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# A Universal Education Savings Account Proposal: Fiscal Implications and Model Legislation\*

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Education Savings Accounts (ESAs) are state-funded and administered accounts to fund educational services for school-age children under the direction of the child's parents or legal guardians. The funds can be used for a variety of educational purposes such as private school tuition, tutoring, books, and online materials. Students can participate only if they contractually agree to not attend a traditional public school (i.e., participants cannot double-dip on taxpayers' funds). An incentive to economize is provided by allowing funds remaining in an ESA account upon graduation to be used for post-secondary (college and career) education.

The 1889 Institute has published *Designing an Education Savings Account 2016* as well as *Education Savings Accounts and Improving Oklahoma Student Achievement*, which explain the ESA concept in some detail. Both are available on the 1889 Institute's website.<sup>1</sup>

Here, we propose specific parameters for an ESA law for

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the state of Oklahoma, and discuss its financial ramifications for the State and for local school districts. **We also provide a model bill at the end of this discussion.**

## Basics of an ESA Law Eligibility

*Any school-age child, kindergarten and above, eligible to attend an Oklahoma public school is eligible for an ESA. [OPTION: Make children from very small districts ineligible. More on this below.] Only children whose parents sign a contract promising not to enroll a child receiving an ESA in full-time public school may receive an ESA. A child who accepts an ESA and who originates from an Oklahoma public school shall be immediately removed from the weighted average daily attendance (WADA) count of the school district of origin.*

Most other states' ESA programs have been limited to benefit only special student populations. Only Nevada has passed what is considered a universal ESA bill, but even Nevada's program is not truly universal. A child must have attended a Nevada public school or charter school for at least 100 days immediately prior to receiving an ESA.<sup>2</sup> The proposal presented here envisions true universality wherein all of Oklahoma's public school-eligible children can qualify.

Fairness is the reason for including children currently attending private schools. The State and its school districts are legally obligated to serve all comers. So, if every privately schooled child in Oklahoma suddenly showed up at the doors of the state's public schools, the school district must provide every one of them the same education they are providing their existing students. However, the parents of these children have relieved the state of the significant financial burden of educating their children. They are willing to bear the burden for the State because they want their children to get a better education than they feel their district school provides. These parents should not be financially punished under an ESA because of their willingness to make financial sacrifices for their children. From a fairness standpoint, students currently attending private schools should be included. However, for short-term financial reasons, these students may need to be phased into the system. (See Fiscal Note discussion below.)

The logic for the optional language on small districts is explained in Fiscal Impact to a District School.

Due to a lack of evidence that early childhood education has lasting effects, and the partial-day nature of early childhood education, the program should be limited to children kindergarten and above.<sup>3</sup>

The contract language is a standard provision in ESA laws. It helps to ensure financial stability of the system and simplifies funding by avoiding refunds and constant transfers.

The provision on reducing WADA count is so that the state will not reimburse a school district for phantom students.

## Funding

*Individual ESAs will be entirely state funded at \$4,500 per year from the state's general appropriation for formula funding of common schools. Parents may supplement this amount with their own money. Deadlines for election by parents to receive ESAs and for funds to be distributed will be set by statute so that public education formula funding can be calculated in a timely manner and parents can receive the funds in advance of the school year.*

At \$4,500 the state will save a significant amount without reducing per student funding to district schools since \$4,500 is much less than the state spends on its district schools. (See Fiscal Note and Fiscal Impact on a District School.) As Table 1 shows, Oklahoma public school districts spent an average of \$8,950 per student during the 2016-2017 school year. Most of this money comes from either the State or local district property taxes. Some was spent on debt service

and other fixed costs that change little with enrollment. However, the bulk of education spending is variable. That is, as enrollment fluctuates, so does the amount of money needed by schools. Adding instruction, support services, transportation, and 60 percent of physical plant per-student expenses as variable costs, amounts to about \$7,000, about 78 percent of total per-student spending illustrated below.<sup>4</sup> Over time, even debt service is variable, but it and "miscellaneous" are both ignored, as is Child Nutrition (largely federally funded). Thus, \$7,000 is the approximate variable cost per student in a district school.

