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## Empowerment Scholarship Accounts

### OVERVIEW:

Parents are responsible for the education of their children and have the right to make educational decisions for their children. Arizona law recognizes that parents have a “fundamental right” to direct the upbringing of their children, including their education.<sup>1</sup>

Center for Arizona Policy (CAP) supports a parent’s right to choose from a wide variety of school options, including district, charter, online, private, or homeschool. Parents are in the best position to make these choices, as they are most familiar with the educational needs, personalities, learning styles, and interests of their children.

In keeping with Arizona’s position as a national school choice leader, Arizona established the CAP-supported Empowerment Scholarship Account (ESA) program. This innovative program gives Arizona parents even more educational options for their children.

### ANALYSIS:

To find the educational environment that best meets the needs of their children, parents need educational options to choose from, *and* actual access to those options. Arizona has been a national leader in providing parents with a wide variety of educational options, as well as actual access to them through a variety of programs, including the Empowerment Scholarship Account program.

### Background

In 2009, the Arizona Supreme Court struck down a voucher program for students with special needs.<sup>2</sup> Immediately after the decision, Governor Jan Brewer convened a special session calling for the enactment of a tax-credit-funded scholarship program to help these students (Lexie’s Law).<sup>3</sup> Unfortunately, the tax credit did not generate enough funds— certainly not enough to help all of the students who were depending on the program and the many more who had hoped to use the program.

However, the Court left the door open for a new program when it wrote, “[t]here may well be ways of providing aid to these student populations without violating the constitution.”<sup>4</sup> Taking them at their word, a new idea came about— education savings accounts, or Arizona Empowerment Scholarship Accounts (ESAs), where parents can direct the money in the account toward a host of educational expenses beyond just tuition at private schools. CAP and its attorneys were heavily involved in drafting and developing this program.

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## The ESA Program

The ESA program allows parents to withdraw their children from district or charter school and receive ninety percent of state funds allocated for their child for a variety of educational expenses, including therapy, tutors, textbooks, curriculum, tuition at private schools, and even fees for standardized tests.<sup>5</sup> Any funding that remains following the completion of school can be used on similar costs in a postsecondary institution. However, students may not receive School Tuition Organization (STO) scholarships while enrolled in the ESA program.

As originally passed in 2011, the ESA program was only available to students with disabilities. Since then, Arizona has expanded those qualified for the program, and it now includes:<sup>6</sup>

- Students in foster care
- Students living on an Indian reservation
- Students in failing or underperforming school districts
- Students with a parent who is on active military duty or was killed in the line of duty
- Students with a parent who is legally blind, deaf, or hard of hearing
- Students with a sibling who is a current or former ESA recipient

With the exception of military families and students in preschool or entering Kindergarten, the ESA program requires that students meet certain public school attendance requirements.<sup>7</sup>

ESA students may receive instruction at home by their parents or tutors, but they are not “homeschool” students under Arizona law. Homeschool students and ESA students are two separate legal classifications under the law.<sup>8</sup>

## Litigation

Upon the creation of the ESA program, several groups, including the Arizona Education Association (AEA) and the Arizona School Board Association (ASBA), filed a lawsuit to challenge the program and sought an injunction to freeze the funds awarded to the students.

A judge in the Superior Court upheld the program in late 2011, and then on October 1, 2013, a three-judge panel of the Arizona Court of Appeals unanimously upheld the program as constitutional.<sup>9</sup> On March 21, 2014, the Arizona Supreme Court declined to hear the case, ending the litigation over the ESA program and upholding its constitutionality.

## Universal Expansion

In 2017, the ESA program was further expanded to include all district and charter school students by phasing in eligibility over four years with the number of students capped at approximately 30,000.<sup>10</sup> However, the law was referred to the 2018 General Election as Proposition 305 and was repealed by the voters.

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For more information about the ESA program, visit the Arizona Department of Education’s ESA page at <http://www.azed.gov/esa/>.

### TALKING POINTS:

- **Education policy should put students first.** Empowerment Scholarship Accounts put students first by ensuring families are able to choose the best educational option for their child.
- **ESAs save the state money.** Schools would face significantly higher costs if children— especially children with disabilities— were to be forced back into the public schools. The amount that can go into an ESA is limited to 90% of what the state would have spent on the student. Moreover, federal and local education funding stay with the district; they are not part of the ESA scholarship.
- **When it comes to education, one size doesn’t fit all.** That’s why it’s important for parents to have options when deciding how to educate their children.

### CONCLUSION:

Parents have the right, and are in the best position, to determine what kind of education is best for their children. Selecting the right educational option will have a lifelong impact on the child’s future, and a choice of that magnitude should be left to parents, not geography or government bureaucrats. The CAP-supported Empowerment Scholarship Account program gives parents additional options as they decide what is the best educational context for their child.

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<sup>1</sup> [Ariz. Rev. Stat. § 1-601\(A\)](#).

<sup>2</sup> *Cain v. Horne*, 220 Ariz. 77 (2009). Available at <https://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2009/CV-08-0189-101300.PDF>

<sup>3</sup> [Ariz. Rev. Stat. § 20-224.07](#); [Ariz. Rev. Stat. § 43-1184](#).

<sup>4</sup> *Cain*, 220 Ariz. at ¶29. Available at <https://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2009/CV-08-0189-101300.PDF>

<sup>5</sup> [Ariz. Rev. Stat. § 15-2402\(B\)\(4\)](#), [-2402\(B\)\(6\)](#).

<sup>6</sup> [Ariz. Rev. Stat. § 15-2401\(7\)](#).

<sup>7</sup> *Id.*

<sup>8</sup> See [Ariz. Rev. Stat. § 15-802](#) (distinguishing “homeschool” student from student participating in the ESA program).

<sup>9</sup> *Niehaus v. Huppenthal*, 233 Ariz. 195 (App. 2013). Available at <https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2013/1%20CA-CV%2012-0242-171447.pdf>

<sup>10</sup> SB 1431, 2017 Leg., 53rd Leg., 1st Reg. Sess., (Ariz 2017). Available at <https://apps.azleg.gov/BillStatus/BillOverview/69282>