



Education Savings Accounts

A Critical Analysis



Policy Brief

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Introduction

Education savings accounts (ESAs) have been variously hailed as both a “voucher on steroids”¹ and the “iPhone of the school choice movement.”² Unlike the iPhone, however, this “innovation” is neither widely adopted nor proven, and has the distinct potential to cause harm.

As of this writing, ESAs have been authorized in five states: Arizona, Florida, Nevada,* Tennessee, and Mississippi. Because the remaining programs were adopted more recently, there is little to no experience operating ESA programs beyond Arizona, which adopted the nation’s first ESA program in 2011. Consequently, there is little evidence to suggest ESAs represent an effective policy response to the challenge of creating quality educational choices for students.

Instead, what limited evidence does exist runs directly counter to proponents’ claims that ESAs will lead to customized education solutions that will provide superior educational opportunities for low-income families and students. The reality is ESAs systematically reduce the availability of financial resources to support education, provide a taxpayer-funded subsidy for unaccountable private schools and commercial vendors, and primarily benefit more affluent students and families, some of who would have attended private school without the subsidy.

Proponents of ESAs nonetheless seek to create a false sense of momentum around these programs and to cherry-pick very mixed evidence from other school voucher programs to make up for the lack of actual data or research on ESA programs.

This report seeks to: (1) provide policymakers with a comparative analysis of ESA programs in the small handful of states where they have been adopted to provide a better understanding of the structural elements of ESA programs to date; and (2) highlight significant policy concerns regarding ESAs and their potential adverse impact on students, public education, and efforts to create high-quality, accountable educational choices for students and families.



Education Savings Accounts (ESAs):

- Provide little or no transparency and zero effective accountability for educational programs and outcomes;
- Are not supported by any existing peer-reviewed research linking ESAs to improved academic outcomes for students despite selective misreading by proponents of other school voucher research;
- Adversely impact fairness in access to educational opportunity and fail to support economically disadvantaged students and families;
- Endanger the rights of students with disabilities; and
- Create heightened risk of fraud and abuse using taxpayer funds.

* Although the Nevada program has yet to be implemented as the funding mechanism was struck down by the Nevada Supreme Court (*Schwartz v. Lopez*, 132 Nev. Advance Opinion 73 (Nev. 2016)), we elected to include Nevada for purposes of this analysis because this model has been widely cited in policy and legislative discussions regarding ESA legislation.

Common Features of Education Savings Accounts

What is an ESA?

In its simplest terms, an ESA is a state-funded account established for qualifying students who elect to participate in the program instead of attending public school. Account funds can be used toward private school tuition or to pay for an array of products and services from private vendors that include virtual courses, tutoring, and curriculum materials.

Arizona authorized the first ESA program in the nation in 2011. Today, Arizona remains the only state with any significant experience operating an ESA program. Florida did not enact its version of the ESA program until 2014, and the remaining three states—Tennessee, Mississippi and Nevada—did not follow until 2015. Mississippi and Tennessee are only now beginning to implement their programs, and Nevada's program is on hold as of this writing following a ruling by the Nevada Supreme Court finding the funding mechanism for the program did not comply with state constitutional requirements.

Student Eligibility

Of currently authorized state ESA programs, the Nevada and Arizona programs have the broadest student eligibility while the Florida, Tennessee, and Mississippi programs are targeted to students with disabilities.

Arizona

Although Arizona's program began in 2011 as one targeted to students with disabilities, the Arizona legislature dramatically expanded eligibility in successive years to include:

- Children of active-duty military families (2012);
- Children in foster care or who have been adopted or placed with a permanent guardian (2012);
- Students attending a public school or district rated "D" or "F" under the state accountability system, or entering kindergarten and residing within the attendance boundary of such a school (2012);
- Siblings of eligible students (2014);
- Preschool children with special needs (2014);
- Students on Native American reservations (2015); and
- Students with parents who are legally blind, deaf or hearing-impaired (2016).

As this report was going to press, Arizona passed an additional expansion of its ESA program that was signed into law on April 7, 2017, that will phase in eligibility to make all Arizona students eligible to apply for an ESA, although enrollment is capped. The phase-in of eligibility under the recent expansion will operate as follows:

- 2017-2018 school year: children who currently attend or are eligible to attend a public school in a kindergarten program or grades 1, 6 or 9;
- 2018-2019 school year: children in grades 2, 7 or 10;
- 2019-2020 school year: children in grades 3, 8 or 11; and
- 2020-2021 school year: children in any of grades 4, 5 or 12.

In addition to the above requirements, a student must have attended an Arizona public school for at least 100 days of the prior fiscal year before to applying to the program. Excepted from the 100-day

attendance requirement are children entering kindergarten who satisfy one of the requirements above, children eligible for or attending a preschool for children with disabilities, children with disabilities eligible to receive funds from a non-profit School Tuition Organization (STO), and children who previously participated in the ESA program.

Arizona limits annual growth of the program to .5% of the prior year's total enrollment of district and charter school students (estimated at 5,500 students annually), although this cap expires in 2022. Enrollment will be capped at 2021-2022 levels (estimated at 30,000 students) in Fiscal Year 2023, although some advocacy groups in Arizona have already indicated their intent to seek repeal of the cap.³

Arizona's program has grown from 144 students in 2012 to 2,212 students in 2016 with estimated distributions of \$25.8 million for the most recent year.⁴ The Arizona Department of Education estimated 3,100 students enrolled in the ESA program at a cost of \$46 million in approved applications for FY 2017.⁵

Nevada

Nevada's ESA program, adopted in 2015, represents both the most recent and the most expansive ESA program in the nation. Nevada's "universal" ESA program is potentially applicable to any student between the ages of 5 and 18 residing in the state provided that the student has attended public school in the state for 100 consecutive days in the period immediately preceding application for an ESA account. Excepted from this requirement are children 5-7 years old and children of members of the military on active duty.