<b>TABLE 1<sup>5</sup></b>		<b>Per-Student Spending Breakdown Oklahoma Public Education</b>	
<b>Instruction</b>			<b>\$4,153.38</b>
<b>Support Services</b>			<b>\$1,790.75</b>
<b>Transportation</b>			<b>\$252.18</b>
<b>Child Nutrition</b>			<b>\$490.97</b>
<b>Physical Plant</b>			<b>\$1,312.63</b>
<b>Debt Service</b>			<b>\$946.96</b>
<b>TOTAL</b>			<b>\$8,946.88</b>

Funding ESAs at \$4,500 per student results in a net savings of approximately \$2,500 per student (\$7,000 - \$4,500) when a child leaves public schools for the ESA. There are additional savings from reduced teacher retirement and health care costs that are not reflected in Table 1 because some expenses are paid directly by the state rather than following through the school district. Health insurance paid directly by the state is about \$560 per student and state retirement contributions amount to almost \$460.<sup>6</sup> However, this additional \$1,020 in annual savings does not occur immediately in the year that the student leaves a district school for an ESA.

While few private schools price as low as \$4,500, this amount is enough that even parents with modest means can afford to send their children to most private schools. Further, virtual school tuition is well-below \$4,500. The state might provide a higher ESA amount for students from low income families. This would complicate some of the financial aspects discussed below, resulting in less savings, but is achievable with minimal additional operational complexity.

Parents would have to decide whether to participate in advance of a school year so that the appropriate amount of ESA funding could be deducted from the state's general appropriation for common schools. Once that deduction is made (by multiplying the number of ESA students by \$4,500)

formula funding can be calculated with the remainder. This likely early summer decision, with the deadline determined by rule, also gives the district school sufficient time to match staffing to enrollment.

## **Governance/Administration**

*Accounts and account activity shall be handled by the State Treasurer. The Treasurer may contract with a private vendor to create a real-time closed vendor payment system that automatically rejects ineligible purchases. The Oklahoma Department of Education (ODE) shall cooperate with the Treasurer and ESA Board in determining student status and enrollment in order to enforce the provisions of the ESA law.*

*A five-person ESA Board to administer the program shall be appointed as follows: one member by the State Treasurer, one member by the Lieutenant Governor, and three members by the Governor. No member of the board may be: 1) an education material and/or service vendor serving ESA students, 2) an employee of the State, or 3) an employee of a public school.*

*The Board shall:*

- 1** *Coordinate with the State Treasurer to determine rules for the proper distribution of funds,*
- 2** *Settle any disputes that might arise concerning a child's eligibility,*
- 3** *Determine what constitutes adequate progress as measured by norm-referenced tests,*
- 4** *Determine deadline dates for ESA application, in coordination with the Oklahoma Department of Education,*
- 5** *Approve items for inclusion as allowable expenses,*
- 6** *Create and maintain a vendors' catalogue, and*
- 7** *Hear appeals regarding allowable ESA purchases.*

*Board staff requirements shall be filled by the Board.*

As envisioned here, the Treasurer would administer the ESA program, the ESA Board would provide policy guidance, and the ODE would provide information for which it has developed expertise in collecting.

The Treasurer has expertise in objectively controlling and disbursing funds with proper accounting controls. While the Treasurer is well-suited to handle financial administration, there also needs to be a body designed to make decisions surrounding implementation and accountability.

This body should be independent of the State Board of Education and State Superintendent. Experience in other states has demonstrated that state departments of education are not organizationally or temperamentally suited to running an ESA program. Their focus on the public education system and bureaucratic processes prevent

the streamlining of systems and there is often hostility toward school choice programs. Nevertheless, the ODE has established protocols for identifying students with unique identifiers and has the ability to match students with student-specific data. Recreating a similar system would be an unnecessary cost, so ODE should retain some purely administrative functions when it comes to ESA students.

