

FAMILY ISSUE FACT SHEET

No. 2017-01 (February 2017, updated April 2017)



SB 1431/HB 2394– EMPOWERMENT SCHOLARSHIPS; EXPANSION; PHASE-IN; REVISIONS

EXECUTIVE SUMMARY

Arizona’s Empowerment Scholarship Account (ESA) program currently provides students from certain underserved populations the funding necessary to allow them to pursue the education that will help them achieve their fullest potential. SB 1431/HB 2394 expands the program to provide equal access for all students by phasing in eligibility by grade level for current public and charter school students over the next four years. The bill also addresses a few areas of the ESA program’s rules and operations that needed refinement in order to better achieve the purpose of the program in meeting the needs of students.

BACKGROUND

History of the ESA Program

In 2009, the Arizona Supreme Court struck down the Arizona Scholarship Program for Pupils with Disabilities and the Displaced Pupils Choice Grant Program, which provided grants for students with special needs and those in foster care to attend private schools. However, the Court noted that, “[t]here may well be ways of providing aid to these student populations without violating the constitution.”ⁱ

Following the Supreme Court’s direction, the 2011 Arizona legislature passed SB 1553, establishing empowerment accounts for students with disabilities. The empowerment accounts disburse 90% of the funds the state would have paid for that student at a charter school into an account that parents can use on tuition at a qualified school, textbooks, curriculum, and even fees for standardized tests. This program was the first of its kind and led the nation in education innovation by placing students’ needs first.

Several groups, including the Arizona Education Association and the Arizona School Boards Association, filed lawsuits to challenge the ESA program and sought an injunction to freeze the funds awarded to the students. The program was upheld in superior court and was unanimously upheld by a three-judge panel of the Arizona Court of Appeals on October 1, 2013.ⁱⁱ Although this decision was appealed to the Arizona Supreme Court, the Court denied consideration of the case on March 21, 2014, effectively upholding the constitutionality of the ESA program.

Empowerment Scholarship Accounts

Arizona was the first state in the nation to implement the innovative ESA program for parents and students, initially creating the program for children with disabilities. Parents sign a contract

to enroll a student in the ESA program, thus releasing the public school system from educating the student or providing additional services. Currently, the ESA program only covers certain classes of students: children with special needs, children in foster care or adopted out of foster care, children assigned to failing schools, children of active duty military members or military members killed in action, children living on tribal lands, and children whose parents are legally blind or deaf.



SB 1431/HB 2394 seeks to expand eligibility to all public and charter school students over a four-year period, and it addresses a few areas of the program's rules and operations that need refinement in order to better fulfill the purpose of the ESA program. The bills as amended include these provisions:

1. Expansion of Program:

- a. In 2017-2018, students in kindergarten and grades 1, 6, and 9 may apply.
- b. In 2018-2019, students in grades 2, 7, and 10 may apply.
- c. In 2019-2020, students in grades 3, 8, and 11 may apply.
- d. In 2020-2021, all public and charter school students (K-12) may apply.
- e. ESA funds: 90% of what the state would have spent on that student in a school district or a charter school setting, depending on whether the student was previously enrolled in a school district or charter school. For low-income students, 90% is increased to 100%. A low-income student is a dependent of a family whose adjusted gross income does not exceed 250% of the federal poverty level guidelines or is a student who is or was a ward of the juvenile court for that same year.
- f. Allows students to continue in the ESA program until they graduate, obtain a GED, or reach age 22 if they continue to attend a qualified school, just like public school students with disabilities are permitted to do.
- g. Number of new ESA students each year capped at .5% of total number of students enrolled in school districts and charter schools. The cap does not have an expiration date. Beginning in 2022-2023, the number of ESA accounts approved by the ADE may not exceed the total number of ESA accounts approved by the ADE during the 2021-2022 school year.

2. Refinement of Program:

- a. Each student in the program who pays tuition as a full-time student at a qualified school, grades 3-12, must take a national norm-reference standardized test, an advanced placement exam, or a college entrance exam each year, and the results must be reported to the student's parent. This requirement is met by taking an examination chosen and administered by a qualified school or a parent may choose any separate examination pursuant to this paragraph that is administered outside of the qualified school. Students may use ESA funds to pay for the exam.
 - i. Qualified schools with 50 or more ESA students shall annually make available to the public upon request or on school's website the aggregate test scores of all students.
 - ii. A network of qualified schools may publish the aggregate test scores by grade level for all schools within the network.
- b. Provides greater transparency for the expenditures made under the program by requiring the Arizona Department of Education (ADE) to post aggregated amounts of all transactions by category and the total number of enrolled students on its website monthly.