Other States

Eligibility for the remaining ESA programs in Mississippi, Tennessee, and Florida is targeted to students with disabilities. Generally, these ESA programs require: (1) a student be a resident of the state; (2) with a disability as defined in statute; and (3) have an Individualized Education Plan (IEP) in place. While most programs require an active IEP, Mississippi will accept an IEP that has been active within five years.⁶ Participation in Mississippi's program was limited to 500 students in the 2015-2016 school year with new enrollment limited to 500 additional students in each subsequent year. Of programs targeted to students with disabilities, only Tennessee has a prior public school attendance requirement of two semesters immediately prior to participating in the ESA program unless the student is entering kindergarten, moved to the state within the last six months, or previously participated in the program.

Funding

Funding for ESA programs is generally set at some percentage—often 90 percent—of a specified amount tied to the state's school finance system with the remainder going to pay for administrative expenses for the program and a small portion being retained in the general fund.

Florida

Florida sets the award amount at 90 percent of the per-student amount that the student would have generated for their local district under the formula taking into account grade, county of residence, and disability. Florida estimates average annual awards for its program at \$10,000.⁷

Arizona

Arizona initially used a funding approach similar to Florida's, but subsequently amended its statute to provide that students participating in the ESA program receive 90 percent of the base student amount multiplied by any applicable weights and additional assistance as if that student were attending a charter school. Arizona's awards for FY 2016 ranged from \$2,900 to \$31,500 per enrolled child with 40 percent of these awards at amounts of \$10,000 or greater.⁸

Beginning in 2017, Arizona's funding will be based on 90% of the funding that the student would have generated based on whether they previously attended a district or charter school, or the district the student would have attended if they are eligible for kindergarten. Low-income students, defined as children who are wards of the court or whose family income does not exceed 250% of the Federal Poverty Guidelines for that year, will receive 100% of the base level funding and additional assistance that the child would have generated at their prior school.

Tennessee

Tennessee's program awards an amount equal to 96 percent of the per-pupil state and local funds generated through the state's funding formula for public education for the district plus any special education funding the student would be entitled to receive under the IEP. The average anticipated award amount is \$6,300.⁹

Nevada

Nevada's yet-to-be-implemented ESA program would award 100 percent of the statewide average base amount per student (approximately \$5,700 according to the State Treasurer) to families earning less than 185 percent of the federal poverty level, with all other students eligible to receive 90 percent of that amount.¹⁰

Mississippi

Rather than utilizing a percentage of a formula-generated amount, Mississippi's ESA program specifies a maximum award amount of \$6,500, subject to annual adjustments in the base student cost. The annual award amount for 2016-2017 was \$6,637.¹¹

Eligible Uses

ESA programs are touted for the ability to use the state-funded amounts for not just private school tuition, but for a broader range of educational products and services provided by private schools, tutors, therapists, and vendors. A more detailed comparison of eligible uses for funds awarded under ESA programs can be found in the Appendix.

While there are some variations in eligible uses for the funds across ESA programs, all programs include:

- unrestricted tuition and fees at a private school or private virtual (online) school;
- textbooks and curricula or other instructional materials;
- tutors or tutoring services;
- fees for national norm-referenced tests, advanced placement exams, or college admissions exams; and
- therapies or other specialized services for students with disabilities.

Some states such as Tennessee, Mississippi, and Nevada allow funds to be used for transportation by a fee-for-service transportation provider with Nevada limiting such expenditures to \$750 per year. Arizona and Florida do not allow the use of ESA funds for transportation. The use of ESA funds for computer hardware is allowed by Nevada, Florida, Tennessee, and Mississippi, but not Arizona.

Florida and Tennessee allow a student to deposit unused ESA funds in a college savings account while Nevada and Mississippi do not. Arizona originally allowed ESA funds to be deposited in a college savings account, but recently repealed the provision in legislation adopted in April 2017.

Transparency, Oversight, and Accountability

Beyond prohibitions on outright fraud or failure to comply with program requirements, no existing ESA program requires any state accountability for educational outcomes under the program as is required for district or charter schools. Indeed, every existing ESA statute contains a provision explicitly disavowing any oversight or regulation of private schools.

As is discussed at greater length elsewhere in this report, only Nevada and Florida require any transparency on student performance on standardized assessments. No program contains any sanctions or ability to exclude a provider for poor performance.

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What protections ESA programs do have are much less extensive than the financial accountability and transparency required of public schools and are intended to address and prevent fraud in the program. These provisions generally include:

- A requirement for audits of ESA accounts;
- Prohibitions on refunding, rebating, or providing other financial benefits to parents;
- Authority to freeze or terminate parent ESA accounts for fraud or misuse; and
- Authority to exclude private schools or other vendors for fraud or failure to comply with administrative program requirements (none of which relate to poor quality academic programs or performance).

Experience to date shows that despite these statutory provisions, significant resources must be devoted to fraud detection and prevention even at relatively small scale.¹²

Administration

States have taken various approaches to program administration. In Mississippi and Tennessee, the program is administered by the state education agency. Both the state education agency and the state treasurer administer Arizona's program. Beginning in 2017-18, the state department of revenue will participate in the Arizona program as well. Nevada's program is administered solely by the state treasurer.

Florida is unique among ESA programs, however, in that eligibility determinations and administration of the program are provided not by the Florida Department of Education itself, but by private non-profit scholarship funding organizations (SFOs) approved by the department. Parents apply directly to the SFO.

