

REFERENCE TITLE: empowerment scholarship accounts; eligibility; administration

State of Arizona  
Senate  
Fifty-second Legislature  
Second Regular Session  
2016

## **SB 1280**

Introduced by  
Senator Lesko

AN ACT

AMENDING SECTIONS 15-2401, 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 15-2401, Arizona Revised Statutes, is amended to  
3 read:

4 15-2401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Curriculum" means a complete course of study for a particular  
7 content area or grade level, including any supplemental materials required by  
8 the curriculum.

9 2. "Department" means the department of education.

10 3. "Eligible postsecondary institution" means a community college as  
11 defined in section 15-1401, a university under the jurisdiction of the  
12 Arizona board of regents or an accredited private postsecondary institution.

13 4. "Parent" means a resident of this state who is the parent or legal  
14 guardian of a qualified student.

15 5. "Qualified school" means a nongovernmental primary or secondary  
16 school or a preschool for pupils with disabilities that is located in this  
17 state and that does not discriminate on the basis of race, color or national  
18 origin.

19 6. "Qualified student" means a resident of this state who:

20 (a) Is any of the following:

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

23 (ii) Identified by a school district or by an independent third party  
24 pursuant to section 15-2403, subsection I as a child with a disability as  
25 defined in section 15-761 OR 15-731.

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

28 (iv) Attending a school or school district that has been assigned a  
29 letter grade of D or F pursuant to section 15-241 or who is currently  
30 eligible to attend kindergarten and who resides within the attendance  
31 boundary of a school that has been assigned a letter grade of D or F pursuant  
32 to section 15-241.

33 (v) A previous recipient of a scholarship issued pursuant to section  
34 15-891 or this section, **UNLESS THE QUALIFIED STUDENT'S PARENT HAS BEEN**  
35 **REMOVED FROM ELIGIBILITY IN THE PROGRAM FOR FAILURE TO COMPLY PURSUANT TO**  
36 **SECTION 15-2403, SUBSECTION C.**

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

41 ~~(vii) A child with a guardian who is a member of the armed forces of~~  
42 ~~the United States and who is on active duty or was killed in the line of~~  
43 ~~duty. A child who meets the requirements of this item is not subject to~~  
44 ~~subdivision (b) of this paragraph.~~

1           ~~(viii)~~ (vii) A child who is a ward of the juvenile court and who is  
2 residing with a prospective permanent placement pursuant to section 8-862 and  
3 the case plan is adoption or permanent guardianship.

4           ~~(ix)~~ (viii) A child who was a ward of the juvenile court and who  
5 achieved permanency through adoption or permanent guardianship.

6           ~~(x)~~ (ix) A child who is the sibling of a current or previous  
7 empowerment scholarship account recipient **OR OF AN ELIGIBLE QUALIFIED STUDENT**  
8 **WHO ACCEPTS THE TERMS OF AND ENROLLS IN THE EMPOWERMENT SCHOLARSHIP PROGRAM.**

9           ~~(xi)~~ (x) A child who resides within the boundaries of an Indian  
10 reservation in this state **AS DETERMINED BY THE DEPARTMENT OF EDUCATION OR A**  
11 **TRIBAL GOVERNMENT.**

12           (b) And, except as provided in subdivision (a), ~~items~~ **ITEM** (vi) ~~and~~  
13 ~~(vii)~~ of this paragraph, who meets any of the following requirements:

