



# EDUCATION TRENDS



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## Education Savings Accounts: Key provisions and state variations

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In 2011, the **Arizona** State Legislature<sup>1</sup> adopted a law creating the first education savings account (ESA) in the United States. Following Arizona's lead, several other states, including **Florida**,<sup>2</sup> **Tennessee**,<sup>3</sup> **Mississippi**<sup>4</sup> and **Nevada**,<sup>5</sup>—have implemented ESA

**AS OF JUNE 2016, FIVE STATES HAVE ADOPTED ESA LAWS. AT LEAST SIX STATES ARE CONSIDERING PROGRAMS IN THEIR 2016 LEGISLATIVE SESSIONS AND THE TREND SHOWS NO SIGN OF SLOWING.**

policies. Additionally, as of June 2016, **Alabama**,<sup>6</sup> **Delaware**,<sup>7</sup> **Iowa**,<sup>8</sup> **Georgia**,<sup>9</sup> **Oklahoma**<sup>10</sup> and **Virginia**<sup>11</sup> introduced ESA bills in their 2016 legislative sessions and a bill pending in Congress would create an ESA program in **Washington, D.C.**<sup>12</sup>

Typical eligibility requirements include conditions such as a pupil's diagnosed

disability, attendance at one of the state's lowest-performing schools or foster care status. Only parents or guardians who have previously enrolled their child in public K-12 schools may apply. Depending on state policy, parents or guardians can use funds from these accounts for supplemental services, recognized achievement tests, advanced placement exams, college entrance exams, textbooks required by the selected academic program or access to a complete course of study in a non-public academic program. Some states, such as Arizona, set two levels of accounts — with a higher range of dollars available for students with disabilities who need significantly greater services.

This Education Trends report provides an overview of ESAs, reviews the key components of several states' laws and highlights some potential policy considerations for ESA program design.

**ESAs intend to provide options for parents or guardians to choose how and where to educate their children—particularly students with identified disabilities or foster children. Distinct from vouchers, ESAs are individual accounts funded by the state that allow parents or guardians to purchase a broader array of educational choices, including tutoring, online courses or private school.**

**Policymakers are encouraged to think about program design considerations in order to ensure students are protected, accounts are administered properly and standards are maintained.**



## Education Savings Accounts: Legislative provisions

Generally, ESAs provide public funds for educational purposes but only for eligible students.<sup>13</sup> Distinct from vouchers, ESAs are individual accounts funded by the state that allow parents or guardians to purchase a broader array of educational choices, including tutoring, online courses or private school.<sup>14</sup> To participate in an ESA program, a student's parent or guardian must agree to not enroll their child in a district or public charter school and the student must meet certain eligibility requirements.

### Program Eligibility Requirements

#### Special Needs

Every state with an ESA law – except Nevada, where the ESA program is broadly available to all students – explicitly defines students with disabilities as eligible for the program. Under each state's program, qualifying pupils are those who are currently enrolled in public school and are subject to an Individual Education Plan (IEP) or have a form of legally recognized disability. One state – Virginia – passed an ESA bill in the 2016 legislative session restricting eligibility to students with disabilities. The legislation was later vetoed by the governor.

Arizona's first iteration of ESAs was available only to students with disabilities and has since expanded eligibility to include children with "unique needs" – defined as children with parents or guardians who are members of the armed services, wards of the state, reside on an Indian reservation, attend failing schools or are siblings of students already using an ESA.<sup>15</sup> Legislation that mirrored current eligibility requirements in Arizona – special and unique needs – was proposed in Alabama and Mississippi<sup>16</sup> in 2016 but failed to pass.

#### Universal Access

Legislative provisions for universal access to these accounts is emerging, but has not been adopted widely to date, nor has it been upheld in the courts. In 2015, Nevada became the first state to pass an ESA law with universal eligibility, though the program is currently on hold pending a state Supreme Court decision on its constitutionality. In the 2016 legislative session, universal ESA legislation was introduced in Georgia (later withdrawn) and legislation pending in Congress would establish a universal ESA law in Washington, D.C. The vetoed ESA bill in Virginia originally contained language for universal eligibility, but was later amended to limit participation to special needs students before passage.