Both Arizona and Tennessee issue debit cards to participating families and distribute funds to parent accounts. Nevada, Florida, and Mississippi reimburse parents for eligible expenses although parents can authorize direct payments to approved providers.

Fees for program administration ranging from three to six percent are deducted from the student award. Florida authorizes private SFOs to receive up to three percent of the award amount subject to a separate, specific appropriation. Nevada authorizes the state treasurer to retain not more than three percent of the award amount for program administration. Arizona and Tennessee both authorize four percent to be retained by the state department of education with an additional one percent in Arizona going to the state treasurer for program administration costs. Beginning in 2017, Arizona has authorized that an additional one percent of the student award be diverted to the State Department of Revenue for income verification. Mississippi authorizes its department of education to retain up to six percent for administrative costs.

Policy Issues

ESAs Provide Limited Data and Zero Accountability

While there are a variety of policy concerns regarding ESA programs, perhaps the most significant, and what sets them apart, is the widely varying transparency of results and an across-the-board lack of accountability for educational outcomes. Although the ability to expend taxpayer funds not just on private school tuition but on a wide array of educational products and services provided by private vendors is touted by its proponents as a virtue of ESA programs, this feature stymies efforts to determine whether these programs produce improved results for students.

To date, there is no existing peer-reviewed research linking ESAs to improved academic outcomes for students despite efforts by proponents to cherry-pick research findings from other school voucher research. In the absence of such data, proponents often point to parent satisfaction surveys or similar voluntary measures which are inherently flawed due to self-selection problems.

In fact, what evidence does exist offers much cause for concern and caution. In the absence of high-quality research on ESAs, voucher proponents fall back on a decidedly mixed body of research on vouchers generally. Yet a meta-analysis of “gold standard” research on school vouchers found U.S. results on academic performance that were so small or null so as to be practically indistinguishable from zero.¹³ Recent research on statewide voucher programs in Louisiana and Indiana is even more troubling, and in fact shows significant negative effects on student learning.¹⁴

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Part of the reason there is little research on the efficacy of ESA programs is that Arizona, the nation's earliest ESA program and the only one of any significant duration, was originally designed to produce no such data.

Arizona's existing ESA program lacks any requirement that participating students take a state assessment or national norm-referenced test or otherwise report on their academic progress. As a result, Arizona has provided taxpayers with zero public transparency or accountability for educational outcomes resulting from its expenditure of taxpayer dollars. Mississippi similarly lacks any requirement that students participating in the program undergo any testing or evaluation to gauge student progress effectively.¹⁵

Recently, Arizona made some very superficial changes to its testing requirements in order to win passage of a dramatic expansion of its ESA program, but these changes do very little to advance any real transparency or accountability for the program. Beginning in the 2017-2018 academic year, ESA students in grades 3 through 12 who pay tuition as a full-time student at a private school are required to be assessed in reading and math by taking a nationally norm-referenced exam, an Advanced Placement exam, the state assessment, or a college admissions exam. This requirement can be satisfied by taking an exam administered by the school or one selected by the parents and administered outside of school. Significantly, there is no public reporting of these results except for private schools enrolling fifty or more ESA students (a threshold which few, if any, private schools are likely to meet), thus eliminating any real transparency for the program. Private schools meeting the enrollment threshold can further evade transparent reporting due to a provision allowing a "network" of private schools to report aggregate results. There is no accountability mechanism for private schools based on student achievement.

Tennessee requires that a limited subset of students in grades three through eight take either the state assessment or a national norm-referenced test in mathematics and English language arts. However, guidance provided by the Tennessee Department of Education states, "[t]he TDOE will not compile, track, or publicly release student assessment results; student assessment results submitted to the TDOE will only be reviewed to verify that the student has taken the required assessments."¹⁶ Stated differently, Tennessee requires that a subset of eligible students be assessed but makes not even the pretense of reviewing the results or reporting on the outcomes for the benefit of the Tennessee taxpayers funding the program, or for parents considering enrolling in the program. Students in grades lower or higher than grades three through eight are not required to take any assessment.

Only Florida and Nevada's ESA programs contain any annual assessment requirement with public reporting of results.¹⁷ Florida's ESA program requires that private schools participating in the program annually administer to students participating in the scholarship program either the state assessment or an approved national norm-referenced test and submit the scores to a research institute at Florida State University. This same research institute provides third-party analysis of all of Florida's school choice programs. Although the Gardiner Scholarship was authorized in 2014, Florida has yet to release publicly any data or reports on the outcomes of student assessments as of this writing.

Nevada comes perhaps the closest to providing some transparency in its ESA program. Nevada requires that students participate in either the state assessment or a national norm-referenced test in mathematics and English language arts. The Nevada Department of Education is required to aggregate

the results by grade level, race, gender, and family income and make these results available on the Department's website. The Department is also required to report on high school graduation rates after three years.¹⁸ Even in Nevada, there are no recommended state accountability remedies or consequences as a result of student outcomes, and of course there are no evaluations from the Nevada program as it has yet to be implemented.

Accountability is further complicated by the fact that ESAs can be expended on a wide array of vendors beyond private schools rendering it virtually impossible to assess the impact of these expenditures on student outcomes. While there are provisions for excluding providers from ESA programs for outright fraud, there is no mechanism to assess or exclude these vendors for the failure to deliver measurable results for students.

In examining ESA programs, it is difficult not to be struck by the lack of any system of transparency and accountability comparable to that required for district and charter schools, both of which are subject to extensive academic and financial accountability requirements.

