



Arizona State Senate Issue Brief

December 18, 2024

Note to Reader:

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EMPOWERMENT SCHOLARSHIP ACCOUNTS

INTRODUCTION

In 2011,¹ Arizona became the first state to establish education savings accounts, referred to as Empowerment Scholarship Accounts (ESAs), to provide students with educational options outside of the public school system.² Program eligibility was first limited to students with disabilities and expanded over time to include multiple student populations. In 2022,³ Arizona expanded eligibility for the ESA Program to include any student who is an Arizona resident and who is eligible to enroll in a public school (universal ESAs). The ESA Program is publicly funded and administered by the Arizona Department of Education (ADE) and the State Treasurer. 90 percent of the funding the student would have generated in a public school is deposited into the ESA and must be used to fund specific education expenses.

The current ESA Program is the result of similar school choice programs that were created in 2006. The Legislature enacted two voucher programs, “Arizona Scholarships for Pupils with Disabilities”⁴ and “The Displaced Pupils Grant Program,”⁵ which would have allowed students to attend a private school of their choice instead of the public school in their district. The Legislature appropriated \$2.5 million to each voucher program. In *Cain v. Horne* in 2009, the Arizona Supreme Court ruled that the voucher programs were unconstitutional pursuant to Article 9, Section 10 of the Arizona Constitution which prohibits appropriations of public money to private and sectarian schools. Although the Court ruled the voucher programs unconstitutional, the Court recognized the intent of the programs and opined that, “there may well be ways of providing aid to these student populations without violating the constitution.”⁶ The ruling issued by the Court provided the framework for the creation of the current ESA Program.

¹ [Laws 2011, Chapter 75](#)

² 16 states, including Florida, Mississippi, Nevada, Tennessee, North Carolina, New Hampshire and West Virginia have since established similar education savings account programs.

³ [Laws 2022, Chapter 388](#)

⁴ [Laws 2006, Chapter 340](#)

⁵ [Laws 2006, Chapter 358](#)

⁶ [Cain v. Horne, 202 P.3d 1178 \(Ariz. 2009\) \(en banc\).](#)

PROGRAM ELIGIBILITY⁷

Prior to the 2022-2023 school year, students were required to meet at least one requirement from two sets of criteria in order to be awarded an ESA. In 2022, the Legislature expanded eligibility for the ESA Program by allowing a student who did not meet the qualification criteria to enroll in an ESA (universal student).

Non-Universal Student ESA Eligibility – To qualify for an ESA as a non-universal student, a child must meet at least one of the following requirements:

- 1) be identified as having a disability;
- 2) attend a school or school district assigned a letter grade of D or F (students who meet this requirement and who qualify for the Free and Reduced-Price Lunch Program do not need to meet any additional requirements);⁸
- 3) be a previous recipient of an ESA or a scholarship from the Arizona Scholarships for Pupils with Disabilities Program (ASPDP);
- 4) be, or have been, a ward of the juvenile court under certain circumstances;⁹
- 5) have a parent or guardian who is a member of the U.S. Armed Forces who is on active duty or was killed in the line of duty (students who meet this requirement do not need to meet any additional requirements);¹⁰
- 6) be a sibling of a current or previous ESA recipient;¹¹
- 7) reside within the boundaries of an Indian reservation;¹² or
- 8) be a child of a parent who is legally blind, deaf or hard of hearing.¹³

Additionally, the child must meet one of the following requirements:

- 1) attended a governmental primary or secondary school as a full-time student for at least the first 45 days of the current or prior

fiscal year and transferred under an ESA contract;

- 2) not previously attended a governmental primary or secondary school, but is currently eligible to enroll in a school district or charter school kindergarten program;
- 3) previously participated in the ESA Program;
- 4) received a scholarship funded by a School Tuition Organization (STO) due to being displaced or disabled, and continues to attend a qualified school;
- 5) was eligible for an ASPDP scholarship under certain circumstances; or
- 6) attended a nonpublic school for pupils with disabilities in the prior year, if placement at the school was approved by ADE and contracted for by a school district.¹⁴

