

REFERENCE TITLE: universal ESAs; repeal.

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2629

Introduced by
Representative Cano

AN ACT

AMENDING SECTION 15-2401, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 44, SECTION 9; REPEALING SECTION 15-2401, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 388, SECTION 1; REPEALING SECTION 15-2401.01, ARIZONA REVISED STATUTES; AMENDING SECTION 15-2402, ARIZONA REVISED STATUTES; RELATING TO ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-2401, Arizona Revised Statutes, as amended by
3 Laws 2022, chapter 44, section 9, is amended to read:

4 15-2401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Annual education plan" means an initial individualized
7 evaluation and subsequent annual reviews that are developed for a
8 qualified student who meets the criteria specified in paragraph 7,
9 subdivision (a), item (i), (ii) or (iii) of this section to determine
10 ongoing annual eligibility through the school year in which the qualified
11 student reaches twenty-two years of age and whether the student may be
12 eligible pursuant to section 36-2981 and should be referred for
13 eligibility determination.

14 2. "Curriculum" means a course of study for content areas or grade
15 levels, including any supplemental materials required or recommended by
16 the curriculum, approved by the department.

17 3. "Department" means the department of education.

18 4. "Eligible postsecondary institution" means a community college
19 as defined in section 15-1401, a university under the jurisdiction of the
20 Arizona board of regents or an accredited private postsecondary
21 institution.

22 5. "Parent" means a resident of this state who is the parent,
23 stepparent or legal guardian of a qualified student.

24 6. "Qualified school" means a nongovernmental primary or secondary
25 school or a preschool for pupils with disabilities that is located in this
26 state or, for qualified students who reside within the boundaries of an
27 Indian reservation in this state, that is located in an adjacent state and
28 that is within two miles of the border of the state in which the qualified
29 student resides, and that does not discriminate on the basis of race,
30 color or national origin.

31 7. "Qualified student" means a resident of this state who:

32 (a) Is any of the following:

33 (i) Identified as having a disability under section 504 of the
34 rehabilitation act of 1973 (29 United States Code section 794).

35 (ii) Identified by a school district or by an independent third
36 party pursuant to section 15-2403, subsection ~~I~~ J as a child with a
37 disability as defined in section 15-731 or 15-761.

38 (iii) A child with a disability who is eligible to receive services
39 from a school district under section 15-763.

40 (iv) Attending a school or school district that was assigned a
41 letter grade of D or F pursuant to section 15-241 for the most recent year
42 in which letter grades were assigned or is currently eligible to attend
43 kindergarten and resides within the attendance boundary of a school that
44 was assigned a letter grade of D or F pursuant to section 15-241 for the
45 most recent year in which letter grades were assigned. A child who meets

1 the requirements of this item and who meets the income eligibility
2 requirements for free and reduced-price lunches under the national school
3 lunch and child nutrition acts (42 United States Code sections 1751
4 through 1793) is not subject to subdivision (b) of this paragraph.

5 (v) A previous recipient of a scholarship issued pursuant to this
6 ~~section~~ ARTICLE AS A QUALIFIED STUDENT AS DEFINED IN THIS SECTION, unless
7 the qualified student's parent has been removed from eligibility in the
8 program for failure to comply pursuant to section 15-2403, subsection C.

9 (vi) A child of a parent who is a member of the armed forces of the
10 United States and who is on active duty or was killed in the line of duty.
11 A child who meets the requirements of this item is not subject to
12 subdivision (b) of this paragraph.

13 (vii) A child who is a ward of the juvenile court and who is
14 residing with a prospective permanent placement pursuant to section 8-862
15 and the case plan is adoption or permanent guardianship.

16 (viii) A child who was a ward of the juvenile court and who
17 achieved permanency through adoption or permanent guardianship.

18 (ix) A child who is the sibling of a ~~current or previous Arizona~~
19 ~~empowerment scholarship account recipient~~ CHILD DESCRIBED IN ITEM (v) OF
20 THIS SUBDIVISION or of an eligible qualified student AS DEFINED IN THIS
21 SECTION who accepts the terms of and enrolls in an Arizona empowerment
22 scholarship account.

23 (x) A child who resides within the boundaries of an Indian
24 reservation in this state as determined by the department of education or
25 a tribal government.

26 (xi) A child of a parent who is legally blind or deaf or hard of
27 hearing as defined in section 36-1941.