ESAs Fail to Support Economically Disadvantaged Students and Families

One of the rationales frequently advanced by proponents of ESAs is that they will provide economically disadvantaged students the same educational choices enjoyed by more affluent families. Given that premise, it seems incongruous that none of the existing ESA programs is means tested to target students in poverty. Nevada and Arizona (beginning in 2017-18) provide a differentiated benefit based on family income, but it is only marginally more than that provided to all other students eligible to participate in the program.

Indeed, many critics of ESA programs question whether they benefit students in poverty as the political rhetoric suggests, or if in fact they benefit more affluent families. The taxpayer-funded subsidy provided by ESAs falls far short of many private school tuitions, thus perhaps primarily benefiting families who can afford to supplement private school tuition with their own funds.

To date, we have identified no academic studies evaluating the equity effects of ESA programs. In the absence of such studies or any available public reporting from state entities, it has been left to investigative journalism to pursue the question, and the findings of these inquiries are troubling.

A 2016 analysis conducted by *The Arizona Republic* of Arizona's ESA program for the 2015-2016 academic year challenges claims by ESA proponents that such programs primarily benefit lower-income students wishing to leave poor-performing public schools.

The overall conclusion of the analysis was that "[t]wo years after state lawmakers granted children from poor-performing schools the right to attend private schools at taxpayer expense, most children using the

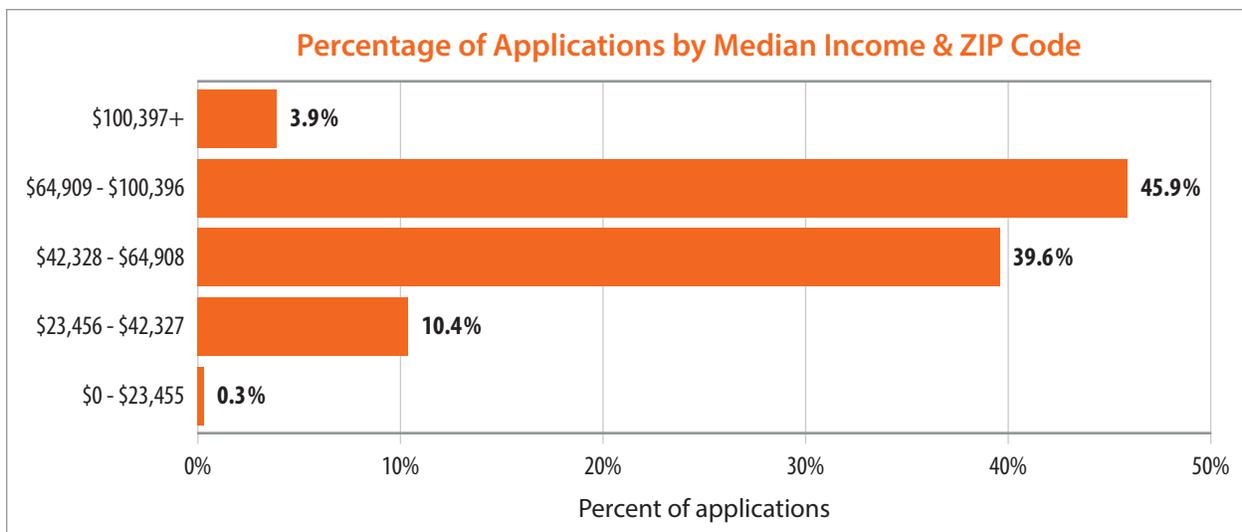
program are leaving high-performing public schools in wealthy districts...¹⁹ Other findings of the report include the following:

- *“The Republic found that during the 2015-16 school year, **the program accounted for \$20.6 million being taken out of public schools that were rated A or B. Only \$6.3 million was taken from schools rated C or D by the Arizona Department of Education, far less than the share of C and D schools statewide**” (emphasis supplied).*
- *“The Republic’s analysis shows it’s largely the parents of disabled and special-needs children from wealthy and high-performing schools using the ESAs to put their children into private schools, while parents of disabled children from poorer districts are not.”*
- The report additionally observed that **the ESA program had the effect of “penalizing the state’s better-performing public schools as ESA payments reduce their budgets” (emphasis supplied).**

In sum, the findings of the reporting cast doubt on ESAs as a policy response to low-performing schools and raise troubling questions regarding equity for economically disadvantaged students, especially economically disadvantaged students with disabilities who did not appear to be accessing the program. A spokesperson for the Arizona state education agency acknowledged the disparity, explaining, “If [the ESA] doesn’t cover everything, it would be up to you to pay the bill... The economic situation of a family will always factor in.” Other defenders of the program cited in the article did not challenge the findings but suggested that information about the program simply had not yet spread to less affluent areas.

The *Las Vegas Review-Journal* conducted an analysis of early applications to Nevada’s ESA program and reached similar conclusions. Using data from the State Treasurer, the *Review-Journal* found:

Overall, half of the nearly 3,100 applications submitted as of Oct. 28 list an address in a ZIP Code among the top 40 percent of median households in Nevada. That’s in contrast to just 10.7 percent of applications from households with median incomes in the bottom 40 percent.²⁰



Source: *The Las Vegas Review-Journal*

While some cautioned against relying too heavily on ZIP code data, one Nevada advocacy organization supportive of the ESA program stated:

“It’s what we expected...The ESA program ‘was not tailored to low-income parents. It was not tailored to parents with children in (low-performing) schools,’ she said. ‘With every program of this nature, it’s just the reality that affluent and high middle-income families are always in the best position to take advantage of government programs’” (emphasis supplied).

Despite their limitations, these analyses nonetheless raise serious questions regarding equity that should give pause to policymakers until either confirmed or disproved by peer-reviewed academic research.

