

# The Education Savings Account Act

## *Summary*

The Education Savings Account Act allows parents to use the funds that would have been allocated to their child at their resident school district for an education program of the parents' choosing.

## *Model Legislation*

### **Section 1. {Title.} The Education Savings Account Act**

### **Section 2. {Definitions.}**

(A) "Program" means The Education Savings Account program created in this subchapter.

(B) "Eligible student" means either:

A child is eligible to participate in the program if they are an elementary or secondary student who is a resident of this state and is otherwise eligible to attend a public school. Once a student receives a scholarship under this program, the student will remain eligible (regardless of household income) until the student graduates high school or reaches 21 years. [Priority access should be given to siblings of students already enrolled in the program and low-income students (who are members of a household whose total annual income does not exceed 200% of the amount to qualify for free or reduced priced lunch).]

(C) "Parent" means a resident of this state who is a parent, guardian, custodian, or other person with the authority to act on behalf of the child.

(D) "Agency" means the state agency charged with oversight of the implementation of this Act.

(E) "Administrator" means an organization registered by the Secretary of State to do business in X (state) and designated by the Agency to handle implementation of this act.

(F) "Resident school district" means the public school district in which the student resides.

(G) “Participating school” means any private school that provides education to elementary and/or secondary students and has notified the Administrator of its intention to participate in the program and comply with the program’s requirements.<sup>[iii]</sup>

(H) “ESA Home Education Program” means a program of educational instruction of a student as directed by his or her parents or guardians that meets the attendance requirements of (relevant statute). Participants in the Personalized Home Education Program shall be provided the same flexibility and opportunities as provided in (relevant home education statute(s)/ sections).<sup>[iv]</sup>

(I) “Private tutoring” means qualified tutoring services approved to receive payment under this Act.

(J) “Education service provider” means a person or organization approved to provide qualified education services and is not a participating school.

(K) “Eligible postsecondary institution” means a community college, an accredited university or an accredited private postsecondary institution.

### **Section 3. {Basic Elements of The Education Savings Account Act.}**

(A) The state shall deposit into an Education Savings Account the dollar amount the resident school district would have received to serve and educate the eligible student from state and local sources had the student enrolled there. A participating student shall be counted in the enrollment figures for his or her resident school district. The funds needed for a scholarship shall be subtracted from the state school aid payable to the student’s resident school district.<sup>iv</sup>

(B) Any parent of an eligible student shall qualify for the state to make a grant to their child’s education savings account if the parents sign an agreement promising:

- (1) To provide an education for the eligible student in at least the subjects of reading, grammar, mathematics, social studies, and science;
- (2) Not to enroll their eligible student in a district or charter school.
- (3) Use Program Funds solely for qualified expenses outlined in this article.
- (4) To comply with the requirements outlined in this article and any accompanying rules.
- (5) If the participating student is a child with a disability, to acknowledge that they have received information from the Agency and understand that participation in this

program qualifies as a parental placement of their child under 20 U.S.C. § 1412(a)(10)(A) of the Individuals with Disabilities Education Act (IDEA).

- (6) To notify the Agency if their student terminates participation in the program and enrolls in a district or charter school.

(C) Parents participating in the Education Savings Account program shall agree to use the funds deposited in their eligible student's accounts for the following qualifying expenses to educate the eligible student:

- (1) Tuition and fees at a participating school.
- (2) Textbooks required by a participating school.
- (3) Payment to an approved tutor or other educational service provider.
- (4) Payment for purchase of curriculum.
- (5) Tuition or fees for a non-public online learning program.
- (6) Fees for national norm-referenced examinations, Advanced Placement examinations or similar courses, and any examinations related to college or university admission.
- (7) Annual contributions to the eligible student's qualified tuition program established pursuant to 26 USC Section 530 or 11 USC Section 529.
- (8) Computer hardware, software, or other technological devices that are used solely for a student's educational needs and approved by the Agency or licensed physician; provided that that hardware purchased with ESA Funds shall not be resold within 1 year of purchase.
- (9) Reasonable fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider.
- (10) Tuition and fees at an eligible postsecondary institution.
- (11) Textbooks required for college or university courses.
- (12) Fees for account management by private financial management firms approved by the Department.
- (13) Other educational expenses approved by the Agency.