28 (b) And, except as provided in subdivision (a), items (iv) and (vi)
29 of this paragraph, who meets any of the following requirements:

30 (i) Attended a governmental primary or secondary school as a
31 full-time student as defined in section 15-901 for at least forty-five
32 days of the current or prior fiscal year and who transferred from a
33 governmental primary or secondary school under a contract to participate
34 in an Arizona empowerment scholarship account. Kindergarten students who
35 are enrolled in Arizona online instruction must receive ~~two~~ ONE hundred
36 hours of logged instruction to be eligible pursuant to this item. First,
37 second and third grade students who are enrolled in Arizona online
38 instruction must receive ~~four~~ TWO hundred hours of logged instruction to
39 be eligible pursuant to this item. Fourth, fifth and sixth grade students
40 who are enrolled in Arizona online instruction must receive ~~five~~ TWO
41 hundred FIFTY hours of logged instruction to be eligible pursuant to this
42 item. Seventh and eighth grade students who are enrolled in Arizona
43 online instruction must receive ~~five~~ TWO hundred ~~fifty~~ SEVENTY-FIVE hours
44 of logged instruction to be eligible pursuant to this item. High school
45 students who are enrolled in Arizona online instruction must receive ~~five~~

1 TWO hundred FIFTY hours of logged instruction to be eligible pursuant to
2 this item.

3 (ii) Previously participated in an Arizona empowerment scholarship
4 account AS A QUALIFIED STUDENT AS DEFINED IN THIS SECTION.

5 (iii) Received a scholarship under section 43-1505 and who
6 continues to attend a qualified school if the student attended a
7 governmental primary or secondary school as a full-time student as defined
8 in section 15-901 for at least ninety days of the prior fiscal year or one
9 full semester before attending a qualified school.

10 (iv) Was eligible for an Arizona scholarship for pupils with
11 disabilities and received monies from a school tuition organization
12 pursuant to section 43-1505 or received an Arizona scholarship for pupils
13 with disabilities but did not receive monies from a school tuition
14 organization pursuant to section 43-1505 and who continues to attend a
15 qualified school if the student attended a governmental primary or
16 secondary school as a full-time student as defined in section 15-901 for
17 at least ninety days of the prior fiscal year or one full semester before
18 attending a qualified school.

19 (v) ATTENDED A NONPUBLIC SCHOOL FOR PUPILS WITH DISABILITIES IN THE
20 PRIOR YEAR IF PLACEMENT AT THE SCHOOL WAS APPROVED BY THE DEPARTMENT AND
21 CONTRACTED FOR BY A PUBLIC SCHOOL DISTRICT.

22 ~~(vi)~~ (vi) Has not previously attended a governmental primary or
23 secondary school but is currently eligible to enroll in a kindergarten
24 program in a school district or charter school in this state or attended a
25 program for preschool children with disabilities. FOR THE PURPOSES OF
26 THIS ITEM, A CHILD IS ELIGIBLE TO ENROLL IN A KINDERGARTEN PROGRAM IF THE
27 CHILD IS AT LEAST FIVE YEARS OF AGE ON JANUARY 1 OF THE CURRENT SCHOOL
28 YEAR, IS UNDER SEVEN YEARS OF AGE, HAS NOT ALREADY COMPLETED A
29 KINDERGARTEN PROGRAM AND IS NOT ENROLLED IN GRADE ONE OF A PRIVATE OR
30 GOVERNMENTAL SCHOOL IN THE CURRENT YEAR.

31 ~~(vii)~~ (vii) Has not previously attended a governmental primary or
32 secondary school but is currently eligible to enroll in a program for
33 preschool children with disabilities in this state.

34 8. "Treasurer" means the office of the state treasurer.

35 Sec. 2. Repeal

36 A. Section 15-2401, Arizona Revised Statutes, as amended by Laws
37 2022, chapter 388, section 1, is repealed.

38 B. Section 15-2401.01, Arizona Revised Statutes, is repealed.

39 Sec. 3. Section 15-2402, Arizona Revised Statutes, is amended to
40 read:

41 15-2402. Arizona empowerment scholarship accounts; funds

42 A. Arizona empowerment scholarship accounts are established to
43 provide options for the education of students in this state.

1 B. To enroll a qualified student for an Arizona empowerment
2 scholarship account, the parent of the qualified student must sign an
3 agreement to do all of the following:

4 1. Use a portion of the Arizona empowerment scholarship account
5 monies allocated annually to provide an education for the qualified
6 student in at least the subjects of reading, grammar, mathematics, social
7 studies and science, unless the Arizona empowerment scholarship account is
8 allocated monies according to a transfer schedule other than quarterly
9 transfers pursuant to section 15-2403, subsection G.

10 2. Not enroll the qualified student in a school district or charter
11 school and release the school district from all obligations to educate the
12 qualified student. This paragraph does not:

13 (a) Relieve the school district or charter school that the
14 qualified student previously attended from the obligation to conduct an
15 evaluation pursuant to section 15-766.

