



EDUCATION SCHOLARSHIP ACCOUNTS

Model Policy

ExcelinEd Policy Toolkit - 2018

This document contains a model policy for education scholarship accounts (ESAs). Parents use ESAs to direct their children's education funding to the state-approved schools, courses, programs and services of their choice.

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SUMMARY

The Education Scholarship 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. The Act identifies student eligibility as well as approved educational expenses. The Act establishes procedures for parents to apply to the ESA program. The Act establishes procedures for an authority to oversee the ESA program. The Act also provides academic and fiscal transparency measures for participating families, schools and education providers.

MODEL POLICY - THE EDUCATION SCHOLARSHIP ACCOUNT ACT

Section 1. {Title}

(A) This Act shall be named the “**Education Scholarship Account Act.**”

Section 2. {Definitions.}

- (A) “Account” means a parent-directed education scholarship account established pursuant to this article and composed of state funds deposited on behalf of a participating student and which may be used for qualified education expenses.
- (B) “Account funds” means the funds awarded on behalf of a participating student.
- (C) “Authority” means the government agency or non-profit organization(s) chosen to implement this program.
- (D) “Curriculum” means a complete course of study for a content area or grade level.
- (E) “Education service provider” means a person or organization who provides qualified education expenses pursuant to this article and is not a participating school.
- (F) “Eligible postsecondary institution” means a state or accredited community college, technical college, university or private postsecondary institution.
- (G) “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.
- (H) “Participating school” means any private school that provides education to elementary and/or secondary students and has notified AUTHORITY of its intention to participate in the program and comply with the program's requirements.
- (I) “Participating student” means a student who receives an account pursuant to this act.
- (J) “Program” means the Education Scholarship Account program created in this subchapter.
- (K) “Private tutoring” means tutoring services provided by a tutoring facility or a tutor who is a teacher licensed in any state, who has taught at an eligible postsecondary institution, who is a subject matter expert or who is otherwise approved by the Department of Education.
- (L) “Qualified education expenses” are expenses listed in Section 3(B).



Section 3. {Basic Elements of the Education Scholarship Act.}

(A) 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 **CHOOSE FROM THE OPTIONS BELOW**}:

Eligibility Category	Description and Analysis
UNIVERSAL	If your intention is to allow all students to participate in the program, no further language is needed.
PRIOR-PUBLIC SCHOOL ENROLLMENT	<p>Lawmakers may want to avoid incurring costs for students currently enrolled in private schools, requiring that participating students have attended a district elementary or secondary school in the prior school year. This reduces the cost to the state but limits the participating student population and is thus not preferred policy.</p> <p>If prior-public school enrollment is politically necessary, consider waiving the requirement for low-income students and students entering kindergarten, 1st grade, 6th grade and/or 9th grade.</p>
MEANS-TESTED	Student is a member of a household whose total annual income does not exceed an amount set by the state, typically a multiplier of federal poverty (400% of federal poverty) or a multiplier of free or reduced-price lunch (two times free or reduced-price lunch or 370% federal poverty).
SPECIAL NEEDS	Student possesses an Individualized Education Plan (IEP) written in accordance with rules established by the state board of education; an Individualized Family Service Plan (ISFP) if entering Kindergarten; was determined IDEA eligible by a multidisciplinary evaluation team; possesses a 504 plan; or is medically diagnosed by a licensed physician in one of the IDEA disability categories under 20 USC 1401(3)(A) ¹ .
UNIQUE NEEDS ²	<p>There are several other underserved populations with a demonstrated need for education choice. Some of these populations include:</p> <ul style="list-style-type: none"> • A child of a parent who is a member of the armed forces and who is on active duty or was killed in the line of duty. • A foster child who is adopted or is in the process of being adopted by a permanent guardian. • Students residing on Native American reservations. • Students who have been victims of bullying or assault. • Gifted and talented students.
SIBLINGS	Many states include siblings of participating students as an eligible category. The reason is simple: most families prefer their children educated in the same school, if possible. This particularly has been true in programs that provide eligibility to students with special needs or those adopted from foster care.

