

REFERENCE TITLE: ESAs; children with disabilities; evaluations.

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HB 2810

Introduced by
Representatives Pawlik: Gutierrez, Hernandez C, Quiñonez, Sandoval,
Schwiebert, Seaman, Terech

AN ACT

AMENDING SECTIONS 15-2402 AND 15-2403, 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 15-2402, Arizona Revised Statutes, is amended to
3 read:

4 15-2402. Arizona empowerment scholarship accounts; funds

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

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

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

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

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

22 (b) Require ~~a~~ THE qualified student to withdraw from ~~a~~ THE school
23 district or charter school before enrolling for an Arizona empowerment
24 scholarship account if the qualified student withdraws from the school
25 district or charter school before receiving any monies in the qualified
26 student's Arizona empowerment scholarship account.

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

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

34 4. Use monies deposited in the qualified student's Arizona
35 empowerment scholarship account only for the following expenses of the
36 qualified student:

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

38 (b) Textbooks required by a qualified school.

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

44 (i) Educational therapies from a licensed or accredited
45 practitioner or provider, including and up to any amount not covered by

1 insurance if the expense is partially paid by a health insurance policy
2 for the qualified student.

3 (ii) A licensed or accredited paraprofessional or educational aide.
4 (iii) Tuition for vocational and life skills education approved by
5 the department.

6 (iv) Associated goods and services that include educational and
7 psychological evaluations, assistive technology rentals and braille
8 translation goods and services approved by the department.

9 (d) Tutoring or teaching services provided by an individual or
10 facility accredited by a state, regional or national accrediting
11 organization.

12 (e) Curricula and supplementary materials.
13 (f) Tuition or fees for a nonpublic online learning program.
14 (g) Fees for a nationally standardized norm-referenced achievement
15 test, an advanced placement examination or any exams related to college or
16 university admission.

17 (h) Tuition or fees at an eligible postsecondary institution.
18 (i) Textbooks required by an eligible postsecondary institution.
19 (j) Fees to manage the Arizona empowerment scholarship account.
20 (k) Services provided by a public school, including individual
21 classes and extracurricular programs.

22 (l) Insurance or surety bond payments.
23 (m) Uniforms purchased from or through a qualified school.
24 (n) If the qualified student meets the criteria specified in
25 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii) and
26 if the qualified student is in the second year prior to the final year of
27 a contract executed pursuant to this article, costs associated with an
28 annual education plan conducted by an independent evaluation team. The
29 department shall prescribe minimum qualifications for independent
30 evaluation teams pursuant to this subdivision and factors that teams must
31 use to determine whether the qualified student shall be eligible to
32 continue to receive monies pursuant to this article through the school
33 year in which the qualified student reaches twenty-two years of age. An
34 independent evaluation team that provides an annual education plan
35 pursuant to this subdivision shall submit a written report that summarizes
36 the results of the evaluation to the parent of the qualified student and
37 to the department on or before July 31. The written report submitted by
38 the independent evaluation team is valid for one year. If the department
39 determines that the qualified student meets the eligibility criteria
40 prescribed in the annual education plan, the qualified student is eligible
41 to continue to receive monies pursuant to this article until the qualified
42 student reaches twenty-two years of age, subject to annual review. A
43 parent may appeal the department's decision pursuant to title 41, chapter
44 6, article 10. As an addendum to a qualified student's final-year

1 contract, the department shall provide the following written information
2 to the parent of the qualified student:

3 (i) That the qualified student will not be eligible to continue to
4 receive monies pursuant to this article unless the results of an annual
5 education plan conducted pursuant to this subdivision demonstrate that the
6 qualified student meets the eligibility criteria prescribed in the annual
7 education plan.

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

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

13 (o) Public transportation services in this state, including a
14 commuter pass for the qualified student, or transportation network
15 services as defined in section 28-9551 between the qualified student's
16 residence and a qualified school in which the qualified student is
17 enrolled.

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

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

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

26 (q) AN EVALUATION PROVIDED BY A QUALIFIED EXAMINER PURSUANT TO
27 SECTION 15-2403, SUBSECTION J, PARAGRAPH 2.

