

REFERENCE TITLE: ESAs; qualified schools; distributions; expenditures

State of Arizona
House of Representatives
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HB 2885

Introduced by
Representatives Gutierrez: Blattman, Connolly, De Los Santos, Hernandez L,
Simacek, Villegas

AN ACT

AMENDING SECTIONS 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 15-2402, Arizona Revised Statutes, is amended to
3 read:

4 15-2402. Arizona empowerment scholarship accounts; funds

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

7 B. To enroll a qualified student for an Arizona empowerment
8 scholarship account, the parent of the qualified student must sign an
9 agreement to do all of the following:

10 1. Use a portion of the Arizona empowerment scholarship account
11 monies allocated annually to provide an education for the qualified
12 student in at least the subjects of reading, grammar, mathematics, social
13 studies and science, ~~unless the Arizona empowerment scholarship account is~~
14 ~~allocated monies according to a transfer schedule other than quarterly~~
15 ~~transfers pursuant to section 15-2403, subsection G.~~

16 2. Not enroll the qualified student in a school district or charter
17 school and release the school district from all obligations to educate the
18 qualified student. This paragraph does not:

19 (a) Relieve the school district or charter school that the
20 qualified student previously attended from the obligation to conduct an
21 evaluation pursuant to section 15-766.

22 (b) Require the qualified student to withdraw from ~~a~~ ANY school
23 district or charter school before enrolling for an Arizona empowerment
24 scholarship account if the qualified student withdraws from the school
25 district or charter school before receiving any monies in the qualified
26 student's Arizona empowerment scholarship account.

27 (c) Prevent the qualified student from applying in advance for an
28 Arizona empowerment scholarship account to be funded beginning the
29 following school year, subject to section 15-2403, subsection H.

30 3. Not accept a scholarship from a school tuition organization
31 pursuant to title 43 concurrently with an Arizona empowerment scholarship
32 account for the qualified student in the same year a parent signs the
33 agreement pursuant to this section.

34 4. Use monies deposited in the qualified student's Arizona
35 empowerment scholarship account only for the following expenses of the
36 qualified student:

37 (a) Tuition or fees at a qualified school that requires all
38 teaching staff and SCHOOL personnel who have unsupervised contact with
39 students to be fingerprinted.

40 (b) Textbooks required by a qualified school.

41 (c) If the qualified student meets any of the criteria specified in
42 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii) as
43 determined by a school district or by an independent third party pursuant
44 to section 15-2403, subsection J, the qualified student may use the
45 following additional services:

1 (i) Educational therapies from a licensed or accredited
2 practitioner or provider, including and up to any amount not covered by
3 insurance if the expense is partially paid by a health insurance policy
4 for the qualified student.

5 (ii) A licensed or accredited paraprofessional or educational aide.

6 (iii) Tuition for vocational and life skills education approved by
7 the department.

8 (iv) Associated goods and services that include educational and
9 psychological evaluations, assistive technology rentals and braille
10 translation goods and services approved by the department.

11 (d) Tutoring or teaching services provided by an individual who is
12 not subject to disciplinary action by the state board of education for
13 immoral or unprofessional conduct pursuant to section 15-505 or 15-534.04
14 or a facility that is accredited by a state, regional or national
15 accrediting organization. The department shall ensure THAT any individual
16 who provides tutoring or teaching services to one or more qualified
17 students pursuant to this subdivision is not subject to disciplinary
18 action by the state board of education. The department shall also remove
19 any individual who is subject to disciplinary action by the state board of
20 education from all platforms that the department provides to parents and
21 qualified students for the purchase of goods or educational services using
22 account monies.

23 (e) Curricula and supplementary materials.

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

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

28 (h) Tuition or fees at an eligible postsecondary institution.

29 (i) Textbooks required by an eligible postsecondary institution.

30 (j) Fees to manage the Arizona empowerment scholarship account.

31 (k) Services provided by a public school, including individual
32 classes and extracurricular programs.

33 (l) Insurance or surety bond payments.

