

117TH CONGRESS
2D SESSION

S. 4726

To alleviate pandemic learning loss.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2022

Mr. CRUZ introduced the following bill; which was read twice and referred to
the Committee on Finance

A BILL

To alleviate pandemic learning loss.

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 “Catch Up Our Kids
5 Act of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The COVID–19 pandemic and the resulting
9 school disruptions will have a profound and lasting
10 impact on students across the United States.

11 (2) While most countries of the world closed
12 schools at the beginning of the pandemic as a pre-

1 caution, the United States was an outlier by keeping
2 schools closed to in-person instruction for unneces-
3 sarily extended periods of time and favoring remote
4 instruction.

5 (3) There is no scientific evidence that showed
6 elementary or secondary schools to be vectors for
7 community spread, nor that school-aged children
8 were uniquely vulnerable to the COVID–19 virus. To
9 date, schools have not been proven to be major
10 spreaders of COVID–19.

11 (4) According to a study done by the Harvard
12 University Center for Education Policy Research, 30
13 percent of students in elementary and secondary
14 schools during the 2020–2021 school year attended
15 schools that conducted classes remotely for more
16 than 16 weeks.

17 (5) The Harvard University study showed that
18 high-poverty districts and districts that serve pre-
19 dominately Black and Hispanic students were more
20 likely to have remote instruction. The study also
21 showed that remote instruction was a primary driver
22 of widening academic achievement gaps.

23 (6) The achievement gaps and learning loss
24 have proven remote instruction to be a failure.

1 (7) In mathematics, studies show that students
2 who attended mostly in-person instruction during
3 the 2020–2021 school year lost approximately 20
4 percent worth of a typical school year’s mathematics
5 learning. Comparatively, students who spent most of
6 the school year in remote instruction lost 50 percent
7 of math instruction.

8 (8) According to a McKinsey study, on average,
9 students in elementary and secondary schools are 3
10 months behind in reading as a result of the pan-
11 demic school disruptions.

12 (9) Pandemic school closures, and the con-
13 sequent learning loss, have reversed the progress
14 made to narrow the academic achievement gaps for
15 historically disadvantaged groups. Low-income,
16 Black, and Hispanic students fell further behind
17 compared to White, Asian, and high-income stu-
18 dents.

19 (10) Learning loss was shown to be less signifi-
20 cant in States and school districts that reopened in-
21 person instruction sooner. States with the lowest
22 rates of remote instruction in both high- and low-
23 poverty districts, such as Texas and Florida, saw
24 smaller rates of learning loss and gaps in achieve-

1 ment compared to States with the highest rates of
2 remote instruction.

3 (11) If pandemic learning loss is permanent,
4 studies show that students who attend high-poverty
5 schools may see a decline of 5 percent in average
6 earnings over their lifetimes. Overall, elementary and
7 secondary school learning loss could result in a
8 \$2,000,000,000,000 decline in lifetime earnings.

9 (12) All levels of government, elected officials,
10 and those working in education must make it a pri-
11 ority to pursue parent-driven and directed policies to
12 help students catch up from pandemic-related learn-
13 ing loss and close achievement gaps.

14 **SEC. 3. USE OF UNOBLIGATED ESSER FUNDS FOR LEARN-**
15 **ING LOSS SCHOLARSHIPS.**

16 (a) DEFINITIONS.—In this section:

17 (1) ELIGIBLE STUDENT.—The term “eligible
18 student” means an elementary school or secondary
19 school student—

20 (A) whose parent or legal guardian applied
21 for a learning loss scholarship under this sec-
22 tion; and

23 (B) who is a citizen or national of the
24 United States or an alien (as defined in section
25 101(a) of the Immigration and Nationality Act

1 (8 U.S.C. 1101(a)) who is lawfully present in
2 the United States.