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

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

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

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

37 C. In exchange for the parent's agreement pursuant to subsection B
38 of this section, the department shall transfer from the monies that would
39 otherwise be allocated to a recipient's prior school district, or if the
40 child is currently eligible to attend a preschool program for children
41 with disabilities, a kindergarten program or any of grades one through
42 twelve, the monies that the department determines would otherwise be
43 allocated to a recipient's expected school district of attendance, to the
44 treasurer for deposit into an Arizona empowerment scholarship account an
45 amount that is equivalent to ninety percent of the sum of the base support

1 level and additional assistance prescribed in sections 15-185 and 15-943
2 for that particular student if that student were attending a charter
3 school.

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

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

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

32 G. Notwithstanding any changes to the student's multidisciplinary
33 evaluation team plan, a student who has previously qualified for an
34 Arizona empowerment scholarship account remains eligible to apply for
35 renewal until the student finishes high school.

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

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

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

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

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

17 Sec. 2. Section 15-2403, Arizona Revised Statutes, is amended to
18 read:

19 15-2403. Arizona empowerment scholarship accounts;
20 administration; appeals; audit; rules; policy
21 handbook

22 A. The treasurer may contract with private financial management
23 firms to manage Arizona empowerment scholarship accounts.

24 B. The department shall conduct or contract for annual audits of
25 Arizona empowerment scholarship accounts to ensure compliance with section
26 15-2402, subsection B, paragraph 4. The department shall also conduct or
27 contract for random, quarterly and annual audits of Arizona empowerment
28 scholarship accounts as needed to ensure compliance with section 15-2402,
29 subsection B, paragraph 4.

30 C. The department may remove any parent or qualified student from
31 eligibility for an Arizona empowerment scholarship account if the parent
32 or qualified student fails to comply with the terms of the contract or
33 applicable laws, rules or orders or knowingly misuses monies or knowingly
34 fails to comply with the terms of the contract with intent to defraud and
35 shall notify the treasurer. The department shall notify the treasurer to
36 suspend the account of a parent or qualified student and shall notify the
37 parent or qualified student in writing that the account has been suspended
38 and that no further transactions will be allowed or disbursements made.
39 The notification shall specify the reason for the suspension and state
40 that the parent or qualified student has fifteen days, not including
41 weekends, to respond and take corrective action. If the parent or
42 qualified student refuses or fails to contact the department, furnish any
43 information or make any report that may be required for reinstatement
44 within the fifteen-day period, the department may remove the parent or
45 qualified student pursuant to this subsection.

1 D. A parent may appeal to the state board of education any
2 administrative decision the department makes pursuant to this article,
3 including determinations of allowable expenses, removal from the program
4 or enrollment eligibility. The department shall notify the parent in
5 writing that the parent may appeal any administrative decision under this
6 article and the process by which the parent may appeal at the same time
7 the department notifies the parent of an administrative decision under
8 this article. The state board of education shall establish an appeals
9 process, and the department shall post this information on the
10 department's website in the same location as the policy handbook developed
11 pursuant to subsection K of this section.

12 E. A parent may represent himself or herself or designate a
13 representative, not necessarily an attorney, before any appeals hearing
14 held pursuant to this section. Any such designated representative who is
15 not an attorney admitted to practice may not charge for any services
16 rendered in connection with such a hearing. The fact that a
17 representative participated in the hearing or assisted the account holder
18 is not grounds for reversing any administrative decision or order if the
19 evidence supporting the decision or order is substantial, reliable and
20 probative.

21 F. The state board of education may refer cases of substantial
22 misuse of monies to the attorney general for the purpose of collection or
23 for the purpose of a criminal investigation if the state board of
24 education obtains evidence of fraudulent use of an account.

25 G. The department shall make quarterly transfers of the amount
26 calculated pursuant to section 15-2402, subsection C to the treasurer for
27 deposit in the Arizona empowerment scholarship account of each qualified
28 student, except the department may make transfers according to another
29 transfer schedule if the department determines a transfer schedule other
30 than quarterly transfers is necessary to operate the Arizona empowerment
31 scholarship account.