34 (m) Uniforms purchased from or through a qualified school.

35 (n) If the qualified student meets the criteria specified in
36 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii) and
37 if the qualified student is in the second year prior to the final year of
38 a contract executed pursuant to this article, costs associated with an
39 annual education plan conducted by an independent evaluation team. The
40 department shall prescribe minimum qualifications for independent
41 evaluation teams pursuant to this subdivision and factors that teams must
42 use to determine whether the qualified student shall be eligible to
43 continue to receive monies pursuant to this article through the school
44 year in which the qualified student reaches twenty-two years of age. An
45 independent evaluation team that provides an annual education plan

pursuant to this subdivision shall submit a written report that summarizes the results of the evaluation to the parent of the qualified student and to the department on or before July 31. The written report submitted by the independent evaluation team is valid for one year. If the department determines that the qualified student meets the eligibility criteria prescribed in the annual education plan, the qualified student is eligible to continue to receive monies pursuant to this article until the qualified student reaches twenty-two years of age, subject to annual review. A parent may appeal the department's decision pursuant to title 41, chapter 6, article 10. As an addendum to a qualified student's final-year contract, the department shall provide the following written information to the parent of the qualified student:

(i) That the qualified student will not be eligible to continue to receive monies pursuant to this article unless the results of an annual education plan conducted pursuant to this subdivision demonstrate that the qualified student meets the eligibility criteria prescribed in the annual education plan.

(ii) That the parent is entitled to obtain an annual education plan pursuant to this subdivision to determine whether the qualified student meets the eligibility criteria prescribed in the annual education plan.

(iii) A list of independent evaluation teams that meet the minimum qualifications prescribed by the department pursuant to this subdivision.

(o) Public transportation services in this state, including a commuter pass for the qualified student, or transportation network services as defined in section 28-9551 between the qualified student's residence and a qualified school in which the qualified student is enrolled.

(p) Computer hardware and technological devices primarily used for an educational purpose. For the purposes of this subdivision, "computer hardware and technological devices":

(i) Includes calculators, personal computers, laptops, tablet devices, microscopes, telescopes and printers.

(ii) Does not include entertainment and other primarily noneducational devices, including televisions, telephones, video game consoles and accessories, and home theatre and audio equipment.

(q) AN EVALUATION PROVIDED BY A QUALIFIED EXAMINER PURSUANT TO SECTION 15-2403, SUBSECTION J, PARAGRAPH 2.

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

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

(a) Computer hardware or other technological devices, except as otherwise allowed under paragraph 4, subdivision (c) or (p) of this subsection.

1 (b) Transportation of the pupil, except for transportation services
2 described in paragraph 4, subdivision (o) of this subsection.

3 C. In exchange for the parent's agreement pursuant to subsection B
4 of this section, the department shall transfer from the monies that would
5 otherwise be allocated to a recipient's prior school district, or if the
6 child is currently eligible to attend a preschool program for children
7 with disabilities, a kindergarten program or any of grades one through
8 twelve, the monies that the department determines would otherwise be
9 allocated to a recipient's expected school district of attendance, to the
10 treasurer for deposit into an Arizona empowerment scholarship account an
11 amount that is equivalent to ninety percent of the sum of the base support
12 level and additional assistance prescribed in sections 15-185 and 15-943
13 for that particular student if that student were attending a charter
14 school.

15 D. The department of education empowerment scholarship account fund
16 is established consisting of monies appropriated by the legislature. The
17 department shall administer the fund. Monies in the fund are subject to
18 legislative appropriation. Monies in the fund shall be used for the
19 department's costs in administering Arizona empowerment scholarship
20 accounts under this chapter. Monies in the fund are exempt from the
21 provisions of section 35-190 relating to lapsing of appropriations. If
22 the number of Arizona empowerment scholarship accounts significantly
23 increases after fiscal year 2020-2021, the department may request an
24 increase in the amount appropriated to the fund in any subsequent fiscal
25 year in the budget estimate submitted pursuant to section 35-113. The
26 department shall list monies in the fund as a separate line item in its
27 budget estimate.