(B) Parents participating in the program shall agree to only use the funds deposited in their participating student’s accounts for the following qualified education expenses:³



- (1) Tuition, fees, and required textbooks and uniforms at a participating school;
 - (2) Private tutoring;
 - (3) Textbooks, curriculum, or other instructional materials, including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;
 - (4) Educational services and therapies for students with disabilities from a licensed or accredited practitioner or provider, including but not limited to occupational, behavioral, physical and speech-language therapies;
 - (5) Computer hardware, software, or other technological devices that are used solely for a student's educational needs and approved by the AUTHORITY or licensed physician;
 - (6) Tuition and fees for an approved non-public online learning course or program;
 - (7) Fees for national norm-referenced examinations, Advanced Placement examinations or similar courses, fees associated with state-recognized industry certification exams and any examinations related to college or university admission;
 - (8) Tuition, fees and instructional materials at a career and technical education provider;
 - (9) Tuition, fees and required textbooks at an eligible postsecondary institution;
 - (10) Contracted educational services provided at a public school or public school district;
 - (11) Fees for transportation⁴ paid to a fee-for-service transportation provider for the participating student to travel to and from an eligible education service provider as defined in this section, but not to exceed \$1,000⁵ per school year;
 - (12) Tuition and/or fees for summer education programs and specialized after-school education programs; and
 - (13) Any other valid education expenses approved by the AUTHORITY.
- (C) The amount the state shall deposit into an account for a participating student shall be equivalent to 90 percent of the calculated amount the student would have received in the district school to which he or she would have been assigned in the resident school district. This equals the base student allocation in the state funding formula multiplied by the appropriate weights provided for the student.⁶ Funds shall be distributed to parents on a quarterly basis.
- (D) The funds in an account may only be used for educational purposes. Any refund or rebate for goods or services purchased with a student's account funds shall be credited directly to the student's account.
- (E) Parents will be allowed to make payments for the costs of educational programs and services not covered by the funds in their accounts. Personal deposits into an account are not permitted.
- (F) Funds received pursuant to this section do not constitute taxable income to the parent of the participating student.
- (G) For purposes of continuity of educational choice, the program payments made under this section shall remain in force until a student participating in the program participates in any of the prohibited activities specified in this chapter, returns to a district or charter school, graduates from high school or attains 22 years of age, whichever occurs first.



(H) Funds saved 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.

(I) Accounts shall remain active and account funds usable until any of the following occur:

- (1) Funds are revoked by AUTHORITY for misuse;
- (2) A student graduates from a postsecondary institution; after four consecutive years after high school graduation in which a student is not enrolled in a postsecondary institution unless active-duty military; a student turns 25 years of age; or
- (3) After two consecutive years of account inactivity.

Section 4. {Parent Application and Re-application.}

(A) A parent may apply to the AUTHORITY to establish an account.

- (1) The AUTHORITY shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner.

(B) The AUTHORITY shall create a standard form that parents can submit to enroll their child in the program and shall ensure that the application is publicly available and may be submitted through various sources, including the Internet.⁷

(C) The AUTHORITY shall approve an application for an account if:

- (1) The parent applies for an account in accordance with any application procedures established by the AUTHORITY;
- (2) The student on whose behalf the parent is applying is an eligible student pursuant to Section 3(A);
- (3) Funds are available for the account; and
- (4) The parent signs an agreement with the AUTHORITY to:
 - i. Provide, at a minimum, an education for the participating student in at least the subjects of reading, grammar, mathematics, social studies, and science;
 - ii. Use program funds only for qualified education expenses;
 - iii. Comply with the rules and requirements of the program;
 - iv. Not enroll their participating student in a district or charter school while participating in the program;
 - v. Not enroll their participating student in {LIST AND CROSS REF ANY ADDITIONAL STATE PRIVATE CHOICE PROGRAMS}; and
 - vi. Acknowledge that they have received information from the AUTHORITY 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);

(D) The signed agreement between the parent and the AUTHORITY shall satisfy the compulsory school attendance requirements of [CITE APPROPRIATE STATE STATUTE].⁸



- (E) The AUTHORITY shall establish procedures to allow parents to annually re-enroll in an expeditious manner. As part of the re-enrollment process, the AUTHORITY or an organization chosen by the AUTHORITY shall conduct a parental survey that asks parents of participating students to express:
 - i. Their satisfaction with the program; and
 - ii. Their opinions on other topics, items, or issues that the state finds would elicit information about the effectiveness of the program and the number of years their child has participated in the program.
- (F) Upon notice to the AUTHORITY, a participating student may choose to stop receiving account funds and enroll full-time in a public school.
 - (1) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's account. However, for accounts that have been open for at least one full school year, the account shall remain open and active for the parent to make qualified education expenditures to educate the student from funds remaining in the account. When no funds remain in the student's account, the AUTHORITY may close the account.
 - (2) The AUTHORITY may adopt rules and policies to provide the least disruptive process for participating students who desire to stop receiving account payments and enroll full-time in a public school.
 - (3) If a participating student decides to return to the program, payments into the student's existing account may resume if the account is still open and active. A new account may be established if the student's account was closed.