## **Allowable ESA Expenses**

- 1** *Private school tuition,*
- 2** *Tutoring,*
- 3** *Educational materials (both print and online),*
- 4** *Educational and extra-curricular services voluntarily offered by public schools,*
- 5** *Traditional co-curricular and extra-curricular activities such as art, athletics, drama, music, student clubs, and other academic-related activities,*
- 6** *Educational therapies (often used by special needs students),*
- 7** *College and career tuition for concurrent enrollment students,*
- 8** *Testing,*
- 9** *Post-secondary education (up to an age to be determined, at which time any remaining funds revert to the state).*

*Parents shall be allowed to allocate funds among these eligible expenses in any way they see fit and buy from registered vendors. Any funds left over at the end of a school year shall carry over into the next year. Funds can be used for post-secondary education (college or technical), including AFTER graduation when the student is no longer eligible to attend public school.*

The list here is fairly standard for ESA programs already in place in other states. Part of the administrative and implementation cost will be creating systems that disallow purchases of items and services not on the list while allowing for timeliness in directing purchases by parents. Creating an approved vendors list saves time and administrative cost in addition to making financial accountability considerably simpler.<sup>7</sup>

## **Academic Accountability**

*A student's parents must have the student tested yearly. The test shall be chosen by the parents from a list of nationally-recognized norm-referenced tests selected by the ESA Board. Once chosen, the same test must be used for a minimum of three consecutive years. Results must be reported to the Oklahoma Department of Education (ODE) which will compile the information and share fully with the ESA Board.*

*Failure on the part of a child to make adequate academic progress, as determined by the ESA Board, failure to submit to testing, or failure to report test results shall result in revocation of a child's ESA and any unspent account balance.*

There should be no need to completely re-create the resources needed to keep account of test results; thusly, the use of ODE resources where expertise and required computerized tools already exist. ODE's role would be purely administrative record-keeping and parents could independently receive test scores for their ESA-participating children. Academic independence is maintained through the use of a menu of existing norm-referenced tests with a specific instrument chosen by parents.

Opponents of school choice often complain that there is too little accountability in school choice programs while proponents argue that restrictive testing requirements limit flexibility and the ability to find the best fit for a child. This proposal gives parents adequate flexibility and simultaneously insulates the taxpayer from risk by placing the onus of responsibility for a child's education where it should be – on the parents.

## **Financial Accountability**

*The Board shall provide a registry for bonded vendors, including specifying the level of bonding required. The Board shall also promulgate a list of allowable expense items and services based on the basic list in law.*

*Parents shall not be allowed to resell items except after they have been used and then only through approved channels. Proceeds from such sale shall accrue to a child's ESA account. Proceeds from the return of unused items shall accrue to the child's ESA account.*

*Parents and vendors shall be prohibited from kickback arrangements that, if discovered, shall be prosecuted as theft.*

*Relatives of first and second degree cannot be paid out of a student's ESA for their services (e.g., tutoring). Exceptions can be made by appeal to the ESA Board.*

*The child of a parent who is convicted of fraud or theft arising from this program shall retain any account balance with allowed expenditures to be directed by the recipient upon attaining the age of 18.*

Most of this is self-explanatory. The ESA board should provide resources to parents so that they can be sure to comply with the specifics and spirit of the law without having to interpret the law themselves. The bottom line is to make sure expenditures from an ESA are for legitimate education expenses of the child an ESA is intended to benefit.

## **Administrative Cost**

*The Treasurer may deduct a maximum of 3 percent from each ESA in order to cover ongoing administrative costs of state agencies. Further, the Treasurer may borrow up to \$350,000 from the state in order to finance administrative startup costs within Treasury and ODE.*

This solution is based on Nevada's approach. Nevada chose a higher-cost disbursement model than Arizona, the first ESA state, in order to better prevent fraud. Nevada's experience with Benefit Wallet (a Xerox subsidiary), online parent portal and vendor-provided payment system (system created by a vendor as contracted by the Treasurer to make immediate transactions that are compliant with the law) make it likely that startup costs will be minimal, assuming Oklahoma chooses a system similar to Nevada's. Over time, the administrative cost per student will drop with an increase in the ESA population and increased administrative expertise.<sup>8</sup>

## **Fiscal Note**

Administrative costs do not need to be addressed if they are handled in a manner as recommended above.