3 (2) SCHOLARSHIP-GRANTING ORGANIZATION.—

4 The term “scholarship-granting organization” means
5 an organization that—

6 (A) is described in section 501(c)(3) of the
7 Internal Revenue Code of 1986 and exempt
8 from taxation under section 501(a) of such
9 Code; and

10 (B) provides learning loss scholarships to
11 eligible students who—

12 (i) reside in the State in which the or-
13 ganization is recognized; or

14 (ii) in the case in which the organiza-
15 tion received a subgrant from the Bureau
16 of Indian Education, are members of a
17 federally recognized Indian Tribe.

18 (3) SECRETARY.—The term “Secretary” means
19 the Secretary of Education.

20 (4) STATE.—The term “State” means each of
21 the 50 States, the District of Columbia, the Com-
22 monwealth of Puerto Rico, American Samoa, Guam,
23 the Commonwealth of the Northern Mariana Is-
24 lands, the United States Virgin Islands, and the De-

1 partment of the Interior (acting through the Bureau
2 of Indian Education).

3 (b) TRANSFER OF UNOBLIGATED FUNDS.—The un-
4 obligated balance of funds made available to carry out sec-
5 tion 18003 of division B of the CARES Act (Public Law
6 116–136), section 313 of the Coronavirus Response and
7 Relief Supplemental Appropriations Act, 2021 (division M
8 of Public Law 116–260), and section 2001 of the Amer-
9 ican Rescue Plan Act of 2021 (20 U.S.C. 3401 note) are
10 hereby transferred and shall be used by the Secretary to
11 carry out this section.

12 (c) LEARNING LOSS SCHOLARSHIPS.—

13 (1) AUTHORIZATION.—The Secretary shall use
14 amounts transferred under subsection (b) to award
15 grants to States that submit applications under
16 paragraph (2).

17 (2) APPLICATIONS.—A State that desires to re-
18 ceive a grant under this section shall submit an ap-
19 plication to the Secretary at such time, in such man-
20 ner, and accompanied by such information as the
21 Secretary may require.

22 (3) ALLOCATIONS TO STATES.—The amount of
23 each grant under paragraph (1) shall be allocated by
24 the Secretary to each State in the same proportion
25 as each State received under part A of title I of the

1 Elementary and Secondary Education Act of 1965
2 (20 U.S.C. 6311 et seq.) in the most recent fiscal
3 year.

4 (4) SUBGRANTS TO SCHOLARSHIP-GRANTING
5 ORGANIZATIONS.—

6 (A) IN GENERAL.—A State that receives a
7 grant under this section shall award subgrants
8 to scholarship-granting organizations to enable
9 the scholarship-granting organization to award
10 learning loss scholarships to the parents or
11 legal guardians of eligible students.

12 (B) USE OF FUNDS.—A parent or legal
13 guardian of an eligible student who receives a
14 learning loss scholarship may use the scholar-
15 ship on behalf of the eligible student for any of
16 the following:

17 (i) Tuition for enrollment at an ele-
18 mentary school or secondary school, includ-
19 ing at a private elementary school or sec-
20 ondary school.

21 (ii) Tutoring services.

22 (iii) Educational classes or curriculum
23 inside or outside of the home.

24 (iv) Books, instructional materials, or
25 online educational materials.

1 (v) Educational therapies, including
 2 educational therapies and services for stu-
 3 dents with disabilities.

4 (vi) Other educational and instruc-
 5 tional materials as the student’s parent or
 6 legal guardian determines is beneficial in-
 7 relation to at-home learning, including on-
 8 line or virtual schooling or home instruc-
 9 tion.

10 **SEC. 4. LEARNING LOSS TAX CREDIT.**

11 (a) IN GENERAL.—Subpart A of part IV of sub-
 12 chapter A of chapter 1 of the Internal Revenue Code of
 13 1986 is amended by inserting after section 25D the fol-
 14 lowing new section:

15 **“SEC. 25E. LEARNING LOSS TAX CREDIT.**

16 “(a) ALLOWANCE OF CREDIT.—In the case of a tax-
 17 payer who is an eligible individual, there shall be allowed
 18 as a credit against the tax imposed by this chapter for
 19 the taxable year with respect to each qualifying child of
 20 the taxpayer an amount equal to \$1,200.

