



ARIZONA STATE SENATE
Fifty-Third Legislature, First Regular Session

FINAL AMENDED
FACT SHEET FOR S.B. 1431/H.B. 2394

empowerment scholarships; expansion; phase-in

Purpose

Phases-in expansion of the Empowerment Scholarship Account (ESA) Program over four years, extends the temporary enrollment cap through 2022 and establishes a hard cap beginning in FY 2023.

Background

The ESA Program was established in 2011 to provide educational options for special needs students outside of the public school system. The ESA Program has since expanded to include: 1) students attending D and F schools or school districts; 2) foster care children; 3) children in military families; 4) siblings of current or previous ESA recipients; 5) school tuition organization recipients who are eligible for the Arizona Scholarships for Pupils with Disabilities Program; and 6) students residing on an Indian Reservation ([A.R.S. § 15-2401](#)).

ESAs are funded at 90 percent of base support level and charter additional assistance that would otherwise be allocated to an ESA recipient's prior school district or charter school. The Arizona Department of Education (ADE) transfers this amount to the State Treasurer (Treasurer) for deposit into each ESA. ADE may retain up to five percent of the monies allocated to ESAs to be used for ADE's costs in administering the Program. The Treasurer is entitled to one percent of the five percent for its costs. Both amounts are subject to legislative appropriation.

In order to participate in the ESA Program, the parent of a qualified child must annually sign an agreement to follow the requirements outlined in statute. Parents must agree to use a portion of the ESA monies to provide an education to the student in at least reading, grammar, mathematics, social studies and science. Statute outlines permitted expenses for ESA monies which include tuition or fees, required textbooks, tutoring and curricula. Parents are required to submit a quarterly expense report to ADE detailing the expenditures ([A.R.S. § 15-2402](#)).

Currently, ADE estimates there are 3,100 students enrolled in the ESA Program and approximately \$46 million disbursed in FY 2017. [Laws 2013, Chapter 250](#), caps the number of new ESAs approved by ADE at 0.5 percent of total public school enrollment through 2019, or approximately 5,500 new students annually.

According to the Joint Legislative Budget Committee (JLBC), S.B. 1431 will decrease General Fund costs by \$1.6 million in FY 2018, \$2.9 million in FY 2019, \$3.5 million in FY 2020 and \$3.4 million in FY 2021. JLBC notes this estimate is highly speculative and actual costs could vary substantially depending on the actual participation rates of newly eligible students.

Provisions

Expansion

1. Expands eligibility in the ESA Program as follows:
 - a) beginning in the 2017-2018 school year, children who currently attend or are eligible to attend a public school in a kindergarten program or any of grades 1, 6 and 9;
 - b) beginning in the 2018-2019 school year, children in any of grades 2, 7 and 10;
 - c) beginning in the 2019-2020 school year, children in any of grades 3, 8 and 11; and
 - d) beginning in the 2020-2021 school year, children in any of grades 4, 5 and 12.
2. Extends, through 2022, the temporary enrollment cap set to expire at the end of 2019.
3. Caps, beginning FY 2023, ESA enrollment at the 2021-2022 school year level.

Testing

4. Includes in the parent agreement beginning in the 2017-2018 school year, a requirement for ESA students in grades 3 through 12 who pay tuition as a full-time student at a private school to take any of the following examinations and requires the qualified school to report those results to the parent:
 - a) a nationally standardized norm-referenced achievement examination;
 - b) an advanced placement examination that assesses reading and mathematics;
 - c) the statewide assessment; or
 - d) any examination related to college or university admissions that assesses reading and mathematics.
5. Allows a student to meet the examination requirement by taking an examination listed above that is either:
 - a) chosen and administered by a private school; or
 - b) chosen by the parent and administered outside of the private school and chosen by the parent.
6. Exempts the following students from the examination requirement:
 - a) a student identified as having a disability under section 504 of the Rehabilitation Act of 1973;
 - b) a student identified by a school district or third party as a child with a disability; and
 - c) a child with a disability who is eligible to receive services from a school district pursuant to statute.
7. Directs private schools that enroll at least 50 ESA students and that administer any of the following exams, to annually make available to the public on request or on the school's website the aggregate test scores of all students:
 - a) a nationally standardized norm-referenced achievement examination;
 - b) an advanced placement examination that assesses reading and mathematics;
 - c) the statewide assessment; or

- d) any examination related to college or university admissions that assesses reading and mathematics.
8. Allows a network of private schools to satisfy the test score requirement by publishing the aggregate test scores by grade level for all schools within the network.