Universal Student ESA Eligibility – Beginning in the 2022-2023 school year, a universal student is eligible to enroll in the ESA Program. To qualify as a universal student, a child must be an Arizona resident who is eligible to enroll in an Arizona public school and does not otherwise qualify for an ESA.¹⁵

ENROLLMENT

Table 1 – 2024 Enrollment Breakdown ¹⁶	
Category	Enrollment %
Students with a Disability	18%
D and F Schools	0.5%
Students in a Military Family	1.5%
Wards of a Juvenile Court (Foster Children)	0.8%
Students on a Reservation	0.5%
Siblings	3.6%
Children of a parent who is legally blind or deaf or hard of hearing	0.8%
K-12 Universal ESAs	74.5%

⁷ [A.R.S. § 15-2401](#)

⁸ [Laws 2012, Chapter 404](#)

⁹ [Laws 2012, Chapter 360](#)

¹⁰ [Laws 2014, Chapter 200](#)

¹¹ [Laws 2014, Chapter 199](#)

¹² [Laws 2015, Chapter 225](#)

¹³ [Laws 2016, Chapter 353](#)

¹⁴ [Laws 2022, Chapter 388](#)

¹⁵ [A.R.S. § 15-2401.01](#)

¹⁶ [ESA Program FY 2024 Quarter 4 Report](#)

From 2013 through 2019, the Legislature capped the number of new ESA recipients at 0.5 percent of the total number of students enrolled in school districts and charter schools during the previous school year.¹⁷ Currently, there is no cap that limits the amount of new ESA participants.

Table 2 – Total Enrollment	
Fiscal Year	Enrollment
FY 2012	144
FY 2013	302
FY 2014	761
FY 2015	1311
FY 2016	2175
FY 2017	3,360
FY 2018	5,042
FY 2019	6,450
FY 2020	7,781
FY 2021	9,777
FY 2022	12,049
FY 2023	53,364
FY 2024 (est)	75,207
FY 2025(est)	82,452

PARTICIPATION REQUIREMENTS¹⁸

To participate in the ESA Program, the parent of a qualified child must annually sign an agreement to follow requirements outlined in statute.

Parents must agree to use a portion of the ESA monies allocated each quarter to provide an education to the student in at least reading, grammar, mathematics, social studies and science. The student may not be enrolled in a school district or charter school and the school district is released from all obligations to educate the student. A student may apply to the ESA Program in advance for funding to begin on a later date, unless that later date is more than two fiscal quarters after the fiscal quarter in which the

application is completed, or on a date that is between March 31 and July 1. If an eligible student completes an application between March 31 and July 1, ADE must enroll that student on July 1. Parents are also prohibited from accepting a scholarship from an STO while participating in the ESA Program.

The agreement contains the following allowable expenses of ESA monies:

- 1) tuition or fees at a qualified school or eligible postsecondary institution that requires all teaching staff and personnel who have unsupervised contact with students to be fingerprinted;
- 2) textbooks required by the qualified school or eligible postsecondary institution;
- 3) educational therapies or services under certain conditions;
- 4) tutoring or teaching services provided by an accredited individual or facility that is not subject to disciplinary action by the State Board of Education ;
- 5) curricula and supplementary materials;
- 6) tuition or fees for a nonpublic online learning program;
- 7) fees for national standardized norm-referenced achievement tests, advanced placement exams or any college admission exams;
- 8) fees to manage the ESA;
- 9) services provided by a public school, including individual classes and extracurricular programs;
- 10) insurance or surety bond payments;
- 11) uniforms purchased from or through a qualified school;
- 12) public transportation services or transportation network services between a student's residence and school; and
- 13) computer hardware and technological devices primarily used for an educational purpose, including calculators, laptops, tablet devices, microscopes and printers.

¹⁷ [Laws 2013, Chapter 250](#)

¹⁸ [A.R.S. § 15-2402](#)

Prohibited ESA expenses include:¹⁹

- 1) computer hardware or other technological devices primarily used for entertainment and other noneducational purposes, including televisions, telephones, video game consoles and accessories and home theatre and audio equipment; and
- 2) transportation of the student other than between the student’s home and school.