ESAs Endanger the Rights of Students with Disabilities

Of the five existing ESA programs, three are specifically targeted to students with disabilities while a fourth (Arizona) began that way, and student eligibility was subsequently expanded. Indeed, limiting the initial legislation to students with disabilities to secure passage and then subsequently expanding eligibility to additional categories of students has been a conscious legislative strategy.* Not frequently discussed, however, is the impact ESA legislation has on the rights of students with disabilities.

In 2016, the Council of Parent Attorneys and Advocates issued a report detailing concerns regarding the impact of programs using public funding for private schools, including ESAs, on students with disabilities, including insufficient funding levels to provide options for any but the affluent and the lack of transparency and accountability for educational outcomes.²¹

Prominent among these concerns was that participation in a voucher program for students with disabilities resulted in the waiver of hard-won civil rights for students with disabilities. These rights include the right to be placed in the least restrictive environment, the right to a free and appropriate public education (FAPE), and due process protections provided under the Individuals with Disabilities Education Act (IDEA). The report notes that frequently parents are not aware of the full implications of program participation until it is too late.

“ Denying IDEA protections in the name of choice is actually a bar to compensatory services and a way for the state to skirt accountability for individual access to a free and appropriate public education. Under a voucher the protection may or may not be free (as many have to supplement the cost with personal funds), and no longer appropriate. ”
— Council of Parent Attorneys and Advocates (2016)

* Some proponents of ESAs have recommended targeting the policy to students with disabilities as a matter of political expediency. A consultant summarizing the results of state legislator focus groups conducted for EdChoice (formerly The Friedman Foundation) offered the following as one of her “key takeaways”:

ESA legislation that starts small, focused on special needs students, is a model that seems to work as it minimizes resistance. Legislators in states that don’t have ESAs think opening up the option to special needs students is the way to start. Those who have already done this are now looking for ways to widen the pool of eligible students. Parents of autistic children were seen as a strong potential network of support for ESA legislation. Activating and engaging the special needs parent networks in the states is a needed component – one that individual legislators can’t do.²²

Among existing ESA programs, most explicitly include language acknowledging that the parents and students are surrendering rights under IDEA, sometimes in the parent agreement signed to participate in the program. For example, information on Tennessee’s program provides, in relevant part:

By accepting the Individualized Education Account (IEA) funding and signing the IEA contract, account holders acknowledge the following:

- By joining the IEA Program, account holders are waiving **all the rights of the student to IDEA services**, the right to a public education, and the right for a Free and Appropriate Public Education (FAPE).
- The student’s **IEP will no longer be in effect**, and the public school district will **not** be required to provide any of the accommodations or services listed in the IEP.
- Participating schools are not required to provide special education services for the student.²³

Mississippi, Arizona, and Florida also specifically provide that a child either waives their rights entirely or is entitled to only the rights of a unilateral private school placement, which does not include the right to receive some or all of the special education services from the local school district. Nevada is silent on the rights of students with disabilities, but the effect is likely the same.

The COPAA report contained the following state policy recommendations intended to protect the rights of students with disabilities:

- Conduct studies to evaluate test scores, graduation and retention rates, harassment reports, and similar measures, both for students accepting vouchers and for those who remain in public schools.
- Protect the legal rights of children; including full alignment with the purpose and provisions of the IDEA, Section 504, the ADA and all other civil rights laws.
- Include reasonable costs for transportation or other services necessary to make the choice equitably available to all families.
- Retain the requirement that all schools accepting vouchers must ensure all students participate in statewide assessments, making all test results publicly available.
- Retain high standards for teacher qualifications as required by the State.
- Provide oversight and monitoring of participating private schools.
- Assure the same level of accountability of participating private schools as any other school.
- Provide tools and supports to parents and children for navigating the often complicated nuances of school choice and give special attention to 1) a student’s role in the school choice decision-making process, and 2) how best to educate families about their school choice options.

The key takeaway from the policy recommendations above is that the majority of them reflect services, legal protections, and trained personnel that public schools are already required to provide and that private schools generally do not provide. Without requiring such protections, ESAs have the potential to significantly reduce rights and protections for these students and families.

ESAs Create Heightened Risk for Fraud and Abuse Using Taxpayer Funds

By extending eligibility to receive state funding not just to private schools but a wide array of private vendors, ESA programs dramatically increase the opportunities and risk for fraud or misspending, particularly as these programs scale.

Instead of a direct payment from the state to an entity with publicly audited books and clear financial reporting and accountability requirements, ESA programs distribute public funds to parents either through a debit card or reimbursement system and parents in turn further distribute these funds to both private schools and to other private vendors. State auditors in Arizona and Florida, the states with the longest standing ESA programs, have documented in reports that the potential for fraud and misspending multiplies at each step in this process.

A June 2016 report²⁴ of a performance audit of the Arizona Department of Education's administration of the Empowerment Scholarship Accounts program conducted by the Arizona Auditor General is illustrative of the fraud risk created by ESA programs. During the six-month period between August 2015 and January 2016, the Department identified \$102,602 in fraud, misspending, or unverifiable expenditures.