21 “(b) LIMITATION.—Subsection (a) shall not apply in
 22 the case of a taxpayer with adjusted gross income for the
 23 taxable year in excess of—

24 “(1) \$400,000 in the case of a joint return, and

25 “(2) \$200,000 in any other case.

1 “(c) ELIGIBLE INDIVIDUAL.—For purposes of this
2 section, the term ‘eligible individual’ means a citizen or
3 national of the United States.

4 “(d) QUALIFYING CHILD.—For purposes of this sec-
5 tion—

6 “(1) IN GENERAL.—The term ‘qualifying child’
7 means a qualifying child of the taxpayer (as defined
8 in section 152(c)) for whom the taxpayer is allowed
9 a deduction under section 151 for the taxable year
10 and who is eligible to attend elementary or sec-
11 ondary school within the State in which the taxpayer
12 resides for all or a portion of the taxable year.

13 “(2) EXCEPTION.—The term ‘qualifying child’
14 shall not include any individual who is not a citizen
15 or national of the United States.

16 “(e) IDENTIFICATION REQUIREMENTS.—

17 “(1) QUALIFYING CHILD IDENTIFICATION RE-
18 QUIREMENT.—No credit shall be allowed under this
19 section to a taxpayer with respect to any qualifying
20 child unless the taxpayer includes the name and tax-
21 payer identification number of such qualifying child
22 on the return of tax for the taxable year and such
23 taxpayer identification number was issued on or be-
24 fore the due date for filing such return.

1 “(2) TAXPAYER IDENTIFICATION REQUIRE-
 2 MENT.—No credit shall be allowed under this section
 3 if the taxpayer identification number of the taxpayer
 4 was issued after the due date for filing the return
 5 for the taxable year.

6 “(f) TAXABLE YEAR MUST BE FULL TAXABLE
 7 YEAR.—Except in the case of a taxable year closed by rea-
 8 son of the death of the taxpayer, no credit shall be allow-
 9 able under this section in the case of a taxable year cov-
 10 ering a period of less than 12 months.

11 “(g) TERMINATION.—This section shall not apply to
 12 any taxable year beginning after December 31, 2024.”.

13 (b) CLERICAL AMENDMENT.—The table of sections
 14 for subpart A of part IV of subchapter A of chapter 1
 15 of the Internal Revenue Code of 1986 is amended by in-
 16 serting after the item relating to section 25D the following
 17 new item:

 “Sec. 25E. Learning loss tax credit.”.

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 2021.

21 **SEC. 5. EXCLUSION FOR EMPLOYEE CHILD EDUCATIONAL**
 22 **ASSISTANCE.**

23 (a) IN GENERAL.—Part III of subchapter B of chap-
 24 ter 1 of the Internal Revenue Code of 1986 is amended
 25 by inserting after section 127 the following new section:

1 **“SEC. 128. CHILDREN’S EDUCATIONAL ASSISTANCE PRO-**
2 **GRAMS.**

3 “(a) EXCLUSION FROM GROSS INCOME.—

4 “(1) IN GENERAL.—Gross income of an em-
5 ployee does not include amounts paid or expenses in-
6 curred by the employer for educational assistance to
7 the employee’s qualifying child if the assistance is
8 furnished pursuant to a program which is described
9 in subsection (b).

10 “(2) \$2,000 MAXIMUM EXCLUSION.—If, but for
11 this paragraph, this section would exclude from
12 gross income more than \$2,000 of educational as-
13 sistance furnished to an individual with respect to
14 any one child of the individual during a calendar
15 year, this section shall apply only to the first \$2,000
16 of such assistance so furnished with respect to such
17 child.

18 “(b) CHILDREN’S EDUCATIONAL ASSISTANCE PRO-
19 GRAM.—

20 “(1) IN GENERAL.—For purposes of this sec-
21 tion, a children’s educational assistance program is
22 a separate written plan of an employer for the exclu-
23 sive benefit of the employees of the employer to pro-
24 vide such employees’ children with educational as-
25 sistance. The program must meet the requirements
26 of paragraphs (2) through (6) of this subsection.