#### Enrollment Caps

In addition to eligibility restrictions, some states have set enrollment caps. Mississippi's ESA, a five-year pilot program, capped enrollment at 500 students for 2015-16, with an additional 500 students permitted to participate in each subsequent year until the pilot ends in 2020. Arizona's current enrollment cap limits growth to 0.5 percent of total public school enrollment from the previous school year and will expire in 2019.



## Funding

### ESA Funding

States vary in their approach to funding ESAs. Some states fund accounts based on the state’s per pupil amounts. In Arizona and Nevada, a parent or guardian whose child qualifies for the program is given 90 percent of the total per pupil revenue that would otherwise go directly to the public school. For students in Tennessee, the maximum award amount is equal to state and local per pupil funding required under the state’s Basic Education Program. Florida reimburses parents or guardians at a level equivalent to the per pupil revenue the student would have received in public school. Mississippi set a dollar amount - \$6,500 per student - for the first year of the program. Funding for subsequent years will increase or decrease by the same proportion as funding provided to public schools.

### Account Use

A significant distinction between ESAs and most other private school choice options is the flexibility in how participants can use public funds. ESA policies provide parents or guardians with a menu of permitted education-related expenses, including private school tuition, textbooks, additional therapies, private tutoring, college/ career readiness assessments and other items and services.<sup>18</sup>

### Administration and Oversight

Legislative policies on ESAs require state agencies to either adopt strategies or refine existing practices for administering personal accounts.

State oversight provisions take two forms:

- 1. Account Audits:** Depending on how the accounts are administered, audits may be conducted randomly or at regular intervals. Florida and Mississippi distribute money on a reimbursement basis, meaning parents or guardians must justify costs when asking for fund reimbursement. Conversely, Arizona, Nevada and Tennessee distribute the funds directly to a bank account on a quarterly basis and monitor transactions with random audits.

### Per Pupil Funding

States define “per pupil funding” in different ways. Some states include all educational revenue from federal, state and local sources when determining a per pupil funding amount, while other states only account for certain state and local revenue in their definition. For instance, Tennessee law requires that ESA account awards equal the amount of per pupil state and local funds set in the student’s district. That funding level is approximately 76 percent of total public school per pupil revenue since federal funds provided to districts are not included.

### ESAs and College Tuition

Arizona, Florida and Tennessee have provisions that allow parents or guardians to convert unused funds from ESAs into Coverdell or 529 plans for their child’s college education, which are tax-incentivized college savings products. Florida also permits parents or guardians to contribute ESA funds into the state’s prepaid college program.<sup>17</sup>

### Program Transparency

The high degree of purchasing freedom provided to participants creates an even greater urgency for states with ESAs to ensure participants use tax funds appropriately. At least one state – Arizona – has implemented a transparency strategy for school choice programs. In Arizona, consumer satisfaction surveys create a valuable bridge between state administrators and ESA participants by highlighting overall satisfaction with the program, as well as a breakdown of account uses, participants’ county of residence and students’ grade level, among other demographic variables.<sup>19</sup>



**2. Student Testing Requirements:** Several states require testing to monitor student success. Florida, Nevada and Tennessee require participants to take some form of standardized test.

Additionally, not every state administers the account funds through a state agency. Florida, for instance, utilizes a pre-existing network of third party nonprofit organizations to reimburse participants. The state is unique in that it administers its ESA program using the same methods as the state's tax credit voucher program.