(D) A participating school, private tutor, eligible postsecondary institution or other education service provider may not refund, rebate, or share a student's grant with a parent or the student in any manner. The funds in an Education Saving Account may only be used for educational purposes.

(E) Parents will be allowed to make payments for the costs of educational programs and services not covered by the funds in their accounts.

(F) A participating student shall be counted in the enrollment figures for his or her resident school district for the purposes of calculating state aid to the resident school district. The funds needed for a grant to an Education Savings Account shall be subtracted from the state school aid payable to the student's resident school district.

(G) Funds not expended over the course of an entire school year are eligible to roll over to the following year. If a parent removes a child from the program before the end of the school year, any remaining funds from that school year shall return to the state and be allocated to fund other accounts.

(H) Funds deposited in an ESA do not constitute taxable income to the Parent or the ESA Student.

#### **Section 4. {Administration of the Education Savings Account Act.}**

(A) The Agency <sup>[v]</sup> will qualify private financial management firms to manage Education Savings Accounts.

(B) The Agency shall conduct or contract for the auditing of accounts, and will at a minimum conduct random audits of accounts on an annual basis. The Agency will have the authority to make any parent of an eligible student ineligible for the Education Savings Account program in the event of substantial misuse of the funds in the account.

(C) The Agency shall refer cases of substantial misuse of funds to law enforcement for investigation if evidence of fraudulent use of an account is obtained.

(D) The Administrator shall provide parents of participating students with a written explanation of the allowable uses of education savings accounts, the responsibilities of parents and the duties of the Administrator.

(E) The Agency may deduct an amount from the grants to education savings accounts to cover the costs of overseeing the accounts and administering the program up to a limit of 3

percent.

(F) The Agency shall establish reasonable fees for private financial management firms participating in the program based upon market rates.

(G) The Agency shall make payments to eligible students' Education Savings Accounts on a quarterly basis.

### **Section 5. {Accountability Standards for Participating Schools.}**

(A) Administrative Accountability Standards. To ensure that students are treated fairly and kept safe, all participating private schools shall:

(1) Comply with all health and safety laws or codes that apply to private schools;

(2) Hold a valid occupancy permit if required by their municipality;

(3) Certify that they comply with the nondiscrimination policies set forth in 42 USC 1981;<sup>[vi]</sup> and

(4) Conduct criminal background checks on employees. The participating school then shall:

(a) Exclude from employment any people not permitted by state law to work in a private school; and

(b) Exclude from employment any people that might reasonably pose a threat to the safety of students.<sup>[vii]</sup>

(B) Financial Accountability Standards. To ensure that funds are spent appropriately, all participating schools shall:

(1) Provide parents with a receipt for all qualifying expenses at the school.

(2) Demonstrate their financial viability by showing they can repay any funds that might be provided from Education Savings Accounts, if they are to receive \$50,000 or more during the school year, by:

(a) Filing with the Administrator prior to the start of the school year a surety bond payable to the state in an amount equal to the aggregate amount of the funds from Education Savings Accounts expected to be paid during the school year from students admitted at the participating school; or

(b) Filing with the Administrator prior to the start of the school year financial information that demonstrates the school has the ability to pay an aggregate amount equal to the amount of the funds from Education Savings Accounts expected to be paid during the school year to students admitted to the participating school.<sup>[viii]</sup>

(C) Academic Accountability Standards. In order to allow parents and taxpayers to measure the achievements of the program:

(1) Parents shall ensure that:<sup>[ix]</sup>

(a) Each year their eligible student takes either the state achievement tests or nationally norm-referenced tests that measure learning gains in math and language arts, and provide for value-added assessment; If a parent selects the state achievement test, the state will cover all associated costs and materials;

(b) The results of these tests are provided to the state or an organization chosen by the state on an annual basis,<sup>[x]</sup>

(c) The student information is reported in a way that would allow the state to aggregate data by grade level, gender, family income level, and race; and

(d) The state or an organization chosen by the state will be informed of the eligible student's graduation from high school.