## **Scenario 1**

***Every private school child receives an ESA, 5,000 home schooled children participate, and no public school children participate.***

Approximately 30,000 children attend private schools in Oklahoma. It is likely most would participate in the ESA program. It is estimated that nearly as many children are home schooled in the state. However, relatively few would participate, at least initially, given the reluctance of home school parents to participate in choice programs. If all current private school children and 5,000 home schooled children participate while no current public school children participate, net general appropriations to the public education system would decline by:

$$<\$157,500,000> = 35,000 \times \$4,500.$$

This is 8.4 percent of the state's \$1.87 billion general appropriation to public schools in 2017, 6.5 percent of \$2.4 billion in total state funding to public schools, and 2.6 percent of the all-funds revenues for public schools.<sup>9</sup>

The state should appropriate an additional \$157.5 million in order to cover the additional cost and not rely on existing formula funding to cover the cost.

## Scenario 2

**35,000 non-public-school children receive an ESA and 180,000 public school children (just over a quarter of all current public school children) participate.**

As noted above, each child in Oklahoma's common schools represents an average variable cost of about \$7,000. While these funds technically come from both state and local sources, as explained in the 1889 Institute's *A Primer for Understanding Oklahoma's School Funding System*, it can be accurately argued that the entire funding system, controlled by the state, funds each student. Thus, every child who opts out of the public education system in favor of receiving an ESA represents a net savings of \$2,500, a savings that can be accurately said to accrue to the state.

### **Net "cost" calculation under Scenario 2:**

*Cost of 35,000 non-public-school children participating:*

$$\$157,500,000 = 35,000 \times \$4,500.$$

*Cost of 180,000 public school children participating:*

$$\$810,000,000 = 180,000 \times \$4,500.$$

*Savings to common schools from 180,000 public school children participating:*

$$\$1,260,000,000 = 180,000 \times \$7,000.$$

*Net savings of Scenario 2:*

$$\$292,500,000 = \$1,260,000,000 - \$157,500,000 - \$810,000,000.$$

This does not include savings for state costs that do not run through the district. Assuming \$1,020 per student in teacher retirement and health insurance costs, there would be an additional \$183,600,000 savings, resulting in a total net savings of \$476,100,000, or a little less than 8 percent of the state's general fund budget.

## No Net-Cost ESA

Many argue the state cannot afford additional expenses at the present time, so it is imperative to keep any new programs from costing the state. As illustrated by Scenario 2, an ESA program potentially means a great deal of savings for the state. However, in the short term, the greatest demand for ESAs is likely to be from children already in private schools for three reasons. First, parents of private school children have an obvious pecuniary interest in participating. Second, it will take time for knowledge about ESAs to become wide-spread among public school parents. Finally, in the short-term private schools may not have enough excess capacity to absorb every new student wanting to enroll. We do not have numbers on the amount of private school excess capacity, but assuming private schools are currently at 80 percent of their capacity, that means there are only 7,500 slots available state-wide for new students.

Over time, private school capacity will expand in response to increased demand caused by ESAs. Further, virtual schools and home schooling do not face capacity constraints. Nevertheless, on balance, for the first few years a lack of private school capacity will likely be a significant problem.

Since ESA participants who leave the common school system create a net savings, an ESA program would have no net costs if the ratio of ESA participants from private schools (PSP) to ESA participants from common schools (CSP) is low enough. As it happens, 100 ESA participants from the common schools, results in a net savings of \$250,000. This savings is sufficient to fund 55 ESA participants from private schools.

A truly universal ESA law could include a provision that restricts the number of ESAs for children who originate from private schools, determining a PSP/CSP ratio that results in no net cost. This would require setting the deadline date for parents of public school children to elect to participate early enough so that net savings could be calculated and a lottery held to determine which private school children can participate. A lottery will not be required in the event that the number of applicants from private schools compared to those from public schools is sufficiently low.