Section 5. {Responsibilities of the Authority.}

- (A) The AUTHORITY shall establish quarterly enrollment periods for parents.
- (B) The AUTHORITY shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.⁹
- (C) The AUTHORITY shall ensure that students eligible for the program and their parents are informed annually of their ability to participate in the program. Special attention shall be paid to ensuring that lower-income families are made aware of the program and their options.
- (D) The AUTHORITY shall provide parents of participating students with a written explanation of the allowable uses of the accounts, information on selecting education service providers, the responsibilities of parents, the role of any private organizations that the AUTHORITY may contract with to administer the program and the duties of the AUTHORITY.
- (E) The AUTHORITY shall compare the list of participating students in the program with public school enrollment lists before each program payment to avoid duplicate payments.
- (F) The AUTHORITY may bar a participating school or education service provider from the program if the AUTHORITY establishes that the participating school or education service provider has:
 - (1) Routinely failed to comply with the accountability standards established in this subchapter; or
 - (2) Failed to provide the participating student with the educational services funded by the account.
- (G) The AUTHORITY shall create procedures to ensure that a fair process exists to determine whether a participating school or education service provider may be barred from receiving payments from accounts.



- (1) If the AUTHORITY decides to bar a participating school or education service provider from the program, it shall notify affected participating students and their parents of this decision as quickly as possible.
 - (2) Participating schools and education service providers may appeal the AUTHORITY'S decision to bar them from receiving payments from accounts pursuant to the state's administrative hearing act.
- (H) The AUTHORITY will have the authority to make any parent of a participating student ineligible for the program in the event of substantial misuse of the funds in the account.
- (1) The AUTHORITY shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of account funds has occurred.
 - i. If a participating student is free from personal misconduct, that student shall be eligible for an account in the future if placed with a new guardian or other person with legal authority to act on behalf of the student.
 - (2) The AUTHORITY will have the authority to refer cases of substantial misuse of funds to law enforcement agencies for investigation if evidence of fraudulent use of an account is obtained.
 - (3) A parent may appeal the AUTHORITY's decision to make a parent ineligible for the program.
- (I) The AUTHORITY will have the authority to conduct or contract for the auditing of accounts, and will at a minimum conduct random audits of accounts on an annual basis.
- (J) The AUTHORITY may accept gifts and grants from any source to cover administrative costs, to inform the public about the program or to fund additional accounts.
- (K) The AUTHORITY shall adopt rules and procedures as necessary for the administration of the program. This may include rules, policies or procedures:
- (1) Establishing or contracting for the establishment of an online anonymous fraud reporting service;
 - (2) Establishing an anonymous telephone hotline for fraud reporting;
 - (3) Requiring a surety bond for education service providers receiving more than \$100,000 in account funds; and/or
 - (4) Refunding payments from education service providers back to accounts.
- (L) The AUTHORITY shall develop a system for parents to direct account funds to participating schools and education service providers by electronic funds transfer, automated clearing house transfer or another system that the office finds to be commercially viable, cost-effective and easy for parents of participating students to use. The office shall not adopt a system that relies solely on reimbursing parents for out-of-pocket expenses, but may determine certain qualified education expenses that must require reimbursement or preapproval for purchase. The AUTHORITY is authorized to qualify private financial management firms to manage the payment system. The AUTHORITY shall establish and provide reasonable fees for private financial management firms participating in the program based upon market rates.
- (M) The AUTHORITY shall seek to implement a commercially viable, cost-effective, and parent-friendly system for parents to publicly rate, review and share information about participating schools and education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers.
- (N) The AUTHORITY may deduct an amount from the grants to accounts to cover the costs of overseeing the accounts and administering the program up to a limit of 10 percent¹⁰.



- (O) The AUTHORITY shall create information for parents regarding the program's interaction with the federal Individuals with Disabilities Education Act (IDEA). This information shall be provided to each parent applying to participate in the program. The information must include:
- (1) An explanation of a parental placement under 20 USC 1412 (a)(10)(A) of IDEA;
 - (2) An explanation of qualified education expenses and the allowable use of account funds, the responsibilities of parents, requirements for participating schools and duties of the AUTHORITY; and
 - (3) Clear information on how a parent can choose to leave the program and enroll their child in a public school at any time.