(2) The state or an organization chosen by the state shall:

(a) Ensure compliance with all student privacy laws;

(b) Collect all test results;

(c) Provide the test results, associated learning gains and graduation rates to the public via a state Web site after the third year of test and graduation-related data collection.<sup>[xi]</sup> The findings shall be aggregated by the students' grade level, gender, family income level, number of years of participation in the scholarship program, and race;<sup>[xiii]</sup>

(d) Provide rates for high school graduation, college attendance and college graduation for participating students to the public via a state Web site after the third year of test and test-related data collection; and

(e) Administer an annual parental satisfaction survey that shall ask parents of students receiving education savings accounts to express:

(1) Their satisfaction with the program; and

(2) Their opinions on other topics, items, or issues that the state finds would elicit information about the effectiveness of The Education Savings Account Program and the number of years their child has participated in the program.

(D) Participating School Autonomy. A participating private school or other education service provider is autonomous and not an agent of the state or federal government and therefore:

(1) The Agency may not in any way regulate the educational program of a participating private school or education service provider that accepts funds from an education savings account;

(2) The creation of The Education Savings Account Program does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of private schools or education service providers beyond those necessary to enforce the requirements of the program; and

(3) Participating private schools and education service providers shall be given the maximum freedom to provide for the educational needs of their students without governmental control.

**Section 6. {Responsibilities of the Agency and Administrator.}**

(A) The Administrator shall ensure that eligible students and their parents are informed annually of which schools will be participating in the Education Savings Account Program. Special attention shall be paid to ensuring that lower-income families are made aware of the program and their

options.



- (B) The Administrator shall create a standard form that parents of eligible students can submit to establish their student’s eligibility for the Education Savings Account Program. The Administrator shall ensure that the application is readily available to interested families through various sources, including the Internet.
- (C) The Administrator shall accept applications on a year-round basis and shall approve applications in a reasonable timeframe.
- (D) The Administrator shall execute a multimedia marketing program targeting eligible families, and especially those below the state’s median household income, informing them about the program and how to apply.
- (E) The Administrator shall establish web and phone-based support system that provides parents with program application support and ongoing account maintenance support.
- (F) The Agency may bar a participating school or education service provider from the Education Savings Account Program if the Agency establishes that the participating school or education provider has:
  - a. Routinely failed to comply with the accountability standards established in Section 5;<sup>[xii]</sup> or
  - b. Failed to provide the eligible student with the educational services funded by the Education Savings Account.
- (G) If the Agency decides to bar a participating school or education provider from the program, it shall notify eligible students and their parents of this decision as quickly as possible.
- (H) The Agency shall adopt rules and procedures as necessary for the administration of the Education Savings Account Program.

**Section 7. {Responsibilities of Resident School Districts.}**

(A) The resident school district shall provide a participating school or education provider that has admitted an eligible student under this program with a complete copy of the student’s school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

(B) The resident school district shall provide transportation for an eligible student to and from

the participating school or education provider under the same conditions as the resident school district is required to provide transportation for other resident students to private schools as per current law. The resident school district will qualify for state transportation aid for each student so transported.

**Section 8. {Effective Date.}** The Education Savings Account Program will be in effect beginning with the fall semester of the next school year.