14           (i) Attended a governmental primary or secondary school as a full-time  
15 student as defined in section 15-901 for at least the first one hundred days  
16 of the prior fiscal year and who transferred from a governmental primary or  
17 secondary school under a contract to participate in an empowerment  
18 scholarship account. **FIRST, SECOND AND THIRD GRADE STUDENTS WHO ARE ENROLLED**  
19 **IN ARIZONA ONLINE INSTRUCTION MUST RECEIVE FOUR HUNDRED HOURS OF LOGGED**  
20 **INSTRUCTION TO BE ELIGIBLE PURSUANT TO THIS ITEM. FOURTH, FIFTH AND SIXTH**  
21 **GRADE STUDENTS WHO ARE ENROLLED IN ARIZONA ONLINE INSTRUCTION MUST RECEIVE**  
22 **FIVE HUNDRED HOURS OF LOGGED INSTRUCTION TO BE ELIGIBLE PURSUANT TO THIS**  
23 **ITEM. SEVENTH AND EIGHTH GRADE STUDENTS WHO ARE ENROLLED IN ARIZONA ONLINE**  
24 **INSTRUCTION MUST RECEIVE FIVE HUNDRED FIFTY HOURS OF LOGGED INSTRUCTION TO BE**  
25 **ELIGIBLE PURSUANT TO THIS ITEM. HIGH SCHOOL STUDENTS WHO ARE ENROLLED IN**  
26 **ARIZONA ONLINE INSTRUCTION MUST RECEIVE FIVE HUNDRED HOURS OF LOGGED**  
27 **INSTRUCTION TO BE ELIGIBLE PURSUANT TO THIS ITEM.**

28           (ii) Previously participated in the empowerment scholarship account  
29 program.

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

35           (iv) Was eligible for an Arizona scholarship for pupils with  
36 disabilities and received monies from a school tuition organization pursuant  
37 to section 43-1505 or received an Arizona scholarship for pupils with  
38 disabilities but did not receive monies from a school tuition organization  
39 pursuant to section 43-1505 and who continues to attend a qualified school if  
40 the student attended a governmental primary or secondary school as a  
41 full-time student as defined in section 15-901 for at least ninety days of  
42 the prior fiscal year or one full semester prior to attending a qualified  
43 school.

44           (v) Has not previously attended a governmental primary or secondary  
45 school but is currently eligible to enroll in a kindergarten program in a

1 school district or charter school in this state OR ATTENDED A PROGRAM FOR  
2 PRESCHOOL CHILDREN WITH DISABILITIES.

3 (vi) Has not previously attended a governmental primary or secondary  
4 school but is currently eligible to enroll in a program for preschool  
5 children with disabilities in this state.

6 7. "Treasurer" means the office of the state treasurer.

7 Sec. 2. Section 15-2402, Arizona Revised Statutes, is amended to read:  
8 15-2402. Arizona empowerment scholarship accounts; funds

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

11 B. To enroll a qualified student for an empowerment scholarship  
12 account, the parent of the qualified student must sign an agreement to do all  
13 of the following:

14 1. Use a portion of the empowerment scholarship account monies  
15 allocated ~~each quarter~~ ANNUALLY to provide an education for the qualified  
16 student in at least the subjects of reading, grammar, mathematics, social  
17 studies and science, unless the empowerment scholarship account is allocated  
18 monies according to a transfer schedule other than quarterly transfers  
19 pursuant to section 15-2403, subsection F.

20 2. Not enroll the qualified student in a school district or charter  
21 school and release the school district from all obligations to educate the  
22 qualified student. This paragraph does not relieve the school district or  
23 charter school that the qualified student previously attended from the  
24 obligation to conduct an evaluation pursuant to section 15-766.

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

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

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

33 (b) Textbooks required by a qualified school.

34 ~~(c) Educational therapies or services from a licensed or accredited~~  
35 ~~practitioner or provider, including licensed or accredited paraprofessionals~~  
36 ~~or educational aides, if the qualified student meets any of the criteria~~  
37 ~~specified in section 15-2401, paragraph 6, subdivision (a), item (i), (ii) or~~  
38 ~~(iii) as determined by a school district or by an independent third party~~  
39 ~~pursuant to section 15-2403, subsection I.~~

40 (c) IF THE QUALIFIED STUDENT MEETS ANY OF THE CRITERIA SPECIFIED IN  
41 SECTION 15-2401, PARAGRAPH 6, SUBDIVISION (a), ITEM (i), (ii) OR (iii) AS  
42 DETERMINED BY A SCHOOL DISTRICT OR BY AN INDEPENDENT THIRD PARTY PURSUANT TO  
43 SECTION 15-2403, SUBSECTION I, THE QUALIFIED STUDENT MAY USE THE FOLLOWING  
44 ADDITIONAL SERVICES:

1 (i) EDUCATIONAL THERAPIES FROM A LICENSED OR ACCREDITED PRACTITIONER  
2 OR PROVIDER.

