

The Education Savings Account Act
2 (Technical Amendments, December 6, 2013)

3
4 **Summary**

5
6 The Education Savings Account Act allows parents to use the funds that would have been
7 allocated to their child at their resident school district for an education program of the parents'
8 choosing.

9
10 **Model Legislation (American Legislative Exchange Council)**

11
12 **Section 1. {Title.} The Education Savings Account Act**

13
14 **Section 2. {Definitions.}**

15
16 (A) "Program" means The Education Savings Account program created in this subchapter.

17
18 (B) "Eligible student" means any elementary or secondary student who was eligible to attend a
19 public school in [state] in the preceding semester or is starting school in [state] for the first
20 time[i] and is a member of a household whose total annual income does not exceed an amount
21 equal to 2.5 times the income standard used to qualify for a free or reduced-price lunch under the
22 national free or reduced-price lunch program established under 42 USC Section 1751 et seq.

23
24 (C) "Parent" means a resident of this state who is a parent, guardian, custodian, or other person
25 with the authority to act on behalf of the child.

26
27 (D) "Department" means the state Department of Public Instruction or an organization chosen by
the state.[ii] 28

29
30 (E) "Resident school district" means the public school district in which the student resides.

31
32 (F) "Participating school" means any private school that provides education to elementary and/or
33 secondary students and has notified the Department of its intention to participate in the program
and comply with the program's requirements.[iii] 34

35
36 (G) "Private tutoring" means tutoring services provided by tutors accredited by a regional or
37 national accrediting organization.

38
39 (H) "Eligible postsecondary institution" means a community college, an accredited university or
40 an accredited private postsecondary institution.

41
42 **Section 3. {Basic Elements of The Education Savings Account Act.}**

43
44 (A) Any parent of an eligible student shall qualify for the state to make a grant to their child's
45 education savings account if the parents sign an agreement promising:

46
47 (1) To provide an education for the eligible student in at least the subjects of reading,
48 grammar, mathematics, social studies, and science;

49
50 (2) Not to enroll their eligible student in a district or charter school.

51
52 (B) The state shall deposit into an Education Savings Account some or all of the state aid that

53 would otherwise have been provided to the resident school district for the eligible student had
54 they enrolled in the resident school district;

55

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

59

60 (1) Tuition and fees at a participating school.

61

62 (2) Textbooks required by a participating school.

63

64 (3) Payment to a licensed or accredited tutor.

65

66 (4) Payment for purchase of curriculum.

67

68 (5) Tuition or fees for a non-public online learning program.

69

70 (6) Fees for national norm-referenced examinations, Advanced Placement examinations
71 or similar courses, and any examinations related to college or university admission.

72

73 (7) Contribution to the eligible student's qualified tuition program established pursuant to
74 11 USC Section 529.

75

76 (8) Educational services for pupils with disabilities from a licensed or accredited
77 practitioner or provider.

78

79 (9) Tuition and fees at an eligible postsecondary institution.

80

3

(10) Textbooks required 81 for college or university courses.

82

83 (11) Fees for account management by private financial management firms approved by
84 the Department.

85

86 (D) Grant amounts to Education Savings Accounts shall be calculated according to the following
87 schedule:[iv] 87

88

89 (1) For students from households qualifying for the federal free or reduced-price lunch
90 program, the amount granted to the student's Education Savings Account shall be equal
91 to the dollar amount the resident school district would have received to serve and educate
92 the eligible student from state sources had the student enrolled there.

93

94 (2) For students from households with an annual income greater than the amount required
95 to qualify for the free or reduced-price lunch program but less than 1.5 times that amount,
96 the amount granted to the student's Education Savings Account shall be equal to seventy97
98 five percent of the dollar amount the resident school district would have received to serve
99 and educate the eligible student from state sources had the student enrolled there.

99

100 (3) For students from households with an annual income of greater than 1.5 times the
101 amount required to qualify for the free or reduced-price lunch program but less than 2.0
102 times that amount, the amount granted to the student's Education Savings Account shall
103 be equal to fifty percent of the dollar amount the resident school district would have
104 received to serve and educate the eligible student from state sources had the student
105 enrolled there.

106

107 (4) For students from households with an annual income of greater than 2.0 times the
108 amount required to qualify for the free or reduced-price lunch program but less than 2.5
109 times that amount, the amount granted to the student's Education Savings Account shall
110 be equal to twenty-five percent of the dollar amount the resident school district would
111 have received to serve and educate the eligible student from state sources had the student
112 enrolled there.