A provision restricting the PSP/CSP ratio should have a definite expiration date. This will encourage private schools to build additional capacity, and for new private schools to emerge in anticipation of increased demand. A date-certain allows for planning and greater confidence. It also encourages public schools to respond in a healthy way, by improving their educational product, rather than putting their hope in lobbying to continue to restrict competition.



## No-Net-Cost ESA Provision

For a period of five years after the effective date of an ESA law, the ratio of Education Savings Account recipients who attended private school before receiving an ESA to ESA recipients who attended public school before receiving an ESA shall be determined by the ESA Board.

The Board, in consultation with the Oklahoma Department of Education, shall:

- 1 Set a deadline for parents of children attending common schools to elect to participate for the upcoming school year,
- 2 Based on the number of common school students who will receive an ESA and the dollar amounts of their respective ESAs, determine the maximum number of students from private schools who can receive an ESA for the school year,
- 3 Conduct a lottery to determine which students from private schools will receive an ESA if the number of applicants exceeds the number determined under #2 above.

## Revised Fiscal Note

### Scenario 3

**The PSP/CSP ratio does not exceed 55 percent.**

#### Scenario 3A

Suppose 5,000 students from Oklahoma's common schools opt to receive an ESA. Then, up to 2,750 students of Oklahoma's non-public-school students can participate at no net cost.

"Cost" calculation under Scenario 3 with 5,000 common school participants:

Cost of 2,750 private school children participating:  
 $\$12,375,000 = 2,750 \times \$4,500.$

Cost of 4,000 public school children participating:  
 $\$22,500,000 = 5,000 \times \$4,500.$

Savings to common schools from 4,000 public school children participating:  
 $\$35,000,000 = 5,000 \times \$7,000.$

Net savings of Scenario 3 with 4,000 common school participants:  
 $\$125,000 = \$35,000,000 - \$12,375,000 - \$22,500,000.$

Additional savings from reduced retirement and health insurance contributions of \$1,020 per student would result in total savings of \$5,100,000.

#### Scenario 3B

Suppose 55,000 common school students participated, allowing all 30,000 private school students to participate.

Net calculation under Scenario 3 with 55,000 common school participants:

Cost of 30,000 private school children participating:  
 $\$135,000,000 = 30,000 \times \$4,500.$

Cost of 55,000 public school children participating:  
 $\$247,500,000 = 55,000 \times \$4,500.$

Savings to common schools from 55,000 public school children participating:  
 $\$385,000,000 = 55,000 \times \$7,000.$

Net balance under Scenario 3 with 15,000 common school participants:  
 $\$2,500,000 = \$385,000,000 - \$247,500,000 - \$135,000,000.$

Additional savings from reduced retirement and health insurance contributions of \$1,020 per student would result in total savings of \$56,100,000.

## Fiscal Impact to a District School Revenue Impact

School district revenue can be broken into four basic pieces. First are revenues used to derive formula funding – dedicated state revenues, state appropriations, and some local property taxes. Second are some property tax revenues that go to the school district and are not used in formula funding calculations. Third is property tax revenue dedicated to servicing any bonds issued by the district to fund capital expenditures. Finally, districts receive various federal grants and federal funding for the free/reduced price lunch program.

Assuming a district is *not* self-funded and does receive state money for formula funding (which is the case for the vast majority of children attending Oklahoma's common schools), the following happens when a child leaves a district:

- 1 The district loses the full amount of formula funding for that child,
- 2 The district retains all local property taxes not included in the funding formula calculation, and
- 3 The district retains all revenues dedicated to bond service, with no loss to formula funding.

The net result is that the total district funding decreases on an absolute basis, but will likely increase on a per student

basis. Savings are also likely to accrue to the state as a whole from students leaving the public system sufficient to slightly increase per-student funding for those students remaining in the public system once the state recalculates formula funding factors. If the number of private school children who opt for an ESA fails to meet the maximum allowed under a no-net-cost provision, the amount of funding per-student in the public system will likely increase.

If a large number of children from self-funded districts opt for an ESA, the amount of formula funding per student in the public schools will be decreased since these students would represent a pure cost to the state, similar to previously privately-schooled children. The share of funding to public schools represented by local revenues will increase as children opt for ESAs, but the total funding per student, especially taking account of bond revenues and local revenues not included in the formula, will likely increase due to the small number of children in self-funded districts, which also tend to be small districts.