1 “(2) ELIGIBILITY.—The program shall benefit
2 employees who qualify under a classification set up
3 by the employer and found by the Secretary not to
4 be discriminatory in favor of employees who are
5 highly compensated employees (within the meaning
6 of section 414(q)) or their dependents. For purposes
7 of this paragraph, there shall be excluded from con-
8 sideration employees not included in the program
9 who are included in a unit of employees covered by
10 an agreement which the Secretary of Labor finds to
11 be a collective bargaining agreement between em-
12 ployee representatives and one or more employers, if
13 there is evidence that children’s educational assist-
14 ance benefits were the subject of good faith bar-
15 gaining between such employee representatives and
16 such employer or employers.

17 “(3) OTHER BENEFITS AS AN ALTERNATIVE.—
18 A program must not provide eligible employees with
19 a choice between children’s educational assistance
20 and other remuneration includible in gross income.
21 For purposes of this section, the business practices
22 of the employer (as well as the written program) will
23 be taken into account.

1 “(4) NO FUNDING REQUIRED.—A program re-
 2 ferred to in paragraph (1) is not required to be
 3 funded.

4 “(5) NOTIFICATION OF EMPLOYEES.—Reason-
 5 able notification of the availability and terms of the
 6 program must be provided to eligible employees.

7 “(c) DEFINITIONS; SPECIAL RULES.—For purposes
 8 of this section—

9 “(1) EDUCATIONAL ASSISTANCE.—The term
 10 ‘educational assistance’, with respect to a qualifying
 11 child of an employee, means the payment, by an em-
 12 ployer, of expenses incurred by or on behalf of an
 13 employee for such child for—

14 “(A) curriculum and curricular materials,

15 “(B) academic books or other instructional
 16 materials,

17 “(C) online educational materials,

18 “(D) tuition for tutoring or educational
 19 classes outside of the home, including at a tu-
 20 toring facility, but only if the tutor or instruc-
 21 tor is not related to the student and—

22 “(i) is licensed as a teacher in any
 23 State,

1 “(ii) has taught at an eligible edu-
2 cational institution (as defined in section
3 529(e)(5)), or

4 “(iii) is a subject matter expert in the
5 relevant subject, or

6 “(E) fees for a nationally standardized
7 norm-referenced achievement test, an advanced
8 placement examination, or any examinations re-
9 lated to college or university admission.

10 The term ‘educational assistance’ does not include
11 any payment for, or the provision of any benefits
12 with respect to, any course or other education involv-
13 ing sports, games, or hobbies.

14 “(2) EMPLOYEE.—The term ‘employee’ in-
15 cludes, for any year, an individual who is an em-
16 ployee within the meaning of section 401(c)(1) (re-
17 lating to self-employed individuals).

18 “(3) EMPLOYER.—An individual who owns the
19 entire interest in an unincorporated trade or busi-
20 ness shall be treated as the individual’s own em-
21 ployer. A partnership shall be treated as the em-
22 ployer of each partner who is an employee within the
23 meaning of paragraph (2).

24 “(4) QUALIFYING CHILD.—For purposes of this
25 section—

1 “(A) IN GENERAL.—The term ‘qualifying
 2 child’ means a qualifying child of the taxpayer
 3 (as defined in section 152(c)) for whom the tax-
 4 payer is allowed a deduction under section 151
 5 for the taxable year and who is eligible to at-
 6 tend elementary or secondary school within the
 7 State in which the taxpayer resides for all or a
 8 portion of the taxable year.

9 “(B) EXCEPTION FOR CERTAIN NONCITI-
 10 ZENS.—The term ‘qualifying child’ shall not in-
 11 clude any individual who would not be a de-
 12 pendent if subparagraph (A) of section
 13 152(b)(3) were applied without regard to all
 14 that follows ‘resident of the United States’.

15 “(5) ATTRIBUTION RULES.—

16 “(A) OWNERSHIP OF STOCK.—Ownership
 17 of stock in a corporation shall be determined in
 18 accordance with the rules provided under sub-
 19 sections (d) and (e) of section 1563 (without re-
 20 gard to section 1563(e)(3)(C)).

