

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

# SENATE BILL 1457

AN ACT

AMENDING SECTIONS 15-2401 AND 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, is amended to  
3 read:

4 15-2401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "ANNUAL EDUCATION PLAN" MEANS AN INITIAL INDIVIDUALIZED EVALUATION  
7 AND SUBSEQUENT ANNUAL REVIEWS THAT ARE DEVELOPED FOR A QUALIFIED STUDENT WHO  
8 MEETS THE CRITERIA SPECIFIED IN PARAGRAPH 7, SUBDIVISION (a), ITEM (i), (ii)  
9 OR (iii) OF THIS SECTION TO DETERMINE ONGOING ANNUAL ELIGIBILITY THROUGH THE  
10 SCHOOL YEAR IN WHICH THE QUALIFIED STUDENT REACHES TWENTY-TWO YEARS OF AGE.

11 ~~1.~~ 2. "Curriculum" means a complete course of study for a particular  
12 content area or grade level, including any supplemental materials required by  
13 the curriculum.

14 ~~2.~~ 3. "Department" means the department of education.

15 ~~3.~~ 4. "Eligible postsecondary institution" means a community college  
16 as defined in section 15-1401, a university under the jurisdiction of the  
17 Arizona board of regents or an accredited private postsecondary institution.

18 ~~4.~~ 5. "Parent" means a resident of this state who is the parent or  
19 legal guardian of a qualified student.

20 ~~5.~~ 6. "Qualified school" means a nongovernmental primary or secondary  
21 school or a preschool for pupils with disabilities that is located in this  
22 state and that does not discriminate on the basis of race, color or national  
23 origin.

24 ~~6.~~ 7. "Qualified student" means a resident of this state who:

25 (a) Is any of the following:

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

28 (ii) Identified by a school district or by an independent third party  
29 pursuant to section 15-2403, subsection I as a child with a disability as  
30 defined in section 15-761.

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

33 (iv) Attending a school or school district that has been assigned a  
34 letter grade of D or F pursuant to section 15-241 or who is currently  
35 eligible to attend kindergarten and who resides within the attendance  
36 boundary of a school that has been assigned a letter grade of D or F pursuant  
37 to section 15-241.

38 (v) A previous recipient of a scholarship issued pursuant to section  
39 15-891 or this section.

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

44 (vii) A child with a guardian who is a member of the armed forces of  
45 the United States and who is on active duty or was killed in the line of

1 duty. A child who meets the requirements of this item is not subject to  
2 subdivision (b) of this paragraph.

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

6 (ix) A child who was a ward of the juvenile court and who achieved  
7 permanency through adoption or permanent guardianship.

8 (x) A child who is the sibling of a current or previous empowerment  
9 scholarship account recipient.

10 (xi) A child who resides within the boundaries of an Indian  
11 reservation in this state.

12 (b) And, except as provided in subdivision (a), items (vi) and (vii)  
13 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.

19 (ii) Previously participated in the empowerment scholarship account  
20 program.

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

26 (iv) Was eligible for an Arizona scholarship for pupils with  
27 disabilities and received monies from a school tuition organization pursuant  
28 to section 43-1505 or received an Arizona scholarship for pupils with  
29 disabilities but did not receive monies from a school tuition organization  
30 pursuant to section 43-1505 and who continues to attend a qualified school if  
31 the student attended a governmental primary or secondary school as a  
32 full-time student as defined in section 15-901 for at least ninety days of  
33 the prior fiscal year or one full semester prior to attending a qualified  
34 school.

35 (v) Has not previously attended a governmental primary or secondary  
36 school but is currently eligible to enroll in a kindergarten program in a  
37 school district or charter school in this state.

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

41 ~~7-~~ 8. "Treasurer" means the office of the state treasurer.

42 Sec. 2. Section 15-2402, Arizona Revised Statutes, is amended to read:  
43 15-2402. Arizona empowerment scholarship accounts; funds

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

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

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

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

15          3. Not accept a scholarship from a school tuition organization  
16 pursuant to title 43 concurrently with an empowerment scholarship account for  
17 the qualified student in the same year a parent signs the agreement pursuant  
18 to this section.

19          4. Use the money deposited in the qualified student's Arizona  
20 empowerment scholarship account only for the following expenses of the  
21 qualified student:

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

23           (b) Textbooks required by a qualified school.

