analysis on the quality of the private schools that students choose to attend. Contrary to popular belief, while many private schools may produce better student outcomes than public schools, the reverse can also be true.

Despite these challenges, existing research on voucher programs shows mixed results. Generally, students attending private school through a voucher program tend to have similar academic outcomes to their peers in traditional public schools, with some studies even finding that voucher students performed worse academically than their peers in traditional public schools. However, other research suggests that student performance in voucher programs may improve over time. Specifically, a multi-year study of Milwaukee's voucher program, the oldest in the country, found that private school-attending students in lower grades tended to have lower academic performance in reading and science than their peers in public schools, while students in upper grades had better academic outcomes in reading and science than their peers. In addition, some students participating in the voucher program were one to two years behind academically when first enrolling in a private school, and study results suggest that attending private school through the voucher program helped these students catch up to their grade level.

Based on the limited research, it appears that children with parents who eagerly pursue vouchers and move their children to private schools can potentially perform better than children who remain in struggling public schools. Would these achievement results continue under a program that is applied statewide? Is this a likely way to raise achievement for students who would remain in urban and suburban public schools?

- 7) ***Voucher programs face legal challenges.*** Several state or local voucher programs across the country have faced legal challenges, often centered on the separation of church and state debate. Specifically, whether sending public funds to sectarian private schools contradicts the Establishment Clause of the

U.S. Constitution's First Amendment and a series of approximately 36 state constitutional amendments prohibiting the states from providing public funds to religious schools—collectively known as the Blaine Amendments. The outcomes of these challenges have been a mix of upholding the programs and finding them unconstitutional, with a few still pending on appeal.

- 8) ***Other policy considerations.*** When considering the creation of a state-funded Education Savings Account system, many more factors must be considered beyond what is described above. While the funding impact of this bill is difficult to assess, diverting public funding away from traditional public schools to parents that currently enroll their children in private schools would decrease the amount of per-pupil state aid provided to public school districts and charter schools. Moreover, because school districts are funded first with local property taxes and second with state aid, the school districts located in areas with the lowest property values would be most harmed by this bill. Other policy considerations include, but are not limited to, the way in which the rights of students with disabilities would continue to be protected, whether low-income parents would receive a voucher amount that could cover private school tuition (the cost of which would likely rise as a result of this bill), whether private schools should be required to administer state testing for student outcome comparison purposes, what level of accountability private schools would be subjected to by state taxpayers, and whether parents would face admissions discrimination within an unregulated voucher system.
- 9) ***Arguments in support of vouchers.*** Proponents argue that these programs empower parents by providing them with choices about where and how to educate their children, and provide students, particularly at-risk or underserved students, with better education options. They also argue that free-market competition among public and private schools improves overall school quality through competition. Interestingly, some note that arguments in favor of school vouchers shifted over the years, with less discussion about the effects of vouchers on student achievement and more discussion about both the value of choice as a right in itself and the beneficial competitive effect of voucher programs on public schools.
- 10) ***Arguments in opposition of vouchers.*** Opponents argue that voucher programs divert public dollars to private schools, but without the same accountability or special education requirements as public schools. They express concerns that voucher programs divert motivated parents and students from underfunded public schools, leaving behind a larger number of disadvantaged students with fewer resources. Opponents also point out that it may be difficult for lower-income families to benefit from voucher programs, as the amount of money available through a voucher may not always cover the full costs of private school. Some raise concerns about public dollars funding religiously-affiliated private schools as a potential violation of the constitutional separation of church and state, as well as the potential for religious discrimination. Finally, some argue that these programs may potentially benefit only a small number of children without providing the comprehensive reforms needed to strengthen the entire public education system.

- 11) ***Concerns from the higher education segments.*** According to the University of California, “These companion measures would effectively prohibit UC from admitting nonresident students, thereby reducing cultural and geographic diversity on UC campuses and compromising the educational resources available to California students. In addition to eliminating a critical funding source for UC, the proposed legislation would undermine the governance structure of the University, potentially eroding the role of faculty and students in developing policy and upholding the academic mission of the University of California.”

According to the California State University (CSU), this bill’s prohibition from admitting nonresident freshman and sophomore students unless determinations about resident applicants are made is unnecessary. Further, “The CSU continues to prioritize admission for California residents, as evidenced by the fact that 95.5 percent of our undergraduate students come from California. In addition, the Board has adopted policies to ensure that in instances of impaction—where campus programs or entire campuses receive more fully qualified applicants than they have the capacity to serve—admission advantages be given to applicants from the local service area of the campus. Additionally, the Board recently adopted a formal redirection policy to ensure that eligible applicants denied admission to their choice campuses are provided the opportunity to attend a CSU campus that has space available.”

- 12) ***Related Legislation***

SCA 16 (Moorlach) proposes to amend Article IX of the State Constitution to: (1) allow the state to disburse funds and other public benefits to educational institutions irrespective of their religious affiliation, and (2) add admissions priority for California residents to the controls afforded to the Legislature over the University of California.

## **SUPPORT**

Choice 2020  
Letters from various individuals

## **OPPOSITION**

California School Boards Association  
California State PTA  
California State University  
University of California

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