---

## Endnotes

[i] The definition for an eligible student in this model legislation includes all children of school age. The authors believe that all children should receive public support for their education regardless of whether they attend a public or private school, whether they are just starting school, or have already dropped out. Please note that this inclusive definition will significantly increase the number of students in your state receiving public support for their education and thereby either increase the costs to taxpayers or reduce the level of assistance available to support each student. Legislators wishing to draft a bill that saves money will want to limit eligibility largely to students who attended a public school in the semester prior to first receiving a grant to their Education Savings Account. Because many of the grants to Education Savings Accounts will be less than what the state would have spent on the student's behalf at their public school of residence, the state will achieve a savings that would make it possible to extend these accounts to additional students including children who are attending school in the state for the first time (such as kindergartners and new residents) or existing private school students in the "school entry grades" of kindergarten and ninth grade. The draft bill assumes there will be no cap on enrollment or funding. If either type of cap were to be applied, we recommend creating priority status for siblings and children from families eligible for the free and reduced price lunch program.

[ii] This bill designates the Department of Public Instruction as the agency regulating the Education Savings Account Act. The intent was to name the existing agency in the state that is responsible for public school finances and private school regulation. Alternatively, legislators may choose to consider other capable departments, create a new small agency, or contract with a private nonprofit organization to oversee the program if they are concerned about the hostility the program would face from the existing state education department.

[iii] This model legislation allows students to use the funds in their Education Savings Account to attend a private school. The authors support giving parents the widest possible array of choices so that they can choose the education that best meets their child's needs. In states without open enrollment programs (public school choice), legislators may also want to include public schools outside of the student's resident school district in the definition of participating school. This would give students the ability to use the funds in their Education Savings Account to pay for nonresident tuition at a public school outside their district of residence.

[iv] In many states, home school associations often prefer an ESA policy structure that separates out traditional home education students from families that choose to participate in the ESA program for the purpose of home education. As students that use the ESA are often subject to more requirements than traditional home school students (testing, reporting, etc.), home school advocates prefer that the ESA law create a new legal category for ESA home

education students so as to not (intentionally or unintentionally) create the possibility for additional regulations or requirements for traditional home education students (who do not participate in the ESA program). Lawmakers may choose to differentiate requirements or not between ESA Home Education Students and Students in the main ESA program (who are enrolled in a traditional private school).

[v] Like in Endnote 2, if legislators are concerned about the hostility the program would face from the existing Department of Public Instruction, they may choose to consider other capable departments, create a new small agency or contract with a private nonprofit organization to administer the program.

[vi] Under 42 USC 1981, private schools are already prohibited from discriminating with respect to race, color and national origin. In addition, if private schools are recipients of federal funds, they are subject to nondiscrimination requirements under 42 USC 2000d (race, color, national origin) and 29 USC 794 (disability). If you choose to include language banning discrimination in hiring on the basis of race, color, national origin, or disability, take care not to interfere with the ability of religious institutions to hire individuals who share their religious beliefs.

[vii] The model legislation provides schools with the tools they need to ensure that students will be safe. The schools are required to conduct criminal background checks on existing and potential employees, and then they are given the flexibility to determine from this information whether the employee might pose a risk to students. This language is valuable in two cases: 1) a small number of states prohibit discriminating against felons in hiring even for sensitive positions in schools, and this language would give schools clear authority to dismiss or not hire individual who pose a risk to student safety; and 2) some religious schools see rehabilitation as part of their mission. In this case, the schools could hire someone with a criminal background who they believe is no longer a threat to students, such as someone who committed nonviolent crimes or has decades-old violations followed by a clean record. This language would give schools the responsibility to do background checks and the power to exclude potential risks from the school.

[viii] The model legislation provides two methods for schools to demonstrate financial viability to ensure that funds from Education Savings Accounts are secure. The first method employs a market-based means of demonstrating viability. Private companies that issue surety bonds have a financial interest in making sure that the schools can repay any funds that might be owed the parents. They will therefore conduct the checks necessary to protect their financial interest as well as the interests of the parents and the taxpayers. Surety bonds can be expensive (one to three percent of the amount covered) or invasive for some institutions, so the legislation allows schools to demonstrate by some other means that they have the financial wherewithal to pay back any amount they might owe the parents. This might include things like personal guarantees, reserve accounts, or escrow accounts.