Low-Income Students

9. Funds students determined to be low-income at 100 percent of the base support level and additional assistance based on:
- a) whether the student was previously attending a charter school or school district; or
 - b) the student's expected district of attendance if the child is currently eligible to attend kindergarten.
10. Defines *low-income student* as a child who is or was a ward of the juvenile court or a child who is a dependent of a family whose federal adjusted gross income as reflected on the last state income tax return that was required to be filed does not exceed 250 percent of the Federal Poverty Guidelines for that same year.
11. Directs ADE and the Department of Revenue (DOR) to develop a process and procedures to determine if a student may be classified as a low-income student for the purposes of funding levels.
12. Permits ADE to request DOR to verify the income level of a parent using already-available information and data at DOR and allows DOR to disclose confidential information to ADE for the purpose of verifying income eligibility to be classified as a low-income student.
13. Limits ADE to verify only that the qualified student is eligible for increased funding and prohibits any other income data from being transmitted to ADE from DOR.
14. Directs ADE to allow applicants to designate if they would like to be classified as low-income for the purposes of funding an ESA.
15. Allows DOR and ADE to develop alternative forms of income verification for families that are not required by law to file state income tax returns.
16. Provides for the following if DOR subsequently receives information that indicates a student should not have been classified as a low-income student:
- a) DOR shall notify ADE; and
 - b) the student is funded at 90 percent of the base support level and additional assistance.
17. Allows students to begin and continue to receive 90 percent of the base support level and additional assistance on signing the agreement to enroll in an ESA and allows these students to be subsequently increased to 100 percent of the base support level and additional assistance if the student is subsequently deemed a low-income student.

18. Prohibits a reduction in funding for students who are enrolled in the ESA Program on or before June 30, 2017.
19. Transfers one percent of the five percent of ESA funding retained by ADE to DOR for deposit in the State Department of Revenue Empowerment Scholarship Account Fund.
20. Establishes the State Department of Revenue Empowerment Scholarship Account Fund to be administered by DOR and consisting of monies transferred to DOR.
21. States that monies in the funds are used for DOR's costs in administering ESAs.
22. Allows DOR to request an increase in the amount appropriated to the fund in any subsequent fiscal year if the number of ESAs significantly increases.
23. Subjects monies in the fund to legislative appropriation and exempts monies in the fund from lapsing.

Eligibility Modifications

24. Removes procedures implemented in 2016 that permit students with a disability to remain on the ESA Program until 22 years of age if they obtained an Annual Education Plan developed by ADE.
25. Allows an ESA student to remain on the ESA Program until the student graduates from high school, obtains a general equivalency diploma (GED) or reaches 22 years of age if the student continues to attend and be enrolled in a qualified school.
26. Allows ADE to request confirmation of a qualified student's progress toward graduation from high school or the completion of a GED.
27. Allows an ESA student who is older than 18 years of age and who has a disability or who receives educational therapies or services to remain on the ESA Program until the student graduates, obtains a GED or reaches 22 years of age if the student uses at least 50 percent of available ESA monies for educational therapies or services.
28. Allows ADE to remove a student in the subsequent year if the student is not in compliance with the above.
29. Modifies the additional eligibility criteria concerning public school attendance to require students to attend a public school for 100 days in the prior fiscal year, rather than the first 100 days of the prior fiscal year
30. Allows ADE to request a public school provide documentation or confirmation of the student's public school attendance in the prior fiscal year and directs the public school to comply with ADE's request within 10 days.

31. Deems a child as eligible to enroll in a kindergarten program if the child is at least four but under seven years of age.
32. Prohibits an ESA student from accepting a School Tuition Organization (STO) scholarship during the same time the student is actively enrolled in an ESA, rather than in the same year a parent signs the agreement.
33. Allows ADE to request confirmation from a qualified school that a student is not receiving an STO scholarship and enrolled in an ESA concurrently.

Application Process and Distribution of ESA Monies

34. Bases the additional assistance portion of ESA funding on whether the student previously attended a charter school or a school district.
35. Requires ADE to allow an ESA applicant to identify all potentially applicable enrollment eligibility criteria and prohibits ADE from restricting the applicant to the identification of a single enrollment eligibility criterion.
36. Requires ADE to notify an applicant who ADE determines is ineligible for an ESA, of the specific statutory deficiencies of the application and the rationale for the denial of the application.
37. Allows an ESA applicant, beginning October 1, 2017, to identify and give written consent to a third-party, meaning any non-profit or private entity including a private school, to assist in the application process or in interacting with ADE on the applicant's behalf.
38. Decreases, beginning January 1, 2018, the amount of time ADE must issue an award letter after receipt of a completed application from 45 days to 30 days.
39. Allows a parent to appeal any administrative decision, including determinations concerning allowable expenses, removal from the program and enrollment eligibility.
40. Requires ADE to notify the parent of the parent's ability to appeal at the same time the parent is notified of the administrative decision.
41. Directs ADE, beginning January 1, 2018, to deposit ESA monies monthly rather than quarterly.
42. Directs ADE to deposit monies into the ESA account immediately or, if necessary, deposit retroactively prorated monies at the time the parent agrees to the terms and conditions.
43. Prohibits ADE from delaying the deposit of monies into an ESA until a subsequent quarter.