32 H. The department shall accept applications between July 1 and June
33 30 of each year. The department shall enroll and issue an award letter to
34 eligible applicants within thirty days after receipt of a completed
35 application and all required documentation. On or before May 30 of each
36 year, the department shall furnish to the joint legislative budget
37 committee an estimate of the amount required to fund Arizona empowerment
38 scholarship accounts for the following fiscal year. The department shall
39 include in its budget request for the following fiscal year the amount
40 estimated pursuant to section 15-2402, subsection C for each qualified
41 student.

42 I. The state board of education may adopt rules and policies
43 necessary to administer Arizona empowerment scholarship accounts,
44 including rules and policies:

- 1 1. For establishing an appeals process pursuant to subsection D of
2 this section.
- 3 2. For conducting or contracting for examinations of the use of
4 account monies.
- 5 3. For conducting or contracting for random, quarterly and annual
6 reviews of accounts.
- 7 4. For establishing or contracting for the establishment of an
8 online anonymous fraud reporting service.
- 9 5. For establishing an anonymous telephone hotline for fraud
10 reporting.
- 11 6. That require a surety bond or insurance for account holders.
- 12 J. The department shall contract with an independent third party
13 for the purposes of determining whether a qualified student is eligible to
14 receive educational therapies or services pursuant to section 15-2402,
15 subsection B, paragraph 4, subdivision (c). If during any period on or
16 after January 1, 2023 the department fails to ensure that a contract with
17 an independent third party is in effect, during that period:
- 18 1. The county school superintendent of each county may approve a
19 list of independent third parties within the county whose evaluation may
20 be used to determine whether a student who resides within the county is
21 eligible to receive educational therapies or services pursuant to section
22 15-2402, subsection B, paragraph 4, subdivision (c).
- 23 2. If the county school superintendent of a county does not provide
24 a list of approved independent third parties within ninety days after the
25 beginning of any period during which the department does not have a
26 contract with an independent third party in effect as described in this
27 subsection, the parent of a **QUALIFIED** student who resides within the
28 county has the right to obtain an ~~independent educational~~ evaluation from
29 a qualified examiner to determine whether the **QUALIFIED** student is
30 eligible to receive educational therapies or services pursuant to section
31 15-2402, subsection B, paragraph 4, subdivision (c). ~~The expense for IF~~
32 **ALLOWED UNDER FEDERAL LAW, an educational** evaluation undertaken pursuant
33 to this paragraph shall be ~~provided by~~ **PAID FOR BY MONIES FROM THE**
34 **QUALIFIED STUDENT'S ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT. IF THE**
35 **QUALIFIED STUDENT'S ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT DOES NOT HAVE**
36 **SUFFICIENT MONIES FOR THE EVALUATION,** the school district within which the
37 **QUALIFIED** student resides and that serves the grade level of the **QUALIFIED**
38 student **SHALL PAY FOR THE EVALUATION. THE SCHOOL DISTRICT MAY ESTABLISH**
39 **REASONABLE REIMBURSEMENT CRITERIA, CONSISTENT WITH FEDERAL LAW, INCLUDING**
40 **COST LIMITS.** For the purposes of this paragraph, "qualified examiner"
41 means a licensed physician, psychiatrist or psychologist.
- 42 K. On or before July 1 of each year, the department shall develop
43 an applicant and participant handbook that includes information relating
44 to policies and processes of Arizona empowerment scholarship accounts.
45 The policy handbook shall comply with the rules adopted by the state board

1 of education pursuant to this section. The department shall post the
2 handbook on its website.

3 L. Except for cases in which the attorney general determines that a
4 parent or account holder has committed fraud, any expenditure from an
5 Arizona empowerment scholarship account for a purchase that is deemed
6 ineligible pursuant to section 15-2402 and that is subsequently repaid by
7 the parent or account holder shall be credited back to the Arizona
8 empowerment scholarship account balance within thirty days after the
9 receipt of payment.

10 M. If, in response to an appeal of an administrative decision made
11 by the department, the state board of education issues a stay of an
12 Arizona empowerment scholarship account suspension pursuant to rules
13 adopted by the board, the department may not withhold funding or contract
14 renewal for the account holder on account of the appealed administrative
15 decision during the stay unless directed by the board to do so.