21 “(B) INTEREST IN UNINCORPORATED
 22 TRADE OR BUSINESS.—The interest of an em-
 23 ployee in a trade or business which is not incor-
 24 porated shall be determined in accordance with
 25 regulations prescribed by the Secretary, which

1 shall be based on principles similar to the prin-
 2 ciples which apply in the case of subparagraph
 3 (A).

4 “(6) DENIAL OF DOUBLE BENEFIT.—No deduc-
 5 tion or credit shall be allowed to the employee under
 6 any other section of this chapter for any amount ex-
 7 cluded from income by reason of this section.

8 “(d) TERMINATION.—This section shall not apply to
 9 any taxable year beginning after December 31, 2024.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
 11 for part III of subchapter B of chapter 1 of the Internal
 12 Revenue Code of 1986 is amended by inserting after the
 13 item relating to section 127 the following new item:

“Sec. 128. Children’s educational assistance programs.”.

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to taxable years beginning after
 16 December 31, 2021.

17 **SEC. 6. TEMPORARY INCREASE IN CONTRIBUTION LIMIT**
 18 **FOR COVERDELL EDUCATION SAVINGS AC-**
 19 **COUNTS.**

20 (a) IN GENERAL.—Section 530 of the Internal Rev-
 21 enue Code of 1986 is amended by adding at the end the
 22 following new subsection:

23 “(g) INCREASED CONTRIBUTION LIMIT TO COMBAT
 24 PANDEMIC-INDUCED LEARNING LOSS.—In the case of
 25 any taxable year beginning in 2022, 2023, or 2024, sub-

1 section (b)(1)(A)(iii) shall be applied by substituting
 2 ‘\$4,000’ for ‘\$2,000’.”.

3 (b) EFFECTIVE DATE.—The amendment made by
 4 this section shall apply to taxable years ending after De-
 5 cember 31, 2021.

6 **SEC. 7. SPECIAL RULES FOR QUALIFIED TUITION PRO-**
 7 **GRAMS.**

8 (a) IN GENERAL.—Section 529 of the Internal Rev-
 9 enue Code of 1986 is amended by redesignating subsection
 10 (f) as subsection (g) and by inserting after subsection (e)
 11 the following new subsection:

12 “(f) SPECIAL TEMPORARY RULES TO COMBAT PAN-
 13 DEMIC-INDUCED LEARNING LOSS.—

14 “(1) IN GENERAL.—In the case of any taxable
 15 year beginning in 2022, 2023, or 2024—

16 “(A) subsection (c)(7) shall be applied—

17 “(i) by substituting ‘qualified ex-
 18 penses’ for ‘tuition’, and

19 “(ii) by treating qualified expenses in
 20 connection with a homeschool (whether
 21 treated as a homeschool or a private school
 22 for purposes of applicable State law) in the
 23 same manner as expenses in connection
 24 with enrollment or attendance at an ele-

1 mentary or secondary public, private, or
2 religious school, and

3 “(B) the last sentence of subsection (e)(3)
4 shall not apply.

5 “(2) QUALIFIED EXPENSES.—For purposes of
6 apply paragraph (1)(A), the term ‘qualified ex-
7 penses’ means the following:

8 “(A) Tuition.

9 “(B) Curriculum and curricular materials.

10 “(C) Books or other instructional mate-
11 rials.

12 “(D) Online educational materials.

13 “(E) Tuition for tutoring or educational
14 classes outside of the home, including at a tu-
15 toring facility, but only if the tutor or instruc-
16 tor is not related to the student and—

17 “(i) is licensed as a teacher in any
18 State,

19 “(ii) has taught at an eligible edu-
20 cational institution, or

21 “(iii) is a subject matter expert in the
22 relevant subject.

23 “(F) Fees for a nationally standardized
24 norm-referenced achievement test, an advanced

1 placement examination, or any examinations re-
 2 lated to college or university admission.

3 “(G) Fees for dual enrollment in an insti-
 4 tution of higher education.

5 “(H) Educational therapies for students
 6 with disabilities provided by a licensed or ac-
 7 credited practitioner or provider, including oc-
 8 cupational, behavioral, physical, and speech-lan-
 9 guage therapies.”.

