



# ARIZONA HOUSE OF REPRESENTATIVES

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Second Regular Session

House: WM DP 6-4-0-0 | 3rd Read 31-26-3-0  
Senate: APPROP DP 6-3-1-0 | 3rd Read 16-10-4

## **HB 2853: Arizona empowerment scholarship accounts; appropriation**

**Sponsor: Representative Toma (with permission of Committee on Rules), LD 22**  
**Transmitted to the Governor**

### **Overview**

Extends eligibility for an Arizona Empowerment Scholarship Account (ESA) to an Arizona resident who is eligible to enroll in an Arizona public school and who does not otherwise qualify for an ESA. Appropriates \$2,200,000 and 26 FTE positions from the state General Fund (GF) in FY 2023 to the Arizona Department of Education (ADE) for ESA administration.

### **History**

The ESA Program was established in 2011 to provide educational options for Arizona students ([Laws 2011, Chapter 75](#)). Currently, to be considered a *qualified student* for the ESA Program, a child must be an Arizona resident who is: 1) disabled; 2) attending a D or F letter grade school; 3) a previous ESA or Arizona Scholarships for Students with Disabilities Program recipient; 4) a child of a U.S. Armed Forces member who is on active duty or was killed in the line of duty; 5) a ward of the juvenile court; 6) the sibling of a current or previous ESA recipient; 7) a resident of an Indian reservation in Arizona; or 8) a child of a parent who is legally blind, deaf or hard of hearing.

A qualified student (except those who are eligible for free or reduced-price lunches and attending a D or F letter grade school or the child of a U.S. Armed Forces member) must meet additional eligibility requirements, including: 1) attended a governmental primary or secondary school for at least 45 days of the current or prior fiscal year; 2) previously participated in an ESA; 3) received a qualifying school tuition organization scholarship; 4) was eligible for an Arizona Scholarship for Pupils with Disabilities; or 5) be an incoming kindergartner or preschooler with disabilities.

ADE must transfer 90% of the sum of the base support level and charter additional assistance to the Treasurer for deposit into a qualified student's ESA. ESA monies may be used for outlined purposes, including: 1) tuition, fees or textbooks at a qualifying school; 2) for disabled students, additional services such as educational therapies and associated goods and services; 3) tutoring; 4) curricula and supplementary materials; and 5) annual education plan costs ([A.R.S. § 15-2402](#)).

A student may use monies to attend a *qualified school*, which is a nongovernmental primary or secondary school or preschool for pupils with disabilities in Arizona. For qualified students who are residents of an Indian reservation in Arizona, a qualified school may be located in an adjacent state within two miles of the border of the state in which the qualified student resides. A qualified school cannot discriminate based on race, color or national origin ([A.R.S. § 15-2401](#)).

### **Provisions**

#### ***Qualified Student***

1. Expands, beginning the 2022-2023 school year, the definition of *qualified student* to include an Arizona resident who is eligible to enroll in an Arizona public school in a preschool program for children with disabilities, a kindergarten program or any of the 1st-12th grades and who does not otherwise qualify for an ESA. (Sec. 2)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input checked="" type="checkbox"/> <a href="#">Fiscal Note</a>
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2. Adds, to the eligibility requirements to be a *qualified student*, a child who attended a nonpublic school for pupils with disabilities in the prior year if placement at the school was approved by ADE and contracted for by a public school district. (Sec. 1)
3. States, when determining eligibility for an ESA, a child is eligible to enroll in a kindergarten program if the child:
  - a) Is at least five years old on January 1 of the current school year but younger than seven;
  - b) Has not already completed a kindergarten program; and
  - c) Is not enrolled in the 1st grade in the current year. (Sec. 1)
4. Decreases the number of logged instruction hours a student enrolled in Arizona online instruction must meet to be eligible for an ESA from:
  - a) 200 to 100 for kindergarten students;
  - b) 400 to 200 for 1st-3rd grade students;
  - c) 500 to 250 for 4th-6th grade students;
  - d) 550 to 275 for 7th and 8th grade students; and
  - e) 500 to 250 for high school students. (Sec. 1)
5. Declares a qualified student is not:
  - a) Required to withdraw from a public school before enrolling for an ESA if they withdraw before receiving any ESA monies; and
  - b) Prevented from applying in advance for an ESA to be funded beginning the following school year. (Sec. 3)
6. Instructs ADE, for a child eligible to attend a preschool program for children with disabilities or any of the 1st-12th grades, to transfer the monies that would be allocated to a recipient's expected school district of attendance to the Treasurer for deposit into an ESA. (Sec. 3)

#### ***Permissible Expenses***

7. Allows ESA monies to be used for:
  - a) Public transportation services in Arizona, including a commuter pass or transportation network services, between the qualified student's residence and a qualified school; and
  - b) Computer hardware and technological devices primarily used for an educational purpose, including calculators, personal computers, laptops, tablet devices, microscopes, telescopes and printers but excluding entertainment and other primarily noneducational devices. (Sec. 3)
8. Deletes consumable educational supplies from the list of prohibited ESA expenses. (Sec. 3)
9. Clarifies that a qualified student who meets statutory criteria for a child with a disability may expend ESA monies for outlined additional services or annual education plan costs. (Sec. 3)

#### ***Independent Third Party Contracting***

10. Allows during any period, beginning January 1, 2023, in which ADE fails to ensure that a contract with an independent third party to determine whether a qualified student is eligible to receive educational therapies or services is in effect:
  - a) Each county school superintendent to approve a list of independent third parties whose evaluation may be used; and
  - b) A student's parent, if a county school superintendent does not provide a list within 90 days of ADE not having a contract, to obtain an independent educational evaluation from a qualified examiner. (Sec. 4)
11. Requires the student's school district of residence that serves the student's grade level to provide the expense for an educational evaluation undertaken by a parent. (Sec. 4)
12. Defines *qualified examiner* as a licensed physician, psychiatrist or psychologist. (Sec. 4)

### ***Appeals***

13. Increases, from 10 to 15 days, the time a parent or qualified student has to respond and take corrective action if the parent or qualified student fails to comply with the terms of the contract or applicable laws, rules or orders for an ESA. (Sec. 4)
14. Authorizes parents to represent themselves or designate a representative, not necessarily an attorney, before any ESA appeals hearing. (Sec. 4)
15. Prohibits any designated representative who is not an attorney admitted to practice from charging for any services rendered in connection with an ESA hearing. (Sec. 4)
16. Asserts, if the evidence supporting a decision or order is substantial, reliable and probative, the fact that a representative participated in a hearing or assisted an ESA holder is not grounds for reversing any administrative decision or order. (Sec. 4)

### ***Miscellaneous***

17. Appropriates \$2,200,000 and 26 FTE positions from the state GF in FY 2023 to ADE for ESA administration (Sec. 5)
18. Contains a retroactivity clause of July 1, 2022. (Sec. 6)
19. Makes conforming changes. (Sec. 1, 4)