About 21,000 students attend self-funded and partially self-funded school districts. While it is theoretically possible that 5,000 of these students would participate, it is highly unlikely. Nevertheless, if 5,000 did participate, the \$22,500,000 in cost represents less than \$33 per public school student.

## **Expense Impact**

When only one student leaves a district, the district loses all of the formula funding for that student, but experiences little in the way of operating savings since a single student leaving is unlikely to result in a reduction of any personnel or facilities, so profits (revenues over cost) decline by the amount of lost revenue. Conversely, the revenue from adding a single student is almost all profit. However, subtracting several students means costs can be reduced. Losing students is rarely a problem for most districts since the absolute number of students enrolled is high. As a result, medium and large schools cost per student can be adjusted proportionally downward when students are lost, but this may not be true of a small school.

For example, a medium-size school district might have 300 first grade students in 10 classes, but a small school has 30 first graders in one class. If both lose 10 percent of their students to an ESA, the medium district has lost 30 students, but can easily deal with this problem by going to 9 classes of 30. They save money because they need one less teacher.

Indeed, medium and small districts are constantly changing staffing to match increases and decreases in enrollment. However, the small school may not have this option. When our hypothetical small school loses 3 students, it will have one class of 27 students and cannot save money by hiring fewer teachers. As a result, losing students can have a negative financial impact on very small schools – revenues decline but costs do not. One possible solution to this problem is to exempt small districts from an ESA program. Of course, doing so would make the program no longer universal.

# MODEL EDUCATION SAVINGS ACCOUNT LEGISLATION

## SECTION 1. NAME

This act shall be known and may be cited as the "Oklahoma Education Savings Account Act".

## SECTION 2. PURPOSE

- (A) There is hereby created the Education Savings Account Program.
- (B) The purpose of the Oklahoma Education Savings Account Act is to provide additional educational options to Parents for the education of students in this state, by creating Education Savings Accounts for individual students and empowering Parents to make educational decisions for their children.
- (C) Education Savings Accounts shall be established for individual students beginning with the 2019-2020 school year.

## SECTION 3. DEFINITIONS

As used in the Oklahoma Education Savings Account Act:

- (1) "Account" means an education savings account established for an Eligible Student pursuant to this act;
- (2) "Board" means the State Board of Education;
- (3) "Department" means the State Department of Education;
- (4) "Eligible Postsecondary Institution" means an accredited public or private postsecondary institution;
- (5) "ESA Board" means the entity created in Section 4 of this Act;
- (6) "Eligible Private School" means any school accredited by the Oklahoma Private School Accrediting Council that has notified the Department of its intention to accept students who are in the Program and comply with the antidiscrimination provisions of 42 U.S.C., Section 2000(d);
- (7) "Eligible Student" means any student who is a legal resident of Oklahoma and is otherwise eligible to enroll in a public elementary or secondary school;
- (8) "Eligible Student Originating from an Oklahoma Public School District" means any Eligible Student who was enrolled for at least 100 days in an public elementary or secondary school in Oklahoma prior to becoming a Participating Student;
- (9) "Participating Student" means any Eligible Student who establishes an Education Savings Account pursuant to the provisions of Sections 5 and 6 of this Act;
- (10) "Parent" means a resident of the state who is a parent, legal guardian, or other person with the authority to act on behalf of an Eligible Student;
- (11) "Program" means the Education Savings Account Program;
- (12) "Resident School District" means the public school district in which the student resides as defined in Section 1-113 of Title 70 of the Oklahoma Statutes; and
- (13) "Treasurer" means the Office of the State Treasurer.

## SECTION 4. ADMINISTRATION OF THE PROGRAM; CREATION OF ESA BOARD

- (A) There is hereby created the Education Savings Account Board, which shall have authority and responsibility to administer the Education Savings Account Program.