113

114 (E) A participating school, private tutor, eligible postsecondary institution or other educational
115 provider may not refund, rebate, or share a student's grant with a parent or the student in any
116 manner. The funds in an Education Saving Account may only be used for educational purposes.
117

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

120

4

(G) A participating student shall be counted in the enrollment 121 figures for his or her resident
122 school district for the purposes of calculating state aid to the resident school district. The funds
123 needed for a grant to an Education Savings Account shall be subtracted from the state school aid
124 payable to the student's resident school district.

125

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

127

(A) The Department[v] 128 will qualify private financial management firms to manage Education
129 Savings Accounts.

130

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

135

136 (C) The Department will have the authority to refer cases of substantial misuse of funds to law
137 enforcement agencies for investigation if evidence of fraudulent use of an account is obtained.

138

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

142

143 (E) The Department may deduct an amount from the grants to education savings accounts to
144 cover the costs of overseeing the accounts and administering the program up to a limit of 3
145 percent.

146

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

149

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

152

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

154

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

157

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

159

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

5

161

162 (3) Certify that they comply with the nondiscrimination policies set forth in 42 USC

1981;[vi]163 and

164

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

166 shall:

167

168 (a) Exclude from employment any people not permitted by state law to work in a

169 private school; and

170 (b) Exclude from employment any people that might reasonably pose a threat to

the safety of students.[vii] 171

172

173 (B) Financial Accountability Standards. To ensure that funds are spent appropriately, all

174 participating schools shall:

175

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

177

178 (2) Demonstrate their financial viability by showing they can repay any funds that might

179 be provided from Education Savings Accounts, if they are to receive \$50,000 or more

180 during the school year, by:

181

182 (a) Filing with the Department prior to the start of the school year a surety bond

183 payable to the state in an amount equal to the aggregate amount of the funds from

184 Education Savings Accounts expected to be paid during the school year from

185 students admitted at the participating school; or

186

187 (b) Filing with the Department prior to the start of the school year financial

188 information that demonstrates the school has the ability to pay an aggregate

189 amount equal to the amount of the funds from Education Savings Accounts

190 expected to be paid during the school year to students admitted to the

participating school.[viii] 191

192

193 (C) Academic Accountability Standards. In order to allow parents and taxpayers to measure the

194 achievements of the program:

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(1) Parents shall ensure that:[ix] 196

197

6

(a) Each year their eligible student takes either the state achievement tests or

199 nationally norm-referenced tests that measure learning gains in math

200 and language arts, and provide for value-added assessment;

201

202 (b) The results of these tests are provided to the state or an organization chosen by

the state on an annual basis,[x] 203 beginning with the first year of testing;

204

205 (c) The student information is reported in a way that would allow the state to

206 aggregate data by grade level, gender, family income level, and race; and

207

208 (d) The state or an organization chosen by the state will be informed of the

209 eligible student's graduation from high school.

210

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

212

213 (a) Ensure compliance with all student privacy laws;

214

215 (b) Collect all test results;

216

217 (c) Provide the test results, associated learning gains and graduation rates to the
218 public via a state Web site after the third year of test and graduation-related data

collection.[xi] 219 The findings shall be aggregated by the students' grade level,

220 gender, family income level, number of years of participation in the scholarship

program, and race;.[xii] 221

222

223 (d) Provide graduation rates to the public via a state Web site after the third year

224 of test and test-related data collection; and

225

226 (e) Administer an annual parental satisfaction survey that shall ask parents of

227 students receiving education savings accounts to express:

228 (1) Their satisfaction with the program; and

229

230 (2) Their opinions on other topics, items, or issues that the state finds

231 would elicit information about the effectiveness of education savings

232 accounts program and the number of years their child has participated in

233 the program.

234

235

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

7

238

239 (1) The Department or any other state agency may not in any way regulate the

240 educational program of a participating private school or education provider that accepts

241 funds from an education savings account;

242

243 (2) The creation of The Education Savings Account Program does not expand the

244 regulatory authority of the state, its officers, or any school district to impose any

245 additional regulation of private schools or education providers beyond those necessary to

246 enforce the requirements of the program; and

247

248 (3) Participating private schools and education providers shall be given the maximum

249 freedom to provide for the educational needs of their students without governmental

250 control.

251

252 **Section 6. {Responsibilities of the Department of Public Instruction.}**

253

254 (A) The Department shall ensure that eligible students and their parents are informed annually of

255 which schools will be participating in the Education Savings Account Program. Special attention

256 shall be paid to ensuring that lower-income families are made aware of the program and their

257 options.

258

259 (B) The Department shall create a standard form that parents of eligible students can submit to

260 establish their student's eligibility for the Education Savings Account Program. The Department

261 shall ensure that the application is readily available to interested families through various

262 sources, including the Internet.

263

264 (C) The Department may bar a participating school or education provider from the Education
265 Savings Account Program if the Department establishes that the participating school or education
266 provider has:

267

268 (1) Routinely failed to comply with the accountability standards established in Section
5;[xiii] 269 or

270

271 (2) Failed to provide the eligible student with the educational services funded by the
272 Education Savings Account.