16 (b) Require ~~a~~ THE qualified student to withdraw from ~~a~~ THE school
17 district or charter school before enrolling for an Arizona empowerment
18 scholarship account if the qualified student withdraws from the school
19 district or charter school before receiving any monies in the qualified
20 student's Arizona empowerment scholarship account.

21 (c) Prevent ~~a~~ THE qualified student from applying in advance for
22 an Arizona empowerment scholarship account to be funded beginning the
23 following school year.

24 3. Not accept a scholarship from a school tuition organization
25 pursuant to title 43 concurrently with an Arizona empowerment scholarship
26 account for the qualified student in the same year a parent signs the
27 agreement pursuant to this section.

28 4. Use monies deposited in the qualified student's Arizona
29 empowerment scholarship account only for the following expenses of the
30 qualified student:

31 (a) Tuition or fees at a qualified school.

32 (b) Textbooks required by a qualified school.

33 (c) If the qualified student meets any of the criteria specified in
34 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii) as
35 determined by a school district or by an independent third party pursuant
36 to section 15-2403, subsection J, the qualified student may use the
37 following additional services:

38 (i) Educational therapies from a licensed or accredited
39 practitioner or provider, including and up to any amount not covered by
40 insurance if the expense is partially paid by a health insurance policy
41 for the qualified student.

42 (ii) A licensed or accredited paraprofessional or educational aide.

43 (iii) Tuition for vocational and life skills education approved by
44 the department.

1 (iv) Associated goods and services that include educational and
2 psychological evaluations, assistive technology rentals and braille
3 translation goods and services approved by the department.

4 (d) Tutoring or teaching services provided by an individual or
5 facility accredited by a state, regional or national accrediting
6 organization.

7 (e) Curricula and supplementary materials.

8 (f) Tuition or fees for a nonpublic online learning program.

9 (g) Fees for a nationally standardized norm-referenced achievement
10 test, an advanced placement examination or any exams related to college or
11 university admission.

12 (h) Tuition or fees at an eligible postsecondary institution.

13 (i) Textbooks required by an eligible postsecondary institution.

14 (j) Fees to manage the Arizona empowerment scholarship account.

15 (k) Services provided by a public school, including individual
16 classes and extracurricular programs.

17 (l) Insurance or surety bond payments.

18 (m) Uniforms purchased from or through a qualified school.

19 (n) If the qualified student meets the criteria specified in
20 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii) and
21 if the qualified student is in the second year prior to the final year of
22 a contract executed pursuant to this article, costs associated with an
23 annual education plan conducted by an independent evaluation team. The
24 department shall prescribe minimum qualifications for independent
25 evaluation teams pursuant to this subdivision and factors that teams must
26 use to determine whether the qualified student shall be eligible to
27 continue to receive monies pursuant to this article through the school
28 year in which the qualified student reaches twenty-two years of age. An
29 independent evaluation team that provides an annual education plan
30 pursuant to this subdivision shall submit a written report that summarizes
31 the results of the evaluation to the parent of the qualified student and
32 to the department on or before July 31. The written report submitted by
33 the independent evaluation team is valid for one year. If the department
34 determines that the qualified student meets the eligibility criteria
35 prescribed in the annual education plan, the qualified student is eligible
36 to continue to receive monies pursuant to this article until the qualified
37 student reaches twenty-two years of age, subject to annual review. A
38 parent may appeal the department's decision pursuant to title 41, chapter
39 6, article 10. As an addendum to a qualified student's final-year
40 contract, the department shall provide the following written information
41 to the parent of the qualified student:

42 (i) That the qualified student will not be eligible to continue to
43 receive monies pursuant to this article unless the results of an annual
44 education plan conducted pursuant to this subdivision demonstrate that the

1 qualified student meets the eligibility criteria prescribed in the annual
2 education plan.

3 (ii) That the parent is entitled to obtain an annual education plan
4 pursuant to this subdivision to determine whether the qualified student
5 meets the eligibility criteria prescribed in the annual education plan.

6 (iii) A list of independent evaluation teams that meet the minimum
7 qualifications prescribed by the department pursuant to this subdivision.

8 (o) Public transportation services in this state, including a
9 commuter pass for the qualified student, or transportation network
10 services as defined in section 28-9551 between the qualified student's
11 residence and a qualified school in which the qualified student is
12 enrolled.

13 (p) Computer hardware and technological devices primarily used for
14 an educational purpose. For the purposes of this subdivision, "computer
15 hardware and technological devices":

16 (i) Includes calculators, personal computers, laptops, tablet
17 devices, microscopes, telescopes and printers.

