

REFERENCE TITLE: **ESA program; ADE; funding estimates**

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

## **SB 1353**

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 enroll and issue an award letter to  
19 eligible applicants within thirty days after receipt of a completed  
20 application and all required documentation. On or before May 30 of each  
21 year, the department shall furnish to the joint legislative budget  
22 committee an estimate of the amount required to fund Arizona empowerment  
23 scholarship accounts for the following fiscal year. The department shall  
24 include in its budget request **PURSUANT TO SECTION 35-113** for the following  
25 fiscal year **BOTH OF THE FOLLOWING:**

26 1. The amount estimated pursuant to section 15-2402, subsection C  
27 for each qualified student.

28 2. **AN UPDATED ESTIMATE OF THE AMOUNT REQUIRED TO FUND ARIZONA**  
29 **EMPOWERMENT SCHOLARSHIP ACCOUNTS FOR THE FOLLOWING FISCAL YEAR.**

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.