- c. Creates the ESA Review Council made up of parents of students in the program, the chairpersons of the House and Senate education committees, and the superintendent of public instruction or the superintendent's representative.
- d. Directs ADE to develop and implement policies and procedures in keeping with the purposes of the program to maximize educational choice for families.
- e. Requires ADE to create a policy handbook for parents after a public comment period.
- f. Eliminates the Annual Education Plan requirement that was intended to replace a public school's Individualized Education Program (IEP).
- g. Allows ADE to confirm that a student is not receiving a scholarship from a school tuition organization at the same time that the student is receiving ESA funds.
- h. ADE may request governmental primary or secondary schools to confirm student's attendance.
- i. Removes language requiring additional time attending a public school or charter school for students who previously qualified under the Arizona Scholarships for Pupils with Disabilities program.
- j. Clarifies that children at least 4 years of age and under 7 are eligible to enroll in kindergarten.
- k. Eliminates ability to use ESA funds for college savings plans.
- l. State Department of Revenue (DOR) creates Empowerment Scholarship Account Fund, funded by monies transferred by ADE, to cover costs in administering the ESA program.
- m. DOR and ADE will develop a process and procedures to determine if student is a low-income student. DOR may not transmit income information, but only whether student qualifies as low income.
- n. Directs ADE to allow students to identify all potential criteria to qualify for enrollment, and prohibits ADE from restricting students to only one of the qualification criteria.
- o. ADE shall allow applicant or current ESA holder to identify a third party to assist with the application process and other interactions with ADE.
- p. Requires Treasurer to contract with financial management firms to manage the ESA accounts. ADE shall cooperate with treasurer and financial management firm.
- q. Clarifies that parents may appeal a decision from ADE regarding enrollment eligibility, removal from the program, determinations of allowable expenses, and requires ADE to notify parents of the right to appeal any administrative decision at the time of the decision.
- r. ADE may not delay the deposit of monies until a subsequent month unless monies will be retroactively prorated to the time the parent signed the contract.
- s. ADE shall accept application between July 1 and June 30 of each year.
- t. Changes the time frame from 45 days to 30 days for ADE to review applications for eligibility and requires ADE to notify parents of the specific deficiencies in the application if an application is denied.

TALKING POINTS

- **Every child should have the opportunity to meet their full potential.** Because not all children thrive in the same educational environment, parents ought to have several options available to them. Seven-year-old Savana is a great example. She struggled with ADHD in an Arizona public

classroom of 30 children. Now she thrives, even reads in front of her class at a private school, thanks to the ESA program. Every Arizona family deserves that chance.



- **Every parent has the right to choose how best to educate his or her children** – whether that is public school, private, charter or homeschooling. Parents should be making that decision. SB 1431/HB 2394 provides an opportunity to give that choice back to more parents.
- **We have seen the success of the ESA program.** Tim is a father of five adopted foster children, all of whom attend a local private school where they get the extra attention they need. They are thriving there. Tim could never afford to send five children to a private school without the ESA program. Doesn't every family deserve that same opportunity?
- **SB 1431/HB 2394 ensures the ESA program serves its intended purpose.** This program has made a significant difference in the lives of children, especially those with special needs. All students deserve this opportunity. The changes in SB 1431/HB 2394 help improve the overall operation of the program so that meeting the needs of students stays a top priority.

CONCLUSION

Arizona's Empowerment Scholarship Account program allows parents to direct their children's education to best meet the needs of each child. The program provides critical aid to children whose needs are best met in a nontraditional public school environment. Now it is time to give all parents the choice to apply for this pioneering program that has benefited so many children.

ⁱ *Cain v. Horne*, 220 Ariz. 77, 84, ¶ 29, 202 P.3d 1178, 1185 (2009).

ⁱⁱ *Niehaus v. Huppenthal*, 233 Ariz. 195, 310 P.3d 983 (Ct. App. 2013), *review denied* (Mar. 21, 2014).