273

274 (D) If the Department decides to bar a participating school or education provider from the
275 program, it shall notify eligible students and their parents of this decision as quickly as possible.

276

8

(E) The Department shall adopt rules and procedures as ne 277 cessary for the administration of the
278 Education Savings Account Program.

279

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

281

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

286

287 (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
289 district is required to provide transportation for other resident students to private schools as per
290 current law. The resident school district will qualify for state transportation aid for each student
291 so transported.

292

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

295

296 **Endnotes**

297

298 [i] The definition for an eligible student in this model legislation includes all children of school
299 age. The authors believe that all children should receive public support for their education
300 regardless of whether they attend a public or private school, whether they are just starting school,
301 or have already dropped out. Please note that this inclusive definition will significantly increase
302 the number of students in your state receiving public support for their education and thereby
303 either increase the costs to taxpayers or reduce the level of assistance available to support each
304 student. Legislators wishing to draft a bill that saves money will want to limit eligibility largely
305 to students who attended a public school in the semester prior to first receiving a grant to their
306 Education Savings Account. Because many of the grants to Education Savings Accounts will be
307 less than what the state would have spent on the student's behalf at their public school of
308 residence, the state will achieve a savings that would make it possible to extend these accounts to
309 additional students including children who are attending school in the state for the first time
310 (such as kindergartners and new residents) or existing private school students in the "school
311 entry grades" of kindergarten and ninth grade.

312

313 [ii] This bill designates the Department of Public Instruction as the agency regulating the
314 Educations Savings Account Act. The intent was to name the existing agency in the state that is
315 responsible for public school finances and private school regulation. Alternatively, legislators
316 may choose to consider other capable departments, create a new small agency, or contract with a

private nonprofit organization to oversee the program i 317 f they are concerned about the hostility
318 the program would face from the existing state education department.

319

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

327

328 [iv] This particular set of proportions represent a framework for one approach to means-testing
329 the scholarship amount. Legislators should develop a formula that makes sense for their state.

330

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

335

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

342

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

355

10

[viii] 356 The model legislation provides two methods for schools to demonstrate financial viability
357 to ensure that funds from Education Savings Accounts are secure. The first method employs a
358 market-based means of demonstrating viability. Private companies that issue surety bonds have
359 a financial interest in making sure that the schools can repay any funds that might be owed the
360 parents. They will therefore conduct the checks necessary to protect their financial interest as
361 well as the interests of the parents and the taxpayers. Surety bonds can be expensive (one to
362 three percent of the amount covered) or invasive for some institutions, so the legislation allows
363 schools to demonstrate by some other means that they have the financial wherewithal to pay
364 back any amount they might owe the parents. This might include things like personal
365 guarantees, reserve accounts, or escrow accounts.

366

367 [ix] The authors believe that empowered parents are the best way to achieve academic
368 accountability. Clear and consistent information about the academic performance of

369 participating students will help empower parents and will also provide the public and
370 policymakers with the information they need to evaluate the effectiveness of the program.
371 Therefore, all participating students should be required to annually take either the state
372 achievement tests or nationally norm-referenced tests that demonstrate learning gains
373 in math and language arts. Most private schools already administer such norm-referenced tests
374 so this provision should not be seen as burdensome.

375

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

380

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

389 [xii] Legislators sincerely wishing to demonstrate the program's academic success to taxpayers
390 could require a scientific evaluation of the program using the testing data established in Section
391 5(C). It is crucial that the legislature give the oversight responsibility for this study to a trusted
392 objective nonpartisan source like a legislative service agency or a trusted research university
393 department. We have provided model language for such an independent evaluation of the
394 program in Section X below. The outlined research would evaluate whether students who
395 participate in the program are better off than a similar cohort in the public schools for at least
11

five years of their education. Unfortunately, a 396 longitudinal study is likely to be quite expensive.
397 Accordingly, the legislation allows the legislature (or a legislative service agency) to accept
398 private grants to completely fund such a study. In some states, the legislature is not allowed to
399 accept such grants, and another trusted agency would have to be selected. It will be tempting for
400 legislators to further define the details of the study, but they should take care not to dictate the
401 methodology or the results in order to maintain the credibility of the research.

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

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

406

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

410

411 (B) *The study shall assess:*

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

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

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

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

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

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

421 (1) *apply appropriate analytical and behavioral science methodologies to ensure public*

422 confidence in the study;

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

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

12

(D) The 427 relevant public schools and the parents of participating students shall cooperate with
428 the research effort by providing student assessment results and any other data necessary to
429 complete this study.

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

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

435 **Additional Note:**

436

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