3 (ii) A LICENSED OR ACCREDITED PARAPROFESSIONAL OR EDUCATIONAL AIDE.

4 (iii) TUITION FOR VOCATIONAL AND LIFE SKILLS EDUCATION APPROVED BY THE  
5 DEPARTMENT.

6 (iv) ASSOCIATED SERVICES THAT INCLUDE EDUCATIONAL AND PSYCHOLOGICAL  
7 EVALUATIONS, ASSISTIVE TECHNOLOGY RENTALS AND BRAILLE TRANSLATION SERVICES  
8 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) ~~Curriculum~~ CURRICULA.

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) Contributions to a Coverdell education savings account established  
18 pursuant to 26 United States Code section 530 for the benefit of the  
19 qualified student, except that money used for elementary or secondary  
20 education expenses must be for expenses otherwise allowed under this section.

21 (i) Tuition or fees at an eligible postsecondary institution.

22 (j) Textbooks required by an eligible postsecondary institution.

23 (k) Fees for management of the empowerment scholarship account ~~by~~  
24 ~~firms selected by the treasurer.~~

25 (l) Services provided by a public school, including individual classes  
26 and extracurricular programs.

27 (m) Insurance or surety bond payments ~~as required by the department of~~  
28 ~~education.~~

29 (n) UNIFORMS PURCHASED FROM OR THROUGH A QUALIFIED SCHOOL.

30 5. Not file an affidavit of intent to homeschool pursuant to section  
31 15-802, subsection B, paragraph 2 or 3.

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

34 (a) Computer hardware or other technological devices.

35 (b) Transportation of the pupil.

36 (c) Consumable educational supplies, including paper, pens or markers.

37 C. In exchange for the parent's agreement pursuant to subsection B of  
38 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 kindergarten, the monies that the  
41 department determines would otherwise be allocated to a recipient's expected  
42 school district of attendance, to the treasurer for deposit into an Arizona  
43 empowerment scholarship account an amount that is equivalent to ninety ~~per~~  
44 ~~cent~~ PERCENT of the sum of the base support level and additional assistance  
45 prescribed in sections 15-185 and 15-943 for that particular student if that

1 student were attending a charter school. The department may retain up to  
2 five ~~per-cent~~ PERCENT of the sum of the base support level and additional  
3 assistance prescribed in sections 15-185 and 15-943 for each student with an  
4 empowerment scholarship account for deposit in the department of education  
5 empowerment scholarship account fund established in subsection D of this  
6 section, out of which the department shall transfer one ~~per-cent~~ PERCENT of  
7 the sum of the base support level and additional assistance prescribed in  
8 sections 15-185 and 15-943 for each student with an empowerment scholarship  
9 account to the state treasurer for deposit in the state treasurer empowerment  
10 scholarship account fund established in subsection E of this section.

11 D. The department of education empowerment scholarship account fund is  
12 established consisting of monies retained by the department pursuant to  
13 subsection C of this section. The department shall administer the fund.  
14 Monies in the fund are subject to legislative appropriation. Monies in the  
15 fund shall be used for the department's costs in administering empowerment  
16 scholarship accounts under this chapter. Monies in the fund are exempt from  
17 the provisions of section 35-190 relating to lapsing of appropriations. If  
18 the number of empowerment scholarship accounts significantly increases after  
19 fiscal year 2012-2013, the department may request an increase in the amount  
20 appropriated to the fund in any subsequent fiscal year in the budget estimate  
21 submitted pursuant to section 35-113.

22 E. The state treasurer empowerment scholarship account fund is  
23 established consisting of monies transferred by the department to the state  
24 treasurer pursuant to subsection C of this section. The state treasurer  
25 shall administer the fund. Monies in the fund shall be used for the state  
26 treasurer's costs in administering the empowerment scholarship accounts under  
27 this chapter. If the number of empowerment scholarship accounts  
28 significantly increases after fiscal year 2013-2014, the state treasurer may  
29 request an increase in the amount appropriated to the fund in any subsequent  
30 fiscal year in the budget estimate submitted pursuant to section 35-113.  
31 Monies in the fund are subject to legislative appropriation. Monies in the  
32 fund are exempt from the provisions of section 35-190 relating to lapsing of  
33 appropriations.