24           (c) Educational therapies or services from a licensed or accredited  
25 practitioner or provider, including licensed or accredited paraprofessionals  
26 or educational aides, if the qualified student meets any of the criteria  
27 specified in section 15-2401, paragraph ~~6~~ 7, subdivision (a), item (i), (ii)  
28 or (iii) as determined by a school district or by an independent third party  
29 pursuant to section 15-2403, subsection I.

30           (d) Tutoring or teaching services provided by an individual or  
31 facility accredited by a state, regional or national accrediting  
32 organization.

33           (e) ~~Curriculum~~ CURRICULA.

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

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

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

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

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

44           (k) Fees for management of the empowerment scholarship account by  
45 firms selected by the treasurer.

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

3 (m) Insurance or surety bond payments as required by the department of  
4 education.

5 (n) BEGINNING JANUARY 1, 2017, IF THE QUALIFIED STUDENT MEETS THE  
6 CRITERIA SPECIFIED IN SECTION 15-2401, PARAGRAPH 7, SUBDIVISION (a), ITEM  
7 (i), (ii) OR (iii) AND IF THE QUALIFIED STUDENT IS IN THE SECOND YEAR PRIOR  
8 TO THE FINAL YEAR OF A CONTRACT EXECUTED PURSUANT TO THIS ARTICLE, COSTS  
9 ASSOCIATED WITH AN ANNUAL EDUCATION PLAN CONDUCTED BY AN INDEPENDENT  
10 EVALUATION TEAM. THE DEPARTMENT SHALL PRESCRIBE MINIMUM QUALIFICATIONS FOR  
11 INDEPENDENT EVALUATION TEAMS PURSUANT TO THIS SUBDIVISION AND FACTORS THAT  
12 TEAMS MUST USE TO DETERMINE WHETHER THE QUALIFIED STUDENT SHALL BE ELIGIBLE  
13 TO CONTINUE TO RECEIVE MONIES PURSUANT TO THIS ARTICLE THROUGH THE SCHOOL  
14 YEAR IN WHICH THE QUALIFIED STUDENT REACHES TWENTY-TWO YEARS OF AGE. AN  
15 INDEPENDENT EVALUATION TEAM THAT PROVIDES AN ANNUAL EDUCATION PLAN PURSUANT  
16 TO THIS SUBDIVISION SHALL SUBMIT A WRITTEN REPORT THAT SUMMARIZES THE RESULTS  
17 OF THE EVALUATION TO THE PARENT OF THE QUALIFIED STUDENT AND TO THE  
18 DEPARTMENT ON OR BEFORE JULY 31. THE WRITTEN REPORT SUBMITTED BY THE  
19 INDEPENDENT EVALUATION TEAM IS VALID FOR ONE YEAR. IF THE DEPARTMENT  
20 DETERMINES THAT THE QUALIFIED STUDENT MEETS THE ELIGIBILITY CRITERIA  
21 PRESCRIBED IN THE ANNUAL EDUCATION PLAN, THE QUALIFIED STUDENT IS ELIGIBLE TO  
22 CONTINUE TO RECEIVE MONIES PURSUANT TO THIS ARTICLE UNTIL THE QUALIFIED  
23 STUDENT REACHES TWENTY-TWO YEARS OF AGE, SUBJECT TO ANNUAL REVIEW. A PARENT  
24 MAY APPEAL THE DEPARTMENT'S DECISION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE  
25 10. AS AN ADDENDUM TO A QUALIFIED STUDENT'S FINAL-YEAR CONTRACT, THE  
26 DEPARTMENT SHALL PROVIDE THE FOLLOWING WRITTEN INFORMATION TO THE PARENT OF  
27 THE QUALIFIED STUDENT:

28 (i) THAT THE QUALIFIED STUDENT WILL NOT BE ELIGIBLE TO CONTINUE TO  
29 RECEIVE MONIES PURSUANT TO THIS ARTICLE UNLESS THE RESULTS OF AN ANNUAL  
30 EDUCATION PLAN CONDUCTED PURSUANT TO THIS SUBDIVISION DEMONSTRATE THAT THE  
31 QUALIFIED STUDENT MEETS THE ELIGIBILITY CRITERIA PRESCRIBED IN THE ANNUAL  
32 EDUCATION PLAN.

33 (ii) THAT THE PARENT IS ENTITLED TO OBTAIN AN ANNUAL EDUCATION PLAN  
34 PURSUANT TO THIS SUBDIVISION TO DETERMINE WHETHER THE QUALIFIED STUDENT MEETS  
35 THE ELIGIBILITY CRITERIA PRESCRIBED IN THE ANNUAL EDUCATION PLAN.