[ix] The authors believe that empowered parents are the best way to achieve academic accountability. Clear and consistent information about the academic performance of participating students will help empower parents and will also provide the public and policymakers with the information they need to evaluate the effectiveness of the program. Therefore, all participating students should be required to annually take either the state achievement tests or nationally norm-referenced tests that demonstrate learning gains in math and language arts. Most private schools already administer such norm-referenced tests so this provision should not be seen as burdensome.

[x] Like in Endnote 2, if legislators are concerned about the hostility the program would face from the existing Department of Public Instruction, they may choose to create a new small agency or contract with a private nonprofit organization to oversee the academic accountability responsibilities of the state.

[xi] The purpose of administering the tests is to create transparency in participating students' academic progress and to demonstrate learning gains. These learning gains can only be demonstrated when the public has access to more than one school year. When this information is made public in the first year, the media and opponents often attack school choice programs, noting that participating students are not performing as well as their public school counterparts. This effect is natural because often the students who participate in choice programs are not doing well in their existing public schools and are academically far behind their participating school counterparts, and it will take them a few years to catch up to grade level.

[xii] Legislators sincerely wishing to demonstrate the program's academic success to taxpayers could require a scientific evaluation of the program using the testing data established in Section 5(C). It is crucial that the legislature give the oversight responsibility for this study to a trusted objective nonpartisan source like a legislative service agency or a trusted research university department. We have provided model language for such an independent evaluation of the program in Section X below. The outlined research would evaluate whether students who participate in the program are better off than a similar cohort in the public schools for at least five years of their education. Unfortunately, a longitudinal study is likely to be quite expensive. Accordingly, the legislation allows the legislature (or a legislative service agency) to accept private grants to completely fund such a study. In some states, the legislature is not allowed to accept such grants, and another trusted agency would have to be selected. It will be tempting for legislators to further define the details of the study, but they should take care not to dictate the methodology or the results in order to maintain the credibility of the research.

[xiii] The legislation allows schools to occasionally fail to meet an accountability standard so that an antagonistic regulator cannot shut down the program by banning schools with a modest occasional violation such as turning in a report late.

***Section X: {Evaluation of the Parental Choice Scholarship Program}***

*(A) The Legislative Service Agency may contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct a study of the program with funds other than state funds.*

*(B) The study shall assess:*

*(1) the level of participating students' satisfaction with the program;*

*(2) the level of parental satisfaction with the program;*

*(3) the fiscal impact to the state and resident school districts of the program;*

*(4) the impact of the program on public and private school capacity, availability and quality; and*

*(5) participating students' academic performance and graduation rates in comparison to students who applied for a scholarship under this program but did not receive one because of random selection.*

*(C) The researchers who conduct the study shall:*

*(1) apply appropriate analytical and behavioral science methodologies to ensure public confidence in the study;*

*(2) protect the identity of participating schools and students by, among other things, keeping anonymous all disaggregated data other than that for the categories of grade level, gender and race and ethnicity; and*

*(3) provide the legislature with a final copy of the evaluation of the program.*

*(D) The relevant public schools and the parents of participating students shall cooperate with the research effort by providing student assessment results and any other data necessary to complete this study.*

*(E) The Legislative Service Agency may accept grants to assist in funding this study.*

*(F) The study shall cover a period of at least five years. The legislature may require periodic reports from the researchers. After publishing their results, the researchers shall make their data and methodology available for public review, while complying with the requirements of the Family Educational Rights and Privacy Act (20 USC Section 1232 g).*

**Additional Note:**

It is fairly common for legislators to consider including severability clauses in new legislation. Legislators should make sure that if such clauses are included and exercised, the remaining legislation produces a program that is workable and achieves the original intent of the bill.

---

<sup>iv</sup> This updated model legislation recommends that students with an ESA receive the same public investment in their education as those attending traditional public schools. The authors do not adjust the amount granted to an ESA student based upon the household's income because states do not adjust the public investment for a student attending a traditional public school or a charter school based upon their household income.