28 E. The state treasurer empowerment scholarship account fund is
29 established consisting of monies appropriated by the legislature. The
30 state treasurer shall administer the fund. Monies in the fund shall be
31 used for the state treasurer's costs in administering the Arizona
32 empowerment scholarship accounts under this chapter. If the number of
33 Arizona empowerment scholarship accounts significantly increases after
34 fiscal year 2020-2021, the state treasurer may request an increase in the
35 amount appropriated to the fund in any subsequent fiscal year in the
36 budget estimate submitted pursuant to section 35-113. Monies in the fund
37 are subject to legislative appropriation. Monies in the fund are exempt
38 from the provisions of section 35-190 relating to lapsing of
39 appropriations. The state treasurer shall list monies in the fund as a
40 separate line item in its budget estimate.

41 F. A parent must renew the qualified student's Arizona empowerment
42 scholarship account on an annual basis. The department of education shall
43 verify that the parent's child is a qualified student as defined in
44 section 15-2401 or 15-2401.01 in the year for which the parent seeks to
45 renew the Arizona empowerment scholarship account. This subsection does

1 not require the department to annually verify the child's disability for
2 the purpose of section 15-2401, paragraph 7, subdivision (a), item (i),
3 (ii) or (iii), if applicable.

4 G. Notwithstanding any changes to the student's multidisciplinary
5 evaluation team plan, a student who has previously qualified for an
6 Arizona empowerment scholarship account remains eligible to apply for
7 renewal until the student finishes high school.

8 H. If a parent does not renew the qualified student's Arizona
9 empowerment scholarship account for a period of ~~three~~ ONE academic ~~years~~
10 YEAR, the department shall notify the parent that the qualified student's
11 account will be closed in sixty calendar days. The notification must be
12 sent through certified mail, email and telephone, if applicable. The
13 parent has sixty calendar days to renew the qualified student's Arizona
14 empowerment scholarship account. If the parent chooses not to renew or
15 does not respond in sixty calendar days, the department shall close the
16 account and any remaining monies shall be returned to the state.

17 I. A signed agreement under this section constitutes school
18 attendance required by section 15-802.

19 J. NOTWITHSTANDING SECTION 15-2404, A QUALIFIED SCHOOL OR A
20 PROVIDER OF SERVICES THAT RECEIVES MONIES FROM AN ARIZONA EMPOWERMENT
21 SCHOLARSHIP ACCOUNT PURSUANT TO THIS ARTICLE IS SUBJECT TO THE FOLLOWING
22 REQUIREMENTS:

23 1. A qualified school or a provider of services purchased pursuant
24 to subsection B, paragraph 4 of this section may not:

25 (a) Share, refund or rebate any Arizona empowerment scholarship
26 account monies with the parent or qualified student in any manner.

27 (b) INCREASE TUITION AND RELATED FEES FOR QUALIFIED STUDENTS AT A
28 RATE THAT EXCEEDS THE PERCENTAGE CHANGE IN THE CONSUMER PRICE INDEX FOR
29 THE PREVIOUS YEAR.

30 2. A QUALIFIED SCHOOL THAT RECEIVES MONIES FROM AN ARIZONA
31 EMPOWERMENT SCHOLARSHIP ACCOUNT PURSUANT TO THIS ARTICLE SHALL DO ALL OF
32 THE FOLLOWING:

33 (a) ANNUALLY POST AND REPORT TO THE DEPARTMENT THE QUALIFIED
34 SCHOOL'S GRADUATION RATE USING A METHODOLOGY PRESCRIBED BY THE DEPARTMENT.
35 THE DEPARTMENT SHALL PRESCRIBE A METHODOLOGY FOR THIS SUBDIVISION THAT IS
36 CONSISTENT WITH THE GRADUATION RATES USED PURSUANT TO SECTION 15-241,
37 SUBSECTION D, PARAGRAPH 6.

