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Senate: ED DPA 6-3-0-0 | 3rd Read: 16-13-0-0

House: APPROP DP 7-4-0-0

SB 1224: empowerment scholarships; qualifications; administration; appropriations

**Sponsor: Senator Allen S, LD 6
Caucus & COW**

Overview

Directs the State Board of Education (SBE), rather than the Arizona Department of Education (ADE), to adopt rules and policies necessary to administer Arizona Empowerment Scholarships (ESAs). Modifies the definitions of *qualified school*, *parent* and *curriculum*. Appropriates a total of \$1,100,000 and 14 full-time employees (FTEs) from the state General Fund (GF) to ADE and SBE for ESA program administration.

History

Established by [Laws 2011, Chapter 75](#), the ESA program is subject to the rules and policies adopted by ADE, which include policies for: 1) conducting examinations of the use of ESA monies; 2) conducting random, quarterly and annual reviews of ESAs; 3) providing for the establishment of an online anonymous fraud reporting service; 4) establishing an anonymous telephone hotline for fraud; and 5) the requirement for a surety bond or insurance for ESA holders ([A.R.S. § 15-2402\(H\)](#)).

Statute requires ADE to make quarterly transfers to the State Treasurer for deposit into each qualified student's ESA account ([A.R.S. § 15-2402](#)). The State Treasurer is allowed to contract with private financial management firms for the management of ESAs ([A.R.S. § 15-2403](#)).

ADE is allowed to retain five percent of the sum of the base support level and additional assistance for each student with an ESA for deposit in the ADE ESA Fund. Statute directs ADE to then transfer monies for deposit in the State Treasurer ESA Fund ([A.R.S. § 15-2402\(C\)](#)).

Currently, a *qualified student* may use ESA monies for specified educational costs at a *qualified school*. Statute defines *qualified school* as a nongovernmental primary or secondary school or a preschool for pupils with disabilities that is located in Arizona and that does not discriminate on the basis of race, color or national origin. *Parent* means an Arizona resident who is the parent or legal guardian of a qualified student ([A.R.S. § 15-2401](#)).

Session law allows a student who resides within the boundaries of an Indian reservation in Arizona and who paid tuition for the 2017-2018 or 2018-2019 school years to a nongovernmental school or preschool for pupils with disabilities that is located in an adjacent state and that is within two miles of the shared border with Arizona to continue using ESA monies to pay tuition until July 1, 2020 ([Laws 2019, Chapter 276](#)).

The ESA program parent handbook for school year 2019-2020 can be found [here](#).

Provisions

Definitions

1. Modifies the definition of *qualified school* to mean, for qualified students who reside within the boundaries of an Indian reservation in Arizona, a nongovernmental primary or secondary

school or a preschool for pupils with disabilities that is located in an adjacent state and that is within two miles of the Arizona border. (Sec. 1)

2. Adds *stepparent* to the definition of *parent*. (Sec. 1)
3. Expands the definition of *curriculum* to include recommended supplemental materials. (Sec. 1)

ESA Program Administration

4. Directs SBE, rather than ADE, to adopt rules and policies necessary to administer ESAs. (Sec. 3)
 - a) Mandates that SBE adopt rules and policies for establishing an appeals process. (Sec. 2, 3)
 - b) Requires, by November 1, 2020, SBE to adopt rules necessary to administer ESAs, retroactive to the date in which this act is filed with the Secretary of State (SOS). (Sec. 5)
 - c) Specifies that SBE must work in cooperation with ADE and may use existing resources and policy documents to guide the rulemaking process. (Sec. 5)
5. Transfers, from ADE to SBE, the ability to refer cases of substantial misuse of monies to the Attorney General (AG) if SBE obtains evidence of fraudulent use of an ESA. (Sec. 3)
6. Requires, by August 1, 2020, the AG to provide written guidance to ADE and SBE regarding what types of information collected under statute relating to ESAs are subject to public records requests under state and federal law, retroactive to the date in which this act is filed with the SOS. (Sec. 6, 7)

Handbook, Account Closure and Parental Appeals

7. Instructs ADE to develop, by July 1 annually, an applicant and participant handbook that:
 - a) Includes information relating to policies and processes of ESAs; and
 - b) Complies with the rules adopted by SBE. (Sec. 3)
8. Requires the handbook to be posted on the ADE website. (Sec. 3)
9. Directs ADE to notify the parent of a qualified student that the student's ESA account will be closed in 60 calendar days, if the parent has not renewed the student's ESA account for three academic years. (Sec. 2)
 - a) Requires notification to be sent through certified mail, email and telephone, if applicable. (Sec. 2)
 - b) Specifies that the parent has 60 calendar days to renew the ESA and, if not renewed, that ADE must close the account and return remaining monies to the state. (Sec. 2)
10. Allows a parent to appeal to SBE any administrative decision that ADE makes, including determinations of allowable expenses, removal from the ESA program or enrollment eligibility. (Sec. 3)
 - a) Requires ADE to notify a parent in writing, at the same time the parent is notified of an administrative decision, that the parent may appeal the administrative decision and the appeal process. (Sec. 3)
 - b) Requires ADE to post this information on its website in the same location as the policy handbook. (Sec. 3)

Allowable Uses for ESA Monies

11. Allows ESA monies to be used for:
 - a) Associated goods that include educational and psychological evaluations, assistive technology rentals and braille translation goods approved by ADE; and
 - b) Supplementary materials. (Sec. 2)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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12. Prohibits ESA monies from being used as contributions to a Coverdell education savings account. (Sec. 2)

ESA Program Funds and Appropriations

13. Deletes language that:
 - a) Allows ADE to retain up to 5% of the sum of the base support level and additional assistance for each student with an ESA for deposit in the ADE ESA Fund; and
 - b) Requires ADE transfer 1% of the sum of the base support level and additional assistance for each student with an ESA for deposit in the State Treasurer ESA Fund. (Sec. 2)
14. Provides that the ADE ESA Fund and State Treasurer ESA Fund consist of monies appropriated by the Legislature and requires ADE and the State Treasurer to list monies in the Funds as separate line items in its budget estimates. (Sec. 2)
15. Appropriates the following from the state GF in FY 2021 to the ADE ESA Fund and from the ADE ESA Fund to ADE:
 - a) \$276,000 and five FTEs to establish a call center for exclusive use for the ESA program at ADE;
 - b) \$388,000 and six FTEs for case managers to review and approve ESA applications at ADE and requires ADE to transition existing employees who review and approve applications out of their existing roles to employ a case management approach; and
 - c) \$136,000 and two FTEs for accounting staff. (Sec. 4)
16. Appropriates \$150,000 from the state GF in FY 2021 to ADE to conduct statewide seminars and trainings for ESA applicants and for staff professional development, marketing and community outreach activities. (Sec. 4)
17. Appropriates \$100,000 and one FTE from the state GF in FY 2021 to SBE to provide administrative support for the rulemaking process and appeals. (Sec. 4)
18. Appropriates \$50,000 from the state GF in FY 2021 to SBE for AG legal services for the appeals program. (Sec. 4)
19. Exempts the appropriations from lapsing. (Sec. 4)

Miscellaneous

20. Makes technical and conforming changes. (Sec. 1-3)