While crediting the Department for identifying some abuse, the report documents numerous instances of misspending including:

- Spending of program funds by parents of 25 students identified as being enrolled in public school in violation of program requirements;
- Parents purchasing "more than \$3,600 of books and curriculum materials from a bookstore using program debit cards, then return[ing] the items for store gift cards," and subsequently using the gift cards to purchase toys and other non-educational items in November 2011. This fraud was only identified because the store became suspicious and reported the activity;
- The use of a program debit card to spend more than \$300 at a grocery store and to pay \$178 to a telecommunications company;
- Instances of parents using third-party payment services such as PayPal and Square (which accounted for \$3 million of the \$15 million spent in FY 2015) to pay \$1,200 to a PayPal account registered to a merchant who appeared to be a tutor, or to pay \$3,500 to another PayPal account that did not indicate the type of merchant with the parent submitting no appropriate supporting documentation and not responding to requests for additional information as of March 2016;
- Parents with children enrolled in the program benefiting financially from the program by receiving tuition payments for their child and others at private schools they operated, including one parent operating a private school that received more than \$330,000 in payments; and
- Children receiving program funds while simultaneously benefiting from funds provided by school tuition organizations (STOs) in violation of program requirements.

One of the key findings of the audit was that "[t]he Department of Education should take steps to strengthen its oversight of spending in the Empowerment Scholarships Account programs..." While noting that the Department had established some processes and identified some instances of misspending, the Auditor General found that "program monies are susceptible to loss and abuse and the Department should further strengthen its efforts to safeguard these monies."

Weaknesses and deficiencies identified by the audit include:

- Allowing some parents to misspend funds and remain in the program while removing other parents from the program for misspending;
- Not taking action against parents who attempted to misspend program funds but were unsuccessful (noting that as of August 2015, 150 children remained in the program whose parents had attempted to withdraw cash using the program debit card);
- Not consistently forwarding parents who misspent program funds to the Attorney General for fraud investigations or collections; and
- Recovering only a small portion of misspent funds (recovering only \$14,500 of the \$102,602 identified as having been misspent between August 2015 and January 2016, and only \$230 of the \$10,000 referred to the Attorney General).

A more recent report by the *Arizona Republic* based on a review of data provided by the Arizona Department of Education regarding spending under the ESA program found, “[t]he Education Department’s tracking of money distributed to private schools, as revealed in data provided to *The Arizona Republic* and *azcentral.com* last week, is opaque, incomplete and riddled with errors,” noting that it was difficult to identify how many students were enrolled at a given school or how much funding the school had received.²⁵

The extent of the difficulties identified in Arizona with maintaining program integrity at a relatively small scale of 2,212 participating students suggests the challenges facing scaled-up programs, while maintaining appropriate oversight and accountability for the expenditure of taxpayer funds, are likely much higher.

Florida, which delegates responsibility for program eligibility and administration almost entirely to third-party non-profit SFOs encountered similar difficulties with verification of program eligibility and recoupment of misspent funds issued by an SFO to students participating in the Gardiner Scholarship (formerly Personalized Learning Savings Account) program.

In May 2016, Florida’s chief financial officer issued a report on contracts administered by the Florida Department of Education, including the administration of the Gardiner Scholarship, that found that 114 students received program funds despite being ineligible because they were also enrolled in public school.²⁶ The *Miami Herald Tribune* summarized the findings of the report, in relevant part, as follows:

Step Up for Students, a Jacksonville-based organization that disburses the scholarships under a \$46.4 million contract with the state, was forced to return most of the \$1.2 million it had already doled out to those 114 students, but the state didn’t recoup all of the dollars.

Step Up told the state that \$137,100 of the money had already been spent, the audit found. Auditors noted, however, that the organization did not provide supporting documentation for those expenditures so “the Department has no way to verify that the students were ever eligible for the program and that the amount of the refund was correct.”²⁸

While experience with ESA programs remains fairly limited, program audits in Arizona and to a lesser extent Florida suggest cause for concern about the potential for fraud and misspending of taxpayer funds in these programs.

Conclusion

Through the efforts of policymakers, Texas has made great strides in offering a range of high-quality options to students and families that are publicly funded, transparent, and fully accountable for student outcomes in both district and public charter schools. The current debate over ESAs should bring into sharp relief the question of whether legislators wish to provide more choices for Texas students and families or more *high-quality* choices.

If the policy objective is to provide more high-quality educational choices, there is little to suggest that ESAs are the appropriate vehicle to do so. Indeed, the glaring lack of accountability for student outcomes and raises the distinct possibility that ESAs will reward the best marketers rather than the best educators.

Indeed, the glaring lack of accountability for student outcomes raises the distinct possibility that ESAs will reward the best marketers rather than the best educators.

The limited available evidence to date suggests that despite lofty claims ESAs may divert taxpayer funds to private schools and vendors to the detriment of economically disadvantaged students. Nor do ESAs hold out much hope for families frustrated with the difficulties of securing needed services for students with disabilities if they are financially unable to further subsidize the cost of their child's education. The cost issue is compounded by the potential requirement to waive their child's legal protections. Throw in greatly multiplied risks for fraud subsidized by taxpayer funds and ESAs start to look less like a solution and more like a disaster for students, families, and taxpayers.