38 (b) ANNUALLY REPORT TO THE DEPARTMENT THE PERCENTAGE OF STUDENTS
39 WHO RECEIVE INSTRUCTION IN THE QUALIFIED SCHOOL FOR A KINDERGARTEN PROGRAM
40 OR ANY OF GRADES ONE THROUGH EIGHT AND WHO HAVE EXCESSIVE ABSENCES. FOR
41 THE PURPOSES OF THIS SUBDIVISION, ABSENCES ARE CONSIDERED EXCESSIVE WHEN
42 THE NUMBER OF ABSENT DAYS EXCEEDS TEN PERCENT OF THE NUMBER OF REQUIRED
43 ATTENDANCE DAYS FOR THE QUALIFIED SCHOOL.

(c) NOTIFY IN WRITING THE PARENT OF A PROSPECTIVE STUDENT WHO MEETS THE CRITERIA OF QUALIFIED STUDENT PRESCRIBED IN SECTION 15-2401, PARAGRAPH 7, SUBDIVISION (a), ITEM (i), (ii) OR (iii) OF THE INDIVIDUAL SPECIAL EDUCATION SERVICES AND EDUCATIONAL THERAPIES THAT THE QUALIFIED SCHOOL WILL PROVIDE TO THE STUDENT BEFORE THE PARENT PAYS TUITION OR FEES FROM AN ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT TO THE QUALIFIED SCHOOL. THE NOTIFICATION PRESCRIBED IN THIS SUBDIVISION IS NOT REQUIRED IN SUBSEQUENT YEARS OF ENROLLMENT AT THE SAME QUALIFIED SCHOOL.

(d) IF A QUALIFIED STUDENT HAS AN INDIVIDUALIZED EDUCATION PROGRAM OR SECTION 504 PLAN, PROVIDE ALL ACCOMMODATIONS AND SERVICES THAT ARE REQUIRED UNDER THE QUALIFIED STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM OR SECTION 504 PLAN UNLESS A PARENT OR THE QUALIFIED STUDENT WAIVES IN WRITING THE ACCOMMODATIONS OR SERVICES. IF THE QUALIFIED SCHOOL FAILS TO EITHER PROVIDE THE ACCOMMODATIONS AND SERVICES OR OBTAIN A WRITTEN WAIVER PURSUANT TO THIS SUBDIVISION, THE QUALIFIED STUDENT MAY TRANSFER OUT OF THE QUALIFIED SCHOOL AND IS ENTITLED TO A REFUND FOR THE PORTION OF THE SCHOOL YEAR FOR WHICH THE STUDENT PAID TUITION AND FEES BUT DID NOT ATTEND THE QUALIFIED SCHOOL.

K. Notwithstanding subsection H of this section, on the qualified student's graduation from a postsecondary institution or after any period of four consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary institution, but not before this time as long as the account holder continues using a portion of account monies for allowable expenses each year and is in good standing, the qualified student's Arizona empowerment scholarship account shall be closed and any remaining monies shall be returned to the state.

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

Sec. 2. Section 15-2403, Arizona Revised Statutes, is amended to read:

15-2403. Arizona empowerment scholarship accounts: administration; appeals; risk-based audits; rules; policy handbook

A. The treasurer may contract with private financial management firms to manage Arizona empowerment scholarship accounts.

B. The department shall conduct or contract for annual audits of Arizona empowerment scholarship accounts to ensure compliance with section 15-2402, subsection B, paragraph 4. The department shall also conduct or contract for random, quarterly and annual audits of Arizona empowerment scholarship accounts as needed to ensure compliance with section 15-2402, subsection B, paragraph 4. The department, in consultation with the office of the auditor general, shall develop risk-based auditing procedures for audits conducted pursuant to this subsection.