Section 6. {Independence of Participating Schools and Education Service Providers.}

- (A) Nothing in the provisions of this act shall be deemed to limit the independence or autonomy of an education service provider or to make the actions of a participating school or education service provider the actions of the state government.
- (B) Participating schools and education service providers shall be given maximum freedom to provide for the educational needs of participating students without governmental control.
- (C) Nothing in this act shall be construed to expand the regulatory authority of the state, its officers or any school district to impose any additional regulation of participating schools and education service providers beyond those narrowly tailored to enforce the requirements of the program.
- (D) A participating school or education service provider that accepts payment from an account pursuant to this act is not an agent of the state or federal government.
- (E) A participating school or education service provider shall not be required to alter its creed, practices, admissions policy or curriculum to accept payments from an account.

Section 7. {Parent Review Commission.}

- (A) There is hereby created the Parent Review Commission to assist the AUTHORITY in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the participating student pursuant to Section 3(B) and to provide recommendations to the AUTHORITY about how to implement, administer and improve the program.
- (B) The Parent Review Commission shall meet the following requirements:
- (1) The Commission shall consist of seven members;
 - (2) The seven members shall be parents of participating students and represent no fewer than four counties in the state;
 - (3) The seven members shall be appointed by the director of the AUTHORITY;
 - (4) The seven members serve at the director of the AUTHORITY'S pleasure for one calendar year and may be reappointed; and
 - (5) The director of the AUTHORITY, or the director's designee, shall serve as the nonvoting chair of the Commission.
- (C) The AUTHORITY may request the Commission to meet, in person or virtually, to determine whether an expenditure of account funds is or was a qualifying expense to educate a participating student pursuant to section 3(B). If the



AUTHORITY requests the Commission to determine the validity of an account expenditure, the Commission may vote to recommend to the AUTHORITY that the questionable expenditure be denied or approved by a majority vote.

- (D) The AUTHORITY may also request the Commission to meet, in person or virtually, to review appeals of education service provider denials pursuant to Section 5(G)(2) and to provide a recommendation to the AUTHORITY as to whether an education service provider should be allowed to receive, or continue receiving, payments from accounts.

Section 8. {Accountability Standards for Participating Schools, Providers, and Students.}

- (A) Administrative Accountability Standards. To ensure that students are treated fairly and kept safe, all participating 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;
- (4) Submit notice to the AUTHORITY that they wish to participate in the program; and
- (5) 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 non-public school; and
 - b. Exclude from employment any people that might reasonably pose a threat to the safety of students.

- (B) Financial Accountability Standards. To ensure that funds are spent appropriately, all participating schools and education service providers 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 accounts, if they are to receive \$50,000 or more during the school year, by:
 - a. Filing with the AUTHORITY 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 accounts expected to be paid during the school year from students admitted at the participating school; or
 - b. Filing with the AUTHORITY prior to the start of the school year financial information that demonstrates the school can pay an aggregate amount equal to the amount of the funds from accounts expected to be paid during the school year to students admitted to the participating school.

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

- (1) In grades that require testing under the state's accountability testing laws for public schools, all participating students shall take either the state achievement tests or nationally norm-referenced tests identified by the AUTHORITY that measure learning gains in math and language arts, and provide for value-added assessment. Students with disabilities for whom standardized testing is not appropriate, as determined in the child's Individualized Education Plan or by a physician licensed in the state, are exempt from this requirement. The results of these tests are provided to the AUTHORITY or an organization chosen



by the AUTHORITY on an annual basis. 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. The AUTHORITY or an organization chosen by the state will be informed of the participating student's graduation from high school.

- (2) For participating students enrolled in participating schools, the participating school shall administer an exam pursuant to Section C(1) of this subchapter.
- (3) For participating students not enrolled in participating schools, the AUTHORITY shall create a process for students to be administered an exam pursuant to Section C(1) of this subchapter, with results reported to the state.¹¹

Section 9. {Annual Report.}

(A) In compliance with all student privacy laws, the AUTHORITY or an organization chosen by the AUTHORITY shall produce an annual report that is accessible via a state website. Student findings shall be aggregated by the students' grade level, gender, family income level, number of years of participation in the scholarship program, and race. The report shall assess:

- (1) Student performance on state achievement tests or nationally norm-referenced tests, including learning gains;
- (2) High school graduation rates;
- (3) Parental satisfaction via the survey pursuant to Section 4(E);
- (4) The percentage of funds used for each qualifying expense identified in Section 3(B); and

(B) The report shall:

- (1) Apply appropriate analytical behavioral science methodologies to ensure public confidence in the study; and
- (2) Protect the identity of participating students and schools by, among other things, keeping anonymous all disaggregated data.

Section 10. {Responsibilities of Resident School Districts.}

(A) The resident school district shall provide a participating school or education service provider that has admitted a participating 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 1232g).

