

REFERENCE TITLE: ESAs; parental notification; waived rights

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1352

Introduced by

Senators Marsh: Alston, Bravo, Diaz, Epstein, Fernandez, Gabaldón,
Gonzales, Hernandez, Miranda, Sundareshan; Representatives Austin, Terech

AN ACT

AMENDING SECTION 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 15-2403, Arizona Revised Statutes, is amended to
3 read:

4 15-2403. Arizona empowerment scholarship accounts;
5 administration; appeals; audit; rules; policy
6 handbook

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

9 B. The department shall conduct or contract for annual audits of
10 Arizona empowerment scholarship accounts to ensure compliance with section
11 15-2402, subsection B, paragraph 4. The department shall also conduct or
12 contract for random, quarterly and annual audits of Arizona empowerment
13 scholarship accounts as needed to ensure compliance with section 15-2402,
14 subsection B, paragraph 4.

15 C. The department may remove any parent or qualified student from
16 eligibility for an Arizona empowerment scholarship account if the parent
17 or qualified student fails to comply with the terms of the contract or
18 applicable laws, rules or orders or knowingly misuses monies or knowingly
19 fails to comply with the terms of the contract with intent to defraud and
20 shall notify the treasurer. The department shall notify the treasurer to
21 suspend the account of a parent or qualified student and shall notify the
22 parent or qualified student in writing that the account has been suspended
23 and that no further transactions will be allowed or disbursements made.
24 The notification shall specify the reason for the suspension and state
25 that the parent or qualified student has fifteen days, not including
26 weekends, to respond and take corrective action. If the parent or
27 qualified student refuses or fails to contact the department, furnish any
28 information or make any report that may be required for reinstatement
29 within the fifteen-day period, the department may remove the parent or
30 qualified student pursuant to this subsection.

31 D. A parent may appeal to the state board of education any
32 administrative decision the department makes pursuant to this article,
33 including determinations of allowable expenses, removal from the program
34 or enrollment eligibility. The department shall notify the parent in
35 writing that the parent may appeal any administrative decision under this
36 article and the process by which the parent may appeal at the same time
37 the department notifies the parent of an administrative decision under
38 this article. The state board of education shall establish an appeals
39 process, and the department shall post this information on the
40 department's website in the same location as the policy handbook developed
41 pursuant to subsection K of this section.

42 E. A parent may represent himself or herself or designate a
43 representative, not necessarily an attorney, before any appeals hearing
44 held pursuant to this section. Any such designated representative who is
45 not an attorney admitted to practice may not charge for any services

1 rendered in connection with such a hearing. The fact that a
2 representative participated in the hearing or assisted the account holder
3 is not grounds for reversing any administrative decision or order if the
4 evidence supporting the decision or order is substantial, reliable and
5 probative.

6 F. The state board of education may refer cases of substantial
7 misuse of monies to the attorney general for the purpose of collection or
8 for the purpose of a criminal investigation if the state board of
9 education obtains evidence of fraudulent use of an account.

10 G. The department shall make quarterly transfers of the amount
11 calculated pursuant to section 15-2402, subsection C to the treasurer for
12 deposit in the Arizona empowerment scholarship account of each qualified
13 student, except the department may make transfers according to another
14 transfer schedule if the department determines a transfer schedule other
15 than quarterly transfers is necessary to operate the Arizona empowerment
16 scholarship account.

17 H. The department shall accept applications between July 1 and June
18 30 of each year. **THE DEPARTMENT SHALL POST ON THE DEPARTMENT'S WEBSITE**
19 **AND INCLUDE IN EACH APPLICATION PACKET A NOTICE OUTLINING EACH LEGAL RIGHT**
20 **THAT A QUALIFIED STUDENT AND PARENT WAIVE BY ENROLLING IN THE ARIZONA**
21 **EMPOWERMENT SCHOLARSHIP ACCOUNTS PROGRAM.** The department shall enroll and
22 issue an award letter to eligible applicants within thirty days after
23 receipt of a completed application and all required documentation. On or
24 before May 30 of each year, the department shall furnish to the joint
25 legislative budget committee an estimate of the amount required to fund
26 Arizona empowerment scholarship accounts for the following fiscal year.
27 The department shall include in its budget request for the following
28 fiscal year the amount estimated pursuant to section 15-2402, subsection C
29 for each qualified student.

30 I. The state board of education may adopt rules and policies
31 necessary to administer Arizona empowerment scholarship accounts,
32 including rules and policies:

33 1. For establishing an appeals process pursuant to subsection D of
34 this section.

35 2. For conducting or contracting for examinations of the use of
36 account monies.

37 3. For conducting or contracting for random, quarterly and annual
38 reviews of accounts.

39 4. For establishing or contracting for the establishment of an
40 online anonymous fraud reporting service.

41 5. For establishing an anonymous telephone hotline for fraud
42 reporting.

43 6. That require a surety bond or insurance for account holders.

44 J. The department shall contract with an independent third party
45 for the purposes of determining whether a qualified student is eligible to

1 receive educational therapies or services pursuant to section 15-2402,
2 subsection B, paragraph 4, subdivision (c). If during any period on or
3 after January 1, 2023 the department fails to ensure that a contract with
4 an independent third party is in effect, during that period:

5 1. The county school superintendent of each county may approve a
6 list of independent third parties within the county whose evaluation may
7 be used to determine whether a student who resides within the county is
8 eligible to receive educational therapies or services pursuant to section
9 15-2402, subsection B, paragraph 4, subdivision (c).

10 2. If the county school superintendent of a county does not provide
11 a list of approved independent third parties within ninety days after the
12 beginning of any period during which the department does not have a
13 contract with an independent third party in effect as described in this
14 subsection, the parent of a student who resides within the county has the
15 right to obtain an independent educational evaluation from a qualified
16 examiner to determine whether the student is eligible to receive
17 educational therapies or services pursuant to section 15-2402,
18 subsection B, paragraph 4, subdivision (c). The expense for an
19 educational evaluation undertaken pursuant to this paragraph shall be
20 provided by the school district within which the student resides and that
21 serves the grade level of the student. For the purposes of this
22 paragraph, "qualified examiner" means a licensed physician, psychiatrist
23 or psychologist.

24 K. On or before July 1 of each year, the department shall develop
25 an applicant and participant handbook that includes information relating
26 to policies and processes of Arizona empowerment scholarship accounts.
27 The policy handbook shall comply with the rules adopted by the state board
28 of education pursuant to this section. The department shall post the
29 handbook on its website.

30 L. Except for cases in which the attorney general determines that a
31 parent or account holder has committed fraud, any expenditure from an
32 Arizona empowerment scholarship account for a purchase that is deemed
33 ineligible pursuant to section 15-2402 and that is subsequently repaid by
34 the parent or account holder shall be credited back to the Arizona
35 empowerment scholarship account balance within thirty days after the
36 receipt of payment.

37 M. If, in response to an appeal of an administrative decision made
38 by the department, the state board of education issues a stay of an
39 Arizona empowerment scholarship account suspension pursuant to rules
40 adopted by the board, the department may not withhold funding or contract
41 renewal for the account holder on account of the appealed administrative
42 decision during the stay unless directed by the board to do so.