1 C. The department shall annually review a sample of Arizona
2 empowerment scholarship accounts, selected at random, to determine whether
3 the parent or qualified student is in compliance with the terms of the
4 contract, applicable laws, rules and orders relating to the Arizona
5 empowerment scholarship accounts program. The Arizona empowerment
6 scholarship account of a parent or qualified student who is in good
7 standing may be randomly selected pursuant to this subsection only one
8 time during any five-year period. The department may remove any parent or
9 qualified student from eligibility for an Arizona empowerment scholarship
10 account if the parent or qualified student fails to comply with the terms
11 of the contract or applicable laws, rules or orders or knowingly misuses
12 monies or knowingly fails to comply with the terms of the contract with
13 intent to defraud and shall notify the treasurer. The department shall
14 notify the treasurer to suspend the account of a parent or qualified
15 student and shall notify the parent or qualified student in writing that
16 the account has been suspended and that no further transactions will be
17 allowed or disbursements made. The notification shall specify the reason
18 for the suspension and state that the parent or qualified student has
19 fifteen days, not including weekends, to respond and take corrective
20 action. If the parent or qualified student refuses or fails to contact
21 the department, furnish any information or make any report that may be
22 required for reinstatement within the fifteen-day period, the department
23 may remove the parent or qualified student pursuant to this subsection.

24 D. A parent may appeal to the state board of education any
25 administrative decision the department makes pursuant to this article,
26 including determinations of allowable expenses, removal from the program
27 or enrollment eligibility. The department shall notify the parent in
28 writing that the parent may appeal any administrative decision under this
29 article and the process by which the parent may appeal at the same time
30 the department notifies the parent of an administrative decision under
31 this article. The state board of education shall establish an appeals
32 process, and the department shall post this information on the
33 department's website in the same location as the policy handbook developed
34 pursuant to subsection K of this section.

35 E. A parent may represent himself or herself or designate a
36 representative, not necessarily an attorney, before any appeals hearing
37 held pursuant to this section. Any designated representative who is not
38 an attorney admitted to practice may not charge for any services rendered
39 in connection with the hearing. The fact that a representative
40 participated in the hearing or assisted the account holder is not grounds
41 for reversing any administrative decision or order if the evidence
42 supporting the decision or order is substantial, reliable and probative.

1 F. The state board of education may refer cases of substantial
2 misuse of monies to the attorney general for the purpose of collection or
3 for the purpose of a criminal investigation if the state board of
4 education obtains evidence of fraudulent use of an account.

5 G. The department shall make ~~quarterly~~ MONTHLY transfers of the
6 amount calculated pursuant to section 15-2402, subsection C to the
7 treasurer for deposit in the Arizona empowerment scholarship account of
8 each qualified student, ~~except the department may make transfers according~~
9 ~~to another transfer schedule if the department determines a transfer~~
10 ~~schedule other than quarterly transfers is necessary to operate the~~
11 ~~Arizona empowerment scholarship account.~~

12 H. The department shall accept applications between July 1 and June
13 30 of each year. The department shall issue an award letter to eligible
14 applicants within thirty days after receipt of a completed application and
15 all required documentation. If an eligible applicant completes an
16 application in advance for an Arizona empowerment scholarship account to
17 be funded beginning on a later date, the department may enroll the
18 eligible applicant on the later date, except that the department may not
19 enroll the applicant more than two fiscal quarters after the fiscal
20 quarter in which the application is completed or on a date that is after
21 March 31 and before July 1. If an eligible applicant completes an
22 application after March 31 and before July 1, the department shall enroll
23 the applicant on or after July 1. The department shall enroll all other
24 eligible applicants when the department issues an award letter pursuant to
25 this subsection. This subsection does not allow a qualified student to
26 receive monies in an Arizona empowerment scholarship account while the
27 qualified student is enrolled in a school district or charter school. On
28 or before September 1 and November 1 of each year, the department shall
29 furnish to the joint legislative budget committee and the governor's
30 office of strategic planning and budgeting an estimate of the amount
31 required to fund Arizona empowerment scholarship accounts for the
32 following fiscal year. The department shall include in its budget request
33 for the following fiscal year the amount estimated pursuant to section
34 15-2402, subsection C for each qualified student.