In 2024, the Attorney General notified ADE that statute and State Board of Education rules require supplementary material purchases to be connected to a curriculum and that ADE must ensure parents provide the required documentation for supplementary material or textbook purchases. As a result, ADE revised its procedures and materials to require parents to submit the appropriate documentation for supplementary material or textbook purchases in order to comply with statute and rules.²⁰

FUNDING

ESAs are funded at 90 percent of Basic State Aid per pupil costs received by charter schools (which is the sum of the Base Support Level and charter additional assistance).²¹ Due to funding weights, this amount varies per pupil from \$4,626 to \$44,666 with the average award for a student equaling \$9,895.²² The monies that would otherwise be allocated to an ESA recipient’s prior school district or charter school are transferred by ADE to the State Treasurer for deposit into each ESA. Because the ESA Program allows parents to rollover funds, some ESA monies are unspent and saved for future education related expenses.

The net costs or savings to the state associated with the ESA Program depends on where the student would have otherwise attended school. ADE interprets statute as setting the funding amount for ESAs at the level at which charter schools are funded. Charter schools

receive more funding through additional assistance than school districts under the Basic State Aid formula. Therefore, according to the Joint Legislative Budget Committee,²³ non-disabled students who would otherwise attend a charter school save the state an average of \$800. Non-disabled students who would otherwise attend a school district cost the state an average of \$700. For disabled students, the state saves \$2,900 for charter school students and \$1,400 for school district students (See Table 3). School districts that cover their entire equalization base through qualifying tax rate revenues are not entitled to Basic State Aid. A student who would otherwise attend a school district that does not receive Basic State Aid costs the state the entire amount of the student's ESA award.

Table 3 - Estimated ESA Cost or Savings Per Pupil				
	Disabled Students		Non-Disabled Students	
	Former Charter	Former District	Former Charter	Former District
Cost Per Pupil	-	-	-	\$700
Savings Per Pupil	\$2,900	\$1,400	\$800	-

FINANCIAL ACCOUNTABILITY

To prevent the misspending of ESA monies, ADE reviews all Program expenditures listed on quarterly expense reports submitted by parents. If a parent seeks to renew their child's ESA, ADE must verify that the student meets the statutory requirements of a *qualified student* that year for ESA Program eligibility. Additionally, ADE: 1) provides parents with guidance on appropriate and inappropriate spending of Program monies; 2) automatically denies inappropriate expenditures; and 3) prevents cash withdrawals.

ADE must annually audit a randomly selected sample of ESAs to determine compliance with the terms of the contract, applicable laws, rules and orders relating to the ESA Program. An ESA in

¹⁹ For more information see "[Disallowable Expenses for ESA Students](#)"

²⁰ [ADE Response to Attorney General](#)

²¹ See "[Arizona’s School Finance System](#)" Issue Brief

²² [ESA Program FY 2024 Quarter 4 Report](#)

²³ [K-12 and ESA Formula Funding Overview](#)

good standing may be randomly selected for an audit only one time during any five-year period.²⁴

ADE may remove any parent or qualified student from ESA eligibility if the parent or student: 1) fails to comply with the terms of the contract, applicable laws, rules or orders; 2) knowingly misuses monies; or 3) knowingly fails to comply with the contract with intent to defraud. Per the Program agreement, parents are required to repay any misspent monies. In cases of noncompliance, the State Treasurer suspends the account and all transactions are halted. Additionally, ADE notifies the parent or qualified student in writing that the ESA is suspended and provides the reason for the suspension. The parent or qualified student has 15 days to respond or take corrective action. In cases of substantial misuse of monies, the State Board of Education may refer the parent to the Attorney General.²⁵

QUARTERLY REPORT

Within 60 days after the last day of each calendar quarter, ADE must prepare a quarterly report on the ESA Program.²⁶ The ESA Program quarterly report must include the annual award amount associated with each ESA and the amount of approved expenses, disaggregated by type of expense. Additionally, the ESA Program quarterly report must include the number of ESA Program students, disaggregated by: 1) eligibility category; 2) for universal ESAs, the number of students who attended an Arizona public school in the school year immediately preceding enrollment in the ESA Program; 3) grade level; 4) the school district or charter school that each student attended in the school year immediately preceding enrollment in the ESA Program; 5) English language learners; 6) students enrolled in the ESA Program as a student with a disability; and 7) the zip code of each student's permanent residence.