- (B) The ESA Board shall consist of five members, each serving a term of three years. The members of the ESA Board shall be appointed as follows:
  - (1) One member by the Treasurer;
  - (2) One member by the Lieutenant Governor; and
  - (3) Three members by the Governor.
- (C) No member of the ESA Board may be:
  - (1) A vendor of a Participating Student or Parent;
  - (2) A vendor of the ESA Board, Treasurer, Department, or Board;
  - (3) An employee of the State; or
  - (4) An employee of a public school district.
- (D) The ESA Board shall be subject to the Open Meetings Act and shall meet as often as necessary to establish and administer the Program.
- (E) The ESA Board shall annually elect a chairman and vice chairman, and the Treasurer or his designee shall serve as the secretary to the ESA Board.
- (F) Members of the ESA Board shall not be compensated other than a mileage reimbursement to travel to the meetings of the ESA Board.
- (G) The ESA Board is hereby vested with the power to sue and be sued, to enter into contracts, to hire staff, to own or lease property, to open and keep accounts, and to perform any other administrative functions required to comply with the provisions of this Act.

## **SECTION 5. BASIC ELEMENTS OF THE EDUCATION SAVINGS ACCOUNT PROGRAM**

- (A) To enroll an Eligible Student in the Program, a Parent of the Eligible Student shall sign an agreement to do the following:
  - (1) Provide an education for the Eligible Student in at least the subjects of reading, grammar, mathematics, social studies, and science;
  - (2) Not enroll the Eligible Student in a district or charter school other than for contracted services pursuant to paragraph 8 of subsection C of this Section;
  - (3) Release the Eligible Student's Resident School District from all obligations to educate the Eligible Student; and
  - (4) Comply with the expenditure limitations of subsection C of this Section.
- (B) The form of the agreement described in subsection A of this Section shall be determined by the ESA Board, but in no event shall the ESA Board create additional requirements other than those described in paragraphs 1 through 4 of subsection A of this Section. The agreement shall consist of only one page, and shall be written in simple, concise language that is comprehensible to a person of average intelligence, and the ESA Board shall establish simple procedures for Parents to submit the signed agreements to the ESA Board or the Treasurer.
- (C) Parents participating in the Program shall use the funds deposited in their Participating Student's Account only for the following qualifying expenses to educate the Participating Student:
  - (1) Tuition and fees at an Eligible Private School.
  - (2) Payment for tutoring.
  - (3) Purchase or lease of education support materials, whether printed, digital, or online. Education support materials include, but are not limited to, curriculum, online courses, textbooks, study guides, tests, lectures, books, and educational video or audio.
  - (4) Fees for testing, including but not limited to national norm-referenced examinations, Advanced Placement examinations or similar courses, examinations related to college or university admission, and career and technical education examinations.