Section 11. {Legal Proceedings.}

- (A) In any legal proceeding challenging the application of this chapter to an education service provider, the state bears the burden of establishing that the law is necessary and does not impose any undue burden on education service providers.
- (B) No liability shall arise on the part of the AUTHORITY or the state or of any public school or school district based on the award of or use of an account pursuant to this act.
- (C) If any part of this act is challenged in a state court as violating either the state or federal constitutions, parents of participating students shall be permitted to intervene in such lawsuit for the purposes of defending the program's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.



(D) If any provision of this act, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 12. {Effective Date.}

(A) The Education Scholarship Account program will be in effect beginning with the fall semester of next year.¹²

ENDNOTES

¹ IDEA (Individuals with Disabilities Education Act) provides definitions for 13 disability categories, which include: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, intellectual disability, multiple disabilities, orthopedic impairment, other health impairment (including ADHD), specific learning disability (which covers dyslexia), speech or language impairment, traumatic brain injury, and visual impairment (including blindness). Under IDEA, schools are required to locate, identify, and evaluate children to see if they are eligible for special education services. Students who are determined eligible for special education services receive an Individualized Education Plan (IEP). Other students may not be deemed eligible for an IEP but instead receive support and accommodation through a 504 plan.

Some students may not receive an IEP or 504 plan through the public school evaluation process, but are still diagnosed with one of the IDEA disabilities. For that reason, it is important that ESA legislation does not limit student eligibility to those with an IEP. Students should also be eligible if they have been diagnosed by a licensed physician in one of the IDEA disability categories.

² States pursuing ESAs often begin by limiting eligibility to targeted student populations such as those who are low-income and/or those who are diagnosed with disabilities. Including other underserved populations, as well, is an effective way to serve more students and build a stronger constituency for the program.

³ 529 and Coverdell contributions are intentionally omitted from the list of eligible expenses. Contributions to these accounts can be withdrawn with a tax penalty [like early 401(k) withdrawals], and there is no way to ensure that parents will use withdrawn funds for qualified education expenses.

⁴ The following language may also be adopted depending on the unique context of your state: “The resident school district shall provide transportation for a participating student to and from the qualifying school or education service provider under the same conditions as the resident school district is required to provide transportation for other resident students to private schools per current law. The resident school district will qualify for state transportation aid for each student so transported.”

⁵ The precise level of the cap may be determined at the discretion of the legislature in consideration of total scholarship amount and the state’s cost of living.

⁶ The specific funding mechanism will vary based on unique conditions and factors in individual states. Although this model policy does not offer explicit recommendations on funding, it is vital that scholarship amounts reflect student need. Accounts could be funded with:

- A percentage of the per-student revenue in: the state, the student's resident school district or a charter school (this could be restricted to state funds or include a combination of state and local funds)
- A flat amount plus weights (i.e., \$8,000 per student plus added amounts for students with disabilities, means-tested, English language learners, gifted/talented, rural and any other student groups who may need additional funding)
- Tiered funding based on need (i.e. \$10,000 for 100% of poverty, \$8,000 for 200% of poverty, etc.)



Automatic formula funding is preferred to annual appropriations. Relying on the state’s funding formula is more reliable and less prone to persistent political controversy than line item appropriations.

⁷ If an ESA program is limited by the amount of available funding (or a maximum number of participants) a lottery may be necessary to award ESAs to interested families.

⁸ Due to the differences in each state’s homeschooling laws, regulations and compulsory attendance requirements, how homeschoolers are treated in ESA programs will depend on each state’s specific context. It is important to meet with homeschooling advocates in your state in advance to discuss their willingness to participate in an ESA program and how to structure it.

In some states, it may be necessary to amend the state’s compulsory education statute to explicitly say that participation in the ESA program satisfies the state’s compulsory education requirement. This type of language is necessary because some ESA students may not be enrolled full-time in a private or nonpublic online school and may instead be educated by a unique combination of the qualifying expenses laid out in Section 3(b) and such ESA students should not be considered truant.

⁹ Ideally, the AUTHORITY will create a system that allows all providers to be listed for parents and the public to browse. Since participating schools will be required to notify the authority of their participation, listing them will be easier. For other expenses—like physical therapy, tutoring, etc.—it may be more difficult to list all possible providers.

¹⁰ Up to 10 percent is the acceptable norm for nonprofit organizations to spend on administrative costs.

¹¹ Ideally, all children in the program are evaluated at least once a year—in a reliable manner—whether they are enrolled in a private school, homeschooled or receive a combination of services including tutoring and online coursework.

¹² The program should launch in the fall to correspond with the beginning of the school year. Launching an ESA program in January (or any time mid-year) presents unneeded complexity.