PROPOSITION 305

Laws 2017, Chapter 139, which made various changes to the ESA Program, was referred to the ballot in 2018. Proposition 305 failed to secure the votes necessary to become law.²⁷

NIEHAUS V. HUPPENTHAL

In 2013, the Arizona School Boards Association, the Arizona Education Association and the Arizona Association of School Business Officials challenged the constitutionality of the ESA Program on the grounds that the Program: 1) violates the Religion Clause of the Arizona Constitution; 2) violates the Aid Clause of the Arizona Constitution; and 3) acts as a waiver of constitutional right.

The Court of Appeals concluded²⁸ that the ESA Program does not violate the Religion Clause which prohibits public funds, “appropriated for or applied to any religious worship, exercise or instruction,”²⁹ because, “the ESA is neutral in all respects toward religion and directs aid to a broad class of individuals defined without reference to religion.”

The Aid Clause³⁰ prohibits the appropriation of public money to private or sectarian schools. Through the ESA Program, parents may spend the funds on a wide range of services in order to educate their eligible children. Because ESA monies are not pre-ordained for a particular destination or earmarked for private schools, the court found that the ESA Program is not in violation of the Aid Clause.

Finally, the plaintiffs asserted that the ESA Program is a waiver of the constitutional right to free public education because eligible students must not be enrolled in a public school while receiving the ESA. However, the court decided that the ESA Program is not a waiver of

²⁴ [Laws 2024, Chapter 218](#)

²⁵ [A.R.S. § 15-2403](#)

²⁶ [A.R.S. § 15-2406](#)

²⁷ [2018 General Election Official Canvas](#)

²⁸ [Niehaus v. Huppenthal](#), 310 P.3d 983, 984 (Ariz. Ct. App. 2013).

²⁹ [Ariz. Const. art 2 § 12](#)

³⁰ [Ariz. Const. art 9 § 10](#)

constitutional right, but is “simply an exchange from one educational service for another, and the choice is voluntary and reversible.”

For these reasons, the Court of Appeals upheld the ESA Program and the Arizona Supreme Court refused to hear the appeal.

ADDITIONAL RESOURCES

- Arizona Department of Education
<http://www.azed.gov/esa/>
- *Cain v. Horne*
<http://www.azcourts.gov/Portals/23/pdf2009/CainOpinionCV080189PR.pdf>
- *Niehaus vs. Huppenthal*
<http://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2013/1%20CA-CV%2012-0242-171447.pdf>
- “Performance Audit: Arizona Department of Education” published by the Arizona Auditor General, June 2016
https://www.azauditor.gov/sites/default/files/16-107_Report.pdf
- "A Special Audit of the Arizona Department of Education – ESA Program" published by the Arizona Auditor General, April 2020
https://www.azauditor.gov/sites/default/files/20-103_Report_0.pdf
- S.B. 1279 (2016) Fiscal Note published by the Joint Legislative Budget Committee
<http://www.azleg.gov/legtext/52leg/2r/fiscal/sb1279.docx.pdf>
- "Disallowable Expenses for ESA Students" prepared by the Arizona Department of Education, March 2023
<https://www.azed.gov/sites/default/files/2023/03/Published-Disallowable-List-2023-03-17.pdf>
- ESA Program Quarterly Reports
<https://www.azed.gov/esa/esa-quarterly-reports>
- "K-12 and ESA Formula Funding Overview" prepared by the Joint Legislative Budget Committee, November 2023
<https://www.azjlbc.gov/units/k12andesaformulafunding.pdf>
- "Parent Handbook: ESA Program School Year 2023-2024" prepared by the Arizona Department of Education, July 2023
<https://www.azed.gov/sites/default/files/2023/05/ESA-2023-24-Parent-Handbook-FINAL-PROOF.pdf>
- "Alleged public monies violations under the ESA Program Public Monies Investigation No. PM2024-0008" prepared by the Office of the Arizona Attorney General, July 2024
https://www.azed.gov/sites/default/files/2024/07/2024-07-01_PM2024-0008_Opening_Letter_and_Request_for_Information.pdf