10 (b) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2021.

13 **SEC. 8. SPECIAL TEMPORARY GIFT TAX RULES FOR COVER-**
 14 **DELL EDUCATION SAVINGS ACCOUNTS AND**
 15 **QUALIFIED TUITION PROGRAMS.**

16 (a) COVERDELL EDUCATION SAVINGS ACCOUNTS.—
 17 Section 530 of the Internal Revenue Code of 1986, as
 18 amended by section 7, is amended by adding at the end
 19 the following new subsection:

20 “(h) SPECIAL TEMPORARY RULES TO COMBAT PAN-
 21 DEMIC-INDUCED LEARNING LOSS.—Notwithstanding sub-
 22 section (d)(3), in the case of any taxable year beginning
 23 in 2022, 2023, or 2024, any contribution to a Coverdell
 24 education savings account during such taxable year on be-

1 half of any designated beneficiary shall not be treated as
 2 a gift for purposes of chapters 12 and 13.”.

3 (b) QUALIFIED TUITION PROGRAMS.—Section 529 of
 4 the Internal Revenue Code of 1986, as amended by section
 5 8, is amended by redesignating subsection (g) as sub-
 6 section (h) and by inserting after subsection (f) the fol-
 7 lowing new subsection:

8 “(g) SPECIAL TEMPORARY RULES TO COMBAT PAN-
 9 DEMIC-INDUCED LEARNING LOSS.—Notwithstanding
 10 paragraphs (2) and (5)(B) of subsection (c), in the case
 11 of any taxable year beginning in 2022, 2023, or 2024, any
 12 contribution to a qualified tuition program during such
 13 taxable year on behalf of any designated beneficiary shall
 14 not be treated as a gift for purposes of chapters 12 and
 15 13.”.

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to taxable years ending after De-
 18 cember 31, 2021.

19 **SEC. 9. PROHIBITION OF CONTROL OVER NONPUBLIC EDU-**
 20 **CATION PROVIDERS; PARENTAL RIGHTS;**
 21 **STATE AND LOCAL AUTHORITY.**

22 (a) NO FEDERAL CONTROL.—Nothing in this Act, or
 23 an amendment made by this Act, shall be construed to
 24 permit, allow, encourage, or authorize any Federal control
 25 over any aspect of any private, religious, or home edu-

1 cation provider, whether or not a home education provider
2 is treated as a private school or home school under State
3 law. This Act, and any amendment made by this Act, shall
4 not be construed to exclude private, religious, or home
5 education providers from participation in programs or
6 services under this Act, or an amendment made by this
7 Act.

8 (b) NO CONTROL BY ENTITIES SUBMITTING
9 LISTS.—Nothing in this Act, or an amendment made by
10 this Act, shall be construed to permit, allow, encourage,
11 or authorize an entity submitting a list of eligible scholar-
12 ship-granting organizations on behalf of a State to man-
13 date, direct, or control any aspect of a private or home
14 education provider, regardless of whether or not a home
15 education provider is treated as a private school under
16 State law.

17 (c) NO EXCLUSION OR DISCRIMINATION.—No par-
18 ticipating State or entity acting on behalf of a State shall
19 exclude, discriminate against, or otherwise disadvantage
20 any education provider with respect to programs or serv-
21 ices under this Act, or an amendment made by this Act,
22 based in whole or in part on the provider's religious edu-
23 cation character or affiliation, including religiously or mis-
24 sion-based policies or practices.

1 (d) PARENTAL RIGHTS TO USE SCHOLARSHIPS.—No
2 participating State or entity acting on behalf of a State
3 shall disfavor or discourage the use of learning loss schol-
4 arships for the uses described in section 3(c)(4)(B), in-
5 cluding those services provided by private or nonprofit en-
6 tities, such as faith-based providers.

7 (e) STATE AND LOCAL AUTHORITY.—Nothing in this
8 Act, or an amendment made by this Act, shall be con-
9 strued to modify a State or local government’s authority
10 and responsibility to fund education.

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