36 (iii) A LIST OF INDEPENDENT EVALUATION TEAMS THAT MEET THE MINIMUM  
37 QUALIFICATIONS PRESCRIBED BY THE DEPARTMENT PURSUANT TO THIS SUBDIVISION.

38 5. Not file an affidavit of intent to homeschool pursuant to section  
39 15-802, subsection B, paragraph 2 or 3.

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

42 (a) Computer hardware or other technological devices.

43 (b) Transportation of the pupil.

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

1 C. In exchange for the parent's agreement pursuant to subsection B of  
2 this section, the department shall transfer from the monies that would  
3 otherwise be allocated to a recipient's prior school district, or if the  
4 child is currently eligible to attend kindergarten, the monies that the  
5 department determines would otherwise be allocated to a recipient's expected  
6 school district of attendance, to the treasurer for deposit into an Arizona  
7 empowerment scholarship account an amount that is equivalent to ninety ~~per~~  
8 ~~cent~~ PERCENT of the sum of the base support level and additional assistance  
9 prescribed in sections 15-185 and 15-943 for that particular student if that  
10 student were attending a charter school. The department may retain up to  
11 five ~~per-cent~~ PERCENT of the sum of the base support level and additional  
12 assistance prescribed in sections 15-185 and 15-943 for each student with an  
13 empowerment scholarship account for deposit in the department of education  
14 empowerment scholarship account fund established in subsection D of this  
15 section, out of which the department shall transfer one ~~per-cent~~ PERCENT of  
16 the sum of the base support level and additional assistance prescribed in  
17 sections 15-185 and 15-943 for each student with an empowerment scholarship  
18 account to the state treasurer for deposit in the state treasurer empowerment  
19 scholarship account fund established in subsection E of this section.

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

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

43 F. A parent must renew the qualified student's empowerment scholarship  
44 account on an annual basis. Notwithstanding any changes to the student's  
45 multidisciplinary evaluation team plan, a student who has previously

1 qualified for an empowerment scholarship account shall remain eligible to  
2 apply for renewal until the student finishes high school.

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

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

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

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

16 Sec. 3. Annual education plan development council; membership;  
17 duties; report; delayed repeal

18 A. The annual education plan development council is established in the  
19 department of education to develop eligibility criteria to determine if a  
20 qualified student who meets the criteria specified in section 15-2401,  
21 paragraph 7, subdivision (a), item (i), (ii) or (iii), Arizona Revised  
22 Statutes, as amended by this act, is eligible to receive empowerment  
23 scholarship account monies beyond eighteen years of age.

24 B. The council shall:

25 1. Develop the eligibility criteria in the form of an annual education  
26 plan.

27 2. Develop a request for proposals to be approved by the state board  
28 of education and issued by the department of education for independent  
29 evaluation teams to conduct annual education plans.

30 3. Review the department's policies concerning annual education plans.

31 4. Submit a report of its findings and recommendations to the  
32 governor, the president of the senate, the speaker of the house of  
33 representatives and the superintendent of public instruction on or before  
34 December 31, 2016.

35 C. The council may make recommendations to the department of  
36 education.

37 D. The department of education shall select the members of the council  
38 and shall include practitioners in the field of special education and parents  
39 of current or previous qualified students who meet the criteria specified in  
40 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii),  
41 Arizona Revised Statutes.

42 E. The council is subject to open meeting laws prescribed in title 38,  
43 chapter 3, article 3.1, Arizona Revised Statutes.

44 F. Members of the council are not eligible to receive compensation.

45 G. This section is repealed from and after December 31, 2016.

1           Sec. 4. 2015-2016 cohort year; eligibility; delayed repeal

2           A. For a qualified student who meets the criteria specified in section  
3 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii), Arizona  
4 Revised Statutes, as amended by this act, and who is in the final year of a  
5 contract, the department of education shall determine if that student may  
6 continue to receive empowerment scholarship account monies until a  
7 determination is made pursuant to section 15-2402, subsection B, paragraph 4,  
8 subdivision (n), Arizona Revised Statutes, as amended by this act. The  
9 department shall base the determination on the qualified student's likelihood  
10 to meet graduation requirements prescribed by the state board of education  
11 pursuant to section 15-701.01, Arizona Revised Statutes, or obtain a high  
12 school equivalency diploma pursuant to section 15-702, Arizona Revised  
13 Statutes.

14           B. This section is repealed from and after December 31, 2016.