APPENDIX: Comparison of State ESA Programs

Arizona (2011): Empowerment Scholarship Account

| Student Eligibility | Funding | Eligible Uses | Administration & Oversight |
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| <p>(2011) Students with disabilities (2012) Children of military families (2012) Children in foster care (2012) Students attending “D” or “F” school (2013) Students entering kindergarten (2014) Siblings of eligible students (2014) Preschool children with special needs (2015) Students on Native American reservations (2016) Students with parents who are legally blind, deaf or hearing-impaired</p> <p>Beginning in 2017-2018, phase-in of universal eligibility on the following timeline:</p> <ul style="list-style-type: none"> – 2017-2018: children who currently attend or are eligible to attend a public school in a kindergarten program or any of grades 1, 6 and 9; – 2018-2019: children in any of grades 2, 7 and 10; – 2019-2020: children in any of grades 3, 8 and 11; and – 2020-2021: children in any of grades 4, 5 and 12. <p>– 100 day public school attendance requirement except: children entering kindergarten who satisfy one of the requirements above, children eligible for or attending a preschool for children with disabilities, children with disabilities eligible to receive funds from a STO and children who previously participated in the ESA program</p> <p>– Capped at .5% of prior year enrollment of district and charter school students until 2022; total enrollment capped at 2021-2022 levels</p> <p>– ESA students can be effectively homeschooled, although they do not file an Affidavit of Intent to Homeschool</p> | <ul style="list-style-type: none"> – Receive 90 % of the base student amount multiplied by any applicable weights and additional assistance as if that student were attending a charter school – Arizona’s awards for FY 2016 ranged from \$2,900 to \$31,500 per enrolled child with 40 % of these awards at amounts of \$10,000 or greater – Beginning in 2017, 90% of the funding that the student would have generated based on whether they previously attended a district or charter school, or the district the student would have attended if they are eligible for kindergarten; Low-income students (wards of the court or family income ≤ 250% of the Federal Poverty Guidelines for that year), will receive 100% of the base level funding and additional assistance that the child would have generated at their prior school | <ul style="list-style-type: none"> – Tuition or fees at a private school or private online learning program – Curriculum for core and extra-curricular subjects – Fees for national standardized tests – Tutoring – Students with an Individualized Education Plan (IEP) or MET Evaluation Report may additionally use funds for educational therapies or services or assistive devices – Funds may not be used for computer hardware, transportation or consumable education supplies | <p>Administering agency: State education agency and state treasurer</p> <p>Administrative costs: 4% of student award to state education agency, 1% of student award to state treasurer; 1% to State Department of Revenue</p> <p>Payment Model: Debit card; monthly distribution</p> <p>Testing: None until 2017-2018 academic year. ESA students in grades 3- 12 enrolled full-time at a private school required to be assessed annually in reading and math through a national norm- referenced exam, Advanced Placement exam, state assessment or college admissions exam. No public reporting of results except for private schools enrolling 50 or more ESA students. Network of private schools can publish aggregate results rather than campus level reporting.</p> <p>State Accountability: NONE</p> <p>Fraud & Abuse: Random & annual audits; Suspension or termination of account for failure to comply with program requirements, misuse of funds or fraud</p> |

Nevada (2015): Education Savings Account

| Student Eligibility | Funding | Eligible Uses | Administration & Oversight |
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| <p>Any resident student between 5 and 18 years of age attending Nevada public school for 100 consecutive days prior to application</p> <p>–Excepted from this requirement are children of military families and children between 5-7 years of age</p> <p>–“Opt-in students” eligible (essentially homeschooled students agreeing to annual testing requirement)</p> | <p>– Students with family income <185% of federal poverty level receive 100% of statewide average base amount per student (approximately \$5,700)</p> <p>– Students with family income > 185% of FPL receive 90% of statewide average base amount per student</p> | <p>– Tuition, fees, and required textbooks for a private school or other eligible institution</p> <p>– Tutoring or other teaching services provided by a tutor or tutoring service</p> <p>– Tuition or fees for a distance learning program</p> <p>– Fees for national norm-referenced exams, AP exams, or college admission tests</p> <p>– Special instruction or special services for students with a disability</p> <p>– Fees for management of the ESA account</p> <p>– Transportation costs not to exceed \$750 per school year</p> | <p>Administering entity: State treasurer</p> <p>Administrative costs: not more than 3% of student award</p> <p>Payment Model: Reimbursement model; can authorize direct payment to private school or vendor; quarterly distribution to account</p> <p>Testing: State or national norm-referenced test in Math/English language arts Department of Education required to report aggregate results by grade level, race, gender, and family income; report on high school graduation rates after three years.</p> <p>State Accountability: NONE</p> <p>Fraud & Abuse:</p> <ul style="list-style-type: none"> – Random audit of 10% of accounts; will audit all accounts of 5% or more of the audited accounts reveal failure to comply with the agreement or “substantial misuse” of the funds – Freeze or dissolve the account for “substantial misuse” – Exclude a participating entity that has “routinely failed” to comply with the statute or has failed to deliver educational services |

Florida (2014): Gardiner Scholarship

| Student Eligibility | Funding | Eligible Uses | Administration & Oversight |
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| <p>Must meet all of the following criteria:</p> <ul style="list-style-type: none"> – State resident; – Eligible to enroll in K-12 public school or will be 3 or 4 years old before September 1; – Has a disability as defined below: Autism spectrum disorder, cerebral palsy, Down syndrome, an intellectual disability, Phelan-McDermid syndrome, Prader-Willi syndrome, spina bifida, muscular dystrophy, Williams syndrome or a high-risk child with developmental delays; and – Is the subject of an IEP or has received a diagnosis of a disability from a physician or psychologist <p>(Homeschooled students eligible)</p> | <p>90% of the per student amount that the student would have generated for their local district under the formula taking into account grade, county of residence and disability</p> <p>Average annual award: \$10,000</p> | <ul style="list-style-type: none"> – Instructional materials, including digital devices, digital periphery devices, and assistive technology devices that allow a student to access instruction or instructional content and training on the use of and maintenance agreements for these devices – Curriculum – Specialized services by approved providers – Enrollment in, or tuition or fees associated with enrollment in, a home education program, private school, postsecondary educational institution private tutoring program, private virtual school, the Florida Virtual School as a private paying student, or an approved online course – Fees for nationally standardized, norm-referenced tests, AP exams, industry certification examinations, assessments related to postsecondary education, or other assessments – Contributions college savings plan – Contracted services provided by a public school or school district, including classes; – Tuition and fees for part-time tutoring services – Fees for specialized summer education programs or after-school education programs – Transition services provided by job coaches – Fees for an annual evaluation of educational progress by a state-certified teacher, if this option is chosen for a home education student – Tuition and fees associated with programs offered by Voluntary Prekindergarten Education Program providers | <p>Administering entity: Private non-profit scholarship funding organizations (SFOs)</p> <p>Administrative costs: not more than 3% of student award subject to separate specific appropriation</p> <p>Payment Model: Reimbursement model</p> <p>Testing: state assessment or approved norm-referenced test</p> <p>Results reported to third-party research institute at Florida State University</p> <p>State Accountability: NONE</p> <p>Fraud & Abuse:</p> <ul style="list-style-type: none"> – Prohibits rebates, refunds or otherwise sharing ESA proceeds with the parent or student – Terminate student’s participation in the program for failure to comply with program requirements – Suspend or revoke the participation of a private school or vendor for violations |