34 F. A parent must renew the qualified student's empowerment scholarship  
35 account on an annual basis. Notwithstanding any changes to the student's  
36 multidisciplinary evaluation team plan, a student who has previously  
37 qualified for an empowerment scholarship account shall remain eligible to  
38 apply for renewal until the student finishes high school.

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

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

1 I. On the qualified student's graduation from a postsecondary  
2 institution or after any period of four consecutive years after high school  
3 graduation in which the student is not enrolled in an eligible postsecondary  
4 institution, the qualified student's Arizona empowerment scholarship account  
5 shall be closed and any remaining funds shall be returned to the state.

6 J. Monies received pursuant to this article do not constitute taxable  
7 income to the parent of the qualified student.

8 Sec. 3. Section 15-2403, Arizona Revised Statutes, is amended to read:

9 15-2403. Empowerment scholarship accounts; administration;  
10 audit; rules

11 A. The treasurer may contract with private financial management firms  
12 to manage Arizona empowerment scholarship accounts ~~with the supervision of~~  
13 ~~the treasurer.~~

14 B. The department shall conduct or contract for annual audits of  
15 empowerment scholarship accounts to ensure compliance with section 15-2402,  
16 subsection B, paragraph 4. The department shall also conduct or contract for  
17 random, quarterly and annual audits of empowerment scholarship accounts as  
18 needed to ensure compliance with section 15-2402, subsection B, paragraph 4.

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

35 D. A parent may appeal the department's decision pursuant to title 41,  
36 chapter 6, article 10.

37 E. The department may refer cases of substantial misuse of monies to  
38 the attorney general for **THE PURPOSE OF COLLECTION OR FOR THE PURPOSE OF A**  
39 **CRIMINAL** investigation if the department obtains evidence of fraudulent use  
40 of an account.

41 F. The department shall make quarterly transfers of the amount  
42 calculated pursuant to section 15-2402, subsection C to the treasurer for  
43 deposit into the empowerment scholarship account of each qualified student,  
44 except the department may make transfers according to another transfer  
45 schedule if the department determines a transfer schedule other than

1 quarterly transfers is necessary for the operation of the empowerment  
2 scholarship account.

3 G. The department shall ~~determine a period that is~~ ACCEPT APPLICATIONS  
4 between July 1 and ~~May 1~~ JUNE 30 of each year ~~during which it will accept~~  
5 ~~applications for the following fiscal year.~~ THE DEPARTMENT SHALL ENROLL AND  
6 ISSUE AN AWARD LETTER TO ELIGIBLE APPLICANTS WITHIN FORTY-FIVE DAYS AFTER  
7 RECEIPT OF A COMPLETED APPLICATION AND ALL REQUIRED DOCUMENTATION. On or  
8 before May 30 of each year, the department shall furnish to the joint  
9 legislative budget committee an estimate of the amount required to fund  
10 empowerment scholarship accounts for the following fiscal year. The  
11 department shall include in its budget request for the following fiscal year  
12 the amount estimated in section 15-2402, subsection C for each qualified  
13 student.

14 H. The department may adopt rules and policies necessary for the  
15 administration of empowerment scholarship accounts, including:

16 1. Policies for conducting or contracting for examinations of the use  
17 of account monies.

18 2. Conducting or contracting for random, quarterly and annual reviews  
19 of accounts.

20 3. Establishing or contracting for the establishment of an online  
21 anonymous fraud reporting service.

22 4. Establishing an anonymous telephone hotline for fraud reporting.

23 5. Policies that require a surety bond or insurance for account  
24 holders.

25 I. The department shall contract with an independent third party for  
26 the purposes of determining if a qualified student is eligible to receive  
27 educational therapies or services pursuant to section 15-2402, subsection B,  
28 paragraph 4, subdivision (c).