## Policy Considerations

When designing ESA programs, policymakers may want to consider:

- Specific provisions that accommodate the needs and protect the rights of disabled populations.<sup>20</sup>
- Funding (at least for the highest need pupils) at a level to cover private school tuition costs to ensure widespread program participation.<sup>21</sup>
- Regular account audits to protect taxpayers from fraud and abuse and to protect the integrity of the programs.<sup>22</sup>
- Mandatory program evaluations tracking student performance, in addition to account use, to ensure academic standards are being met.<sup>23</sup>

	Program Eligibility Requirements	Funding	Account Use	Administration and Accountability	
				Account Management	Testing Requirements
<b>Arizona:</b> <b>Empowerment Scholarship Account</b>	<b>Either:</b> <ol style="list-style-type: none"> <li>1. Identified as having a disability.</li> <li>2. Attending a school assigned a letter grade of D or F.</li> <li>3. Previous recipient of a scholarship.</li> <li>4. A child of a parent or guardian who is on active duty in the military.</li> <li>5. A ward of the juvenile court.</li> </ol>	Participants receive 90 percent of per pupil funding.	Nongovernmental school tuition, including postsecondary, therapy, tutoring, extracurricular services, textbooks and curriculum.  *Unused account funds eligible to convert to college savings account.	<ul style="list-style-type: none"> <li>• Department must conduct or contract for annual audits and random quarterly audits.</li> <li>• Quarterly deposit to participating accounts.</li> </ul>	N/A
<b>Florida:</b> <b>Gardiner Scholarship</b>	<b>Either:</b> <ol style="list-style-type: none"> <li>1. Identified as having a disability.</li> <li>2. Pupils who are 3 or 4 years of age.</li> <li>3. Eligible for other Florida Scholarships.</li> </ol>	Participants are entitled to the maximum state per pupil award amount plus the program or district funds the student would have received in public school.	Nongovernmental school tuition, including postsecondary, therapy, tutoring, extracurricular services, textbooks and curriculum.  *Unused account funds eligible to convert to college savings account.	<ul style="list-style-type: none"> <li>• Auditor General must perform annual audit of all scholarship-funding organizations.</li> <li>• Quarterly reimbursement.</li> </ul>	Students are required to take state or national standardized test.
<b>Mississippi:</b> <b>Equal Opportunity for Students with Special Needs</b>	Any student who has had an Individualized Education Program within 18 months of applying for program.	Participants received \$6,500 for 2015-16 school year. Funding for subsequent years will increase or decrease by the same proportion as funding provided to public schools.	Nongovernmental school tuition, including postsecondary, therapy, tutoring, extracurricular services, textbooks and curriculum.  *Transportation fees allowed.	<ul style="list-style-type: none"> <li>• Department must conduct random audits. Services may be contracted.</li> <li>• Quarterly reimbursement.</li> </ul>	N/A
<b>Nevada:</b> <b>Education Savings Account</b>	Any child who has been enrolled in Nevada public schools for 100 days immediately prior to program participation.	Participants receive 90 percent of per pupil funding. Students below 185 percent of poverty line receive 100 percent of per pupil funding.	Nongovernmental school tuition, including postsecondary, therapy, tutoring, extracurricular services, textbooks and curriculum.  *Transportation fees included.	<ul style="list-style-type: none"> <li>• Certified or licensed accountant must audit accounts randomly each year.</li> <li>• Annual deposit to participating accounts.</li> </ul>	Students are required to take state or national standardized test.
<b>Tennessee:</b> <b>Individualized Education Account Program</b>	<b>Either:</b> <ol style="list-style-type: none"> <li>1. Identified as having a disability.</li> <li>2. Has an Individualized Education Program.</li> </ol>	Maximum award amount is equal to per pupil state and local funds required through the Basic Education Program and special need funding for IEP.	Nongovernmental school tuition, including postsecondary, therapy, tutoring, extracurricular services, textbooks and curriculum.  *Unused account funds eligible to convert to college savings account.  *Transportation fees included.	<ul style="list-style-type: none"> <li>• Department must conduct random audits. Services may be contracted.</li> <li>• Quarterly deposits to account.</li> </ul>	Students are required to take state or national standardized test.



Endnotes

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