18 (ii) Does not include entertainment and other primarily
19 noneducational devices, including televisions, telephones, video game
20 consoles and accessories, and home theatre and audio equipment.

21 5. Not file an affidavit of intent to homeschool pursuant to
22 section 15-802, subsection B, paragraph 2 or 3.

23 6. Not use monies deposited in the qualified student's account for
24 any of the following:

25 (a) Computer hardware or other technological devices, except as
26 otherwise allowed under paragraph 4, subdivision (c) or (p) of this
27 subsection.

28 (b) Transportation of the pupil, except for transportation services
29 described in paragraph 4, subdivision (o) of this subsection.

30 C. In exchange for the parent's agreement pursuant to subsection B
31 of this section, the department shall transfer from the monies that would
32 otherwise be allocated to a recipient's prior school district, or if the
33 child is currently eligible to attend a preschool program for children
34 with disabilities, a kindergarten program or any of grades one through
35 twelve, the monies that the department determines would otherwise be
36 allocated to a recipient's expected school district of attendance, to the
37 treasurer for deposit into an Arizona empowerment scholarship account an
38 amount that is equivalent to ninety percent of the sum of the base support
39 level and additional assistance prescribed in sections 15-185 and 15-943
40 for that particular student if that student were attending a charter
41 school.

42 D. The department of education empowerment scholarship account fund
43 is established consisting of monies appropriated by the legislature. The
44 department shall administer the fund. Monies in the fund are subject to
45 legislative appropriation. Monies in the fund shall be used for the

1 department's costs in administering Arizona empowerment scholarship
2 accounts under this chapter. Monies in the fund are exempt from the
3 provisions of section 35-190 relating to lapsing of appropriations. If
4 the number of Arizona empowerment scholarship accounts significantly
5 increases after fiscal year 2020-2021, the department may request an
6 increase in the amount appropriated to the fund in any subsequent fiscal
7 year in the budget estimate submitted pursuant to section 35-113. The
8 department shall list monies in the fund as a separate line item in its
9 budget estimate.

10 E. The state treasurer empowerment scholarship account fund is
11 established consisting of monies appropriated by the legislature. The
12 state treasurer shall administer the fund. Monies in the fund shall be
13 used for the state treasurer's costs in administering the Arizona
14 empowerment scholarship accounts under this chapter. If the number of
15 Arizona empowerment scholarship accounts significantly increases after
16 fiscal year 2020-2021, the state treasurer may request an increase in the
17 amount appropriated to the fund in any subsequent fiscal year in the
18 budget estimate submitted pursuant to section 35-113. Monies in the fund
19 are subject to legislative appropriation. Monies in the fund are exempt
20 from the provisions of section 35-190 relating to lapsing of
21 appropriations. The state treasurer shall list monies in the fund as a
22 separate line item in its budget estimate.

23 F. A parent must renew the qualified student's Arizona empowerment
24 scholarship account on an annual basis.

25 G. Notwithstanding any changes to the student's multidisciplinary
26 evaluation team plan, a student who has previously qualified for an
27 Arizona empowerment scholarship account [PURSUANT TO SECTION 15-2401](#)
28 remains eligible to apply for renewal until the student finishes high
29 school.

30 H. If a parent does not renew the qualified student's Arizona
31 empowerment scholarship account for a period of three academic years, the
32 department shall notify the parent that the qualified student's account
33 will be closed in sixty calendar days. The notification must be sent
34 through certified mail, email and telephone, if applicable. The parent
35 has sixty calendar days to renew the qualified student's Arizona
36 empowerment scholarship account. If the parent chooses not to renew or
37 does not respond in sixty calendar days, the department shall close the
38 account and any remaining monies shall be returned to the state.

39 I. A signed agreement under this section constitutes school
40 attendance required by section 15-802.

41 J. A qualified school or a provider of services purchased pursuant
42 to subsection B, paragraph 4 of this section may not share, refund or
43 rebate any Arizona empowerment scholarship account monies with the parent
44 or qualified student in any manner.

1 K. Notwithstanding subsection H of this section, on the qualified
2 student's graduation from a postsecondary institution or after any period
3 of four consecutive years after high school graduation in which the
4 student is not enrolled in an eligible postsecondary institution, but not
5 before this time as long as the account holder continues using a portion
6 of account monies for eligible expenses each year and is in good standing,
7 the qualified student's Arizona empowerment scholarship account shall be
8 closed and any remaining monies shall be returned to the state.

9 L. Monies received pursuant to this article do not constitute
10 taxable income to the parent of the qualified student.