Policies and Procedures

44. Specifies ADE may adopt policies and procedures, rather than rules, for the ESA Program.
45. Requires ADE to develop and implement the policies and procedures pursuant to the intent of the law and by giving students the most educational options available under the law.
46. Includes expense reporting, eligible expenses and application procedures in the policies and procedures and prohibits these policies from restricting the types or amount of curriculum choices made by parents for students.
47. Requires ADE to request additional documentation and information regarding eligible expenses and give a parent an opportunity to respond before denying an expenditure.
48. Directs ADE to post on its website information and data that are updated monthly regarding ESAs that includes the following:
 - a) info on all purchases and expenditures made with ESA monies that does not violate the personal privacy of any student or family and that includes only aggregate data;
 - b) the number of enrolled students disaggregated by eligibility; and
 - c) any other information or data that may be pertinent to promoting transparency and accountability of the ESA program.

Policy Handbook

49. Requires ADE to develop and publish a policy handbook by July 1 of each year.
50. Requires the policy handbook to include information pertaining to policies relating to interactions and processes of an applicant and participant adopted by ADE in order to administer the ESA Program and clarifies the handbook does not apply to internal agency policies and procedures.
51. Limits the policies that ADE may administer to only those published in the policy handbook.
52. Prohibits ADE from publishing the policy handbook, making any revisions or enforcing any new policy or procedure before the completion of both of the following:
 - a) the collection of public comments for at least 60 days, which ADE is required to consider and reasonably incorporate in the policy handbook; and
 - b) the submission of a copy of the policy handbook and any revisions to the Governor, President of the Senate and Speaker of the House of Representatives.

ESA Review Council

53. Establishes the ESA Review Council consisting of the following members:
 - a) six members appointed by the Governor who are parents of children currently enrolled in an ESA and who have been enrolled for at least two years;
 - b) the chairpersons of the Education Committees of the Senate and the House of Representatives; and

- c) the Superintendent of Public Instruction or the Superintendent's designee.
54. Requires the ESA Review Council to do the following:
- a) review and make recommendations to ADE regarding the administration of ESAs;
 - b) make recommendations to the Legislature for changes to laws regarding ESAs;
 - c) review and approve any changes to the ESA policy handbook; and
 - d) submit a report regarding the ESA Review Council's activities and recommendations by December 15 of each year to the Governor, the President of the Senate and the Speaker of the House of Representatives and provide a copy to the Secretary of State.
55. Directs ADE to provide technical assistance to the ESA Review Council.
56. Specifies appointed members serve at the pleasure of the person who made the appointment.
57. Directs the members of the Council to select a chairperson from the parent members.
58. States Council members are not eligible to receive compensation, but the parent members are eligible for reimbursement of expenses.
59. Terminates the ESA Review Council on January 1, 2021.

Miscellaneous

60. Removes as a qualifying expense, contributions to a Coverdell Education Savings Account.
61. Includes as a qualifying expense, fees for an examination that is taken to satisfy the examination requirement.
62. Requires, rather than allows, the Treasurer to contract with private financial management firms to manage ESAs and directs ADE to cooperate with the Treasurer and the contracted firm.
63. Makes technical and conforming changes.
64. Becomes effective on the general effective date.

Amendments Adopted by Committee of the Whole

1. Extends the temporary cap and establishes a hard cap beginning FY 2023.
2. Requires certain private schools that enroll ESA students to make test scores available to the public.
3. Provides 100 percent, rather than 90 percent, of funding to students who are determined to be low-income or are or were a ward of the juvenile court and establishes a process and funding stream for DOR to determine if a student is low-income.

4. Bases the additional assistance portion of ESA funding on whether the student previously attended a charter school or a school district.
5. Allows ADE to request confirmation of a student's public school attendance and directs the public school to comply with ADE's request within 10 days.
6. Deems a child eligible to enroll in kindergarten if the child is at least four but under seven years of age.
7. Removes contributions to Coverdell Education Savings Accounts as a qualifying expense.
8. Includes the statewide assessment as an examination that may satisfy the testing requirement.
9. Allows students with a disability or students who receive educational therapies or services to continue on the ESA Program beyond 18 years of age under certain circumstances.
10. Beginning October 2017, allows applicants to identify a third-party to assist in the application process or in interacting with ADE on the applicant's behalf.
11. Requires, rather than allows, the Treasurer to contract with a private financial management firm.
12. Beginning January 2018, directs ADE to deposit ESA monies monthly.
13. Beginning January 2018, requires ADE to issue award letters within 30 days, rather than 45 days, after receipt of a completed application.
14. Requires ADE to request additional documentation from parents before denying an expenditure.
15. Includes provisions from S.B. 1281 relating to the administration of the ESA Program including application procedures, ADE policies and procedures, the policy handbook, the ESA Review Council and eligibility modifications.

Revision

1. Updates the fiscal impact statement.
2. Includes specifics concerning funding in the background.
3. Specifies test scores are reported to parents.

FACT SHEET - Amended

S.B. 1431

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Senate Action

ED 2/9/17 DP 4-3-0
3rd Read 4/6/17 16-13-1

House Action

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(S.B. 1431 was substituted for H.B. 2394
on 3rd Read).

Signed by the Governor 4/6/17
Chapter 139

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CB/jn