35 I. The state board of education may adopt rules and policies
36 necessary to administer Arizona empowerment scholarship accounts,
37 including rules and policies:

38 1. For establishing an appeals process pursuant to subsection D of
39 this section.

40 2. For conducting or contracting for examinations of the use of
41 account monies, consistent with subsection L of this section.

42 3. For conducting or contracting for random, quarterly and annual
43 reviews of accounts.

44 4. For establishing or contracting for the establishment of an
45 online anonymous fraud reporting service.

1 5. For establishing an anonymous telephone hotline for fraud
2 reporting.

3 6. That require a surety bond or insurance for account holders.

4 J. The department shall contract with an independent third party
5 for the purposes of determining whether a qualified student is eligible to
6 receive educational therapies or services pursuant to section 15-2402,
7 subsection B, paragraph 4, subdivision (c). If during any period on or
8 after January 1, 2023 the department fails to ensure that a contract with
9 an independent third party is in effect, during that period:

10 1. The county school superintendent of each county may approve a
11 list of independent third parties within the county whose evaluation may
12 be used to determine whether a qualified student who resides within the
13 county is eligible to receive educational therapies or services pursuant
14 to section 15-2402, subsection B, paragraph 4, subdivision (c).

15 2. If the county school superintendent of a county does not provide
16 a list of approved independent third parties within ninety days after the
17 beginning of any period during which the department does not have a
18 contract with an independent third party in effect as described in this
19 subsection, the parent of a qualified student who resides within the
20 county has the right to obtain an ~~independent educational~~ evaluation from
21 a qualified examiner to determine whether the qualified student is
22 eligible to receive educational therapies or services pursuant to section
23 15-2402, subsection B, paragraph 4, subdivision (c). ~~The expense for~~ IF
24 ALLOWED UNDER FEDERAL LAW, an ~~educational~~ evaluation undertaken pursuant
25 to this paragraph shall be ~~provided by~~ PAID FOR BY MONIES FROM THE
26 QUALIFIED STUDENT'S ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT. IF THE
27 QUALIFIED STUDENT'S ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT DOES NOT HAVE
28 SUFFICIENT MONIES FOR THE EVALUATION, the school district within which the
29 qualified student resides and that serves the grade level of the qualified
30 student SHALL PAY FOR THE EVALUATION. THE SCHOOL DISTRICT MAY ESTABLISH
31 REASONABLE REIMBURSEMENT CRITERIA, CONSISTENT WITH FEDERAL LAW, INCLUDING
32 COST LIMITS. For the purposes of this paragraph, "qualified examiner"
33 means a licensed physician, psychiatrist or psychologist.

34 K. On or before July 1 of each year, the department shall develop
35 an applicant and participant handbook that includes information relating
36 to policies and processes of Arizona empowerment scholarship
37 accounts. The policy handbook shall comply with the rules adopted by the
38 state board of education pursuant to this section. The department shall
39 post the handbook on the department's website.

40 L. The department shall:

41 1. Establish and maintain an online database of allowable and
42 disallowed categories of expenses and provide a link to the database on
43 the department's website.

1 2. Allow the use of account monies to reimburse the parent of a
2 qualified student or a qualified student for the purchase of a good or
3 educational service that is an allowable expense pursuant to section
4 15-2402, subsection B.

5 M. Except for cases in which the attorney general determines that a
6 parent or account holder has committed fraud, any expenditure from an
7 Arizona empowerment scholarship account for a purchase that the department
8 determines is not an allowable expense pursuant to section 15-2402 and
9 that is subsequently repaid by the parent or account holder shall be
10 credited back to the Arizona empowerment scholarship account balance
11 within thirty days after the receipt of payment.

12 N. If, in response to an appeal of an administrative decision made
13 by the department, the state board of education issues a stay of an
14 Arizona empowerment scholarship account suspension pursuant to rules
15 adopted by the board, the department may not withhold funding or contract
16 renewal for the account holder because of the appealed administrative
17 decision during the stay unless directed by the board to do so.