Tennessee (2015): Individualized Education Account

| Student Eligibility | Funding | Eligible Uses | Administration & Oversight |
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| <p>An “eligible student” must be a Tennessee resident who meets all of the following criteria:</p> <ul style="list-style-type: none"> – Has an active individualized education program (IEP) in effect at the time of request for participation in the program; – Has one of the following disabilities identified in their IEP as their primary or secondary disability: autism, deaf-blindness, hearing impairments, intellectual disability, orthopedic impairments, traumatic brain injury, and/or visual impairments; and – Attended Tennessee public school for two semesters immediately preceding receiving IEA, unless entering kindergarten, moved to Tennessee within 6 months, or previously received IEA <p>(Homeschooled students eligible)</p> | <p>96% of the amount representing the per-pupil state and local funds generated and required through the state’s funding formula for public education for the district plus any special education funding that the student would be entitled to receive under the IEP</p> <p>Average annual award: \$6,300</p> | <ul style="list-style-type: none"> – Tuition, fees or textbooks at private school – Tutoring services provided by a tutor accredited by a state, regional, or national accrediting organization – Purchase of curriculum, including any supplemental materials required by the curriculum – Fees for transportation paid to a fee-for-service transportation provider – Tuition or fees for a private online learning program or course – Fees for nationally standardized norm-referenced achievement tests, AP examinations, or any examinations related to college or university admission – Contributions to a Coverdell education savings account – Educational therapies or services for from a licensed or accredited practitioner or provider, including licensed or accredited paraprofessionals or educational aides – Services provided under a contract with a public school, including individual classes and extracurricular programs – Tuition, fees or textbooks at an eligible postsecondary institution – Fees for the management of the IEA by private financial management firms – Computer hardware or other technological devices approved by the department or a physician, if the computer hardware or other technological device is used for the student’s educational needs – Contributions to ABLE account | <p>Administering entity: State education agency</p> <p>Administrative costs: 4% of student award</p> <p>Payment Model: Debit card; quarterly distribution</p> <p>Testing: Students in grades 3-8 must take national norm-referenced assessment or state assessment in Math and English language arts</p> <p>Agency verifies only that student has taken assessment; does not compile, track or report results</p> <p>State Accountability: NONE</p> <p>Fraud & Abuse:</p> <ul style="list-style-type: none"> – Random, quarterly and annual reviews of student accounts – Freeze or terminate account for failure to comply with program requirements, fraud or misuse of funds – Family member, including a step parent or member of the student’s household, may not derive a financial benefit from the program or provide a professional recommendation or approval for a service or the use of computer hardware or another technological device for the student – Participating schools and providers prohibited from refunding, sharing or rebating funds to a parent or participating student – May require a private school to submit a financial audit prepared by a Certified Public Accountant – Participating school or provider may be suspended or terminated from the program for the failure to comply with any requirements, rules or procedures |

Mississippi (2015): Education Scholarship Account

| Student Eligibility | Funding | Eligible Uses | Administration & Oversight |
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| <ul style="list-style-type: none"> – Resident of Mississippi; and – Student has had an active IEP within the last 5 years – Participation limited to 500 students in the 2015-2016 school year with new enrollment limited to 500 additional students in each subsequent year <p>(Homeschooled students not eligible)</p> | <p>Maximum award amount of \$6,500 subject to annual adjustment in base student amount (\$6,637 in 2016-17)</p> | <ul style="list-style-type: none"> – Tuition and/or fees at private school – Textbooks – Payment to a tutor – Purchase of curriculum, including supplementary materials required by curriculum – Fees for transportation paid to a fee-for-service transportation provider – Tuition and/or fees for online learning programs or courses – Fees for: nationally standardized norm-referenced achievement tests, Advanced Placement examinations, and any examinations related to college admission – Educational services or therapies from a licensed or certified practitioner or provider, including licensed or certified paraprofessionals or educational aides – Services provided by a public school, including individual classes and extracurricular programs – Tuition, fees, and textbooks at a postsecondary institution – Surety bond payments if required by MDE – No more than \$50 in annual consumable school supplies – Computer hardware and software and other technological devices if an eligible school, licensed or certified tutor, licensed or certified educational service practitioner or provider, or licensed medical professional verifies in writing that these items are essential for the student to meet annual, measurable goals | <p>Administering entity: State education agency</p> <p>Administrative costs: Up to 6% of student award</p> <p>Payment Model: Quarterly reimbursement; can authorize direct payment to private school or vendor</p> <p>Testing: NONE</p> <p>State Accountability: NONE</p> <p>Fraud & Abuse: Participating students, or anyone acting on their behalf, may NOT receive cash or cash equivalent items (gift cards, store credit, refunds, rebates, etc.) from any services or products paid for with ESA funds</p> |

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