- (5) Expenses related to traditional co-curricular and extra-curricular activities including but not limited to art, drama, music, athletics, student clubs, and other academic activities.
  - (6) Educational therapies or services for students with special needs.
  - (7) Tuition, fees, and instructional materials at an Eligible Postsecondary Institution or career and technical education provider.
  - (8) Contracted educational services provided at a public school or public school district.
  - (9) Any other valid educational expenses approved by the ESA Board and included in the annual catalogue described in subsection D of this Section.
- (D) Annually, the ESA Board shall publish a catalogue of vendors approved by the ESA Board to provide goods and services to participants in the Program. The catalogue shall include itemized lists with pricing information for each good or service offered by each vendor. The ESA Board shall establish procedures for receiving applications from qualified vendors and shall have discretion in the formatting and content of the catalogue, but the catalogue shall be simple to use and shall be available online. Nothing in this subsection shall be interpreted to make the catalogue the exclusive list of approved expenditures, but any item included in the catalogue shall be deemed to be conclusively qualified under paragraphs 1 through 9 of subsection C of this Section.
- (E) The ESA Board and the Treasurer shall develop procedures to receive and repurpose or sell used equipment that Participating Students have purchased utilizing their Education Savings Account. Proceeds derived from such resale shall be credited in the Participating Student's Account. Parents and Participating Students shall not be permitted to resell any equipment purchased utilizing an Education Savings Account, except through channels established in this subsection.
- (F) A Parent shall be required to annually renew the agreement described in subsection A of this Section in order for a Participating Student to continue in the Program.
- (G) Participating Students shall be required to annually take a nationally standardized norm-referenced achievement test and provide the results to the Department.
- (F) A signed agreement under this section shall be deemed school attendance and shall constitute compliance with the compulsory attendance law as set forth in Section 10-105 of Title 70 of the Oklahoma Statutes.
- (G) A Parent of an Eligible Student shall submit a request to participate in the Education Savings Account Program no later than June 15th preceding the school year for which an Account is requested. If a request is made after June 15th the Account will not begin receiving funds until the following school year, except as provided in subsection H of this Section.
- (H) The Parent of an Eligible Student who requests to participate in the Education Savings Account Program after June 15th but prior to November 15th, may request permission from the ESA Board to receive one-half of the amount provided in subsection A of Section 6 for the spring semester of the school year if the Parent provides evidence to the ESA Board of extenuating circumstances that prevented the Eligible Student from submitting a request prior to June 15th, or evidence of intervening circumstances subsequent to June 15th that justify an Eligible Student's departure from an Oklahoma public school district. Documentation that the Eligible Student resided outside of the state on June 15th but has subsequently relocated to the state shall constitute prima facie evidence of extenuating circumstances that prevented the Eligible Student from submitting a request prior to June 15th.
- (I) Participating Students may continue in the Program once they are determined to be eligible pursuant to this Act until they graduate, return to public school, or it has been found by the ESA Board that the agreement required in this Section has been violated.
- (J) Monies received and used by the Parent of a Participating Student in compliance with the provisions

of this act shall not constitute taxable income to the Parent.

## **SECTION 6. ESA FUNDING**

- (A) From funds specifically appropriated by the legislature for this purpose, the annual amount to be deposited into the Education Savings Account of a Participating Student shall be four thousand five hundred dollars (\$4,500.00). One half of the foregoing sum shall be deposited on July 1 preceding the school year for which an Account is requested, and one half of the foregoing sum shall be deposited on December 1 during the school year during for which and Account is requested.
- (B) Unused funds in an Education Savings Account shall be permitted to accumulate and to be spent in subsequent years within the parameters provided in subsection C of Section 5 of this Act.
- (C) A Participating Student's Education Savings Account shall be closed on the student's twenty-fifth birthday and any remaining funds shall be returned to the General Revenue Fund of the State.
- (D) Upon submission of the signed agreement by the Parent as required pursuant to Section 5 of this Act, the Treasurer shall notify the State Department of Education and the ESA Board, and the Treasurer shall:
  - (1) Establish an Education Savings Account in the name of the Participating Student and the Parent;
  - (2) Deposit the amount provided in subsection A of this Section into the Education Savings Account for each Participating Student; and
  - (3) Notify the Participating Student and Parent that the Account has been established and provide instructions for use of the Account.
  - (4) Monies for deposit into the Education Savings Accounts shall be from the funds provided for in Section 11 of this Act for purposes of the Education Savings Account Program and as directed by the Oklahoma Education Savings Account Act.
- (E) Any Eligible Student who enters the Program shall be removed from the Weighted Average Daily Attendance (WADA) computation for the school district of origin.
- (F) The Treasurer may retain an amount equal to up to three percent (3%) of the total amount set aside for the Program for administrative services. The retained funds shall be deposited in the Education Savings Account Administrative Fund established in subsection G of this Section.
- (G) There is hereby established the Education Savings Account Administrative Fund. The fund shall consist of monies retained by the Treasurer pursuant to subsection F of this Section. The Treasurer shall administer the fund, with expenditures subject to the approval of the ESA Board. Monies in the fund shall be used by the Treasurer for the costs of administering the Education Savings Account Program. Monies in the fund shall be exempt from the provisions of law relating to lapsing of appropriations. The legislature may appropriate additional monies to the fund as required to ensure success of the Program. The Treasurer may transfer monies from his general operating fund to the Education Savings Account Administrative Fund as required to ensure the establishment and success of the Program.
- (H) Subject to approval of the ESA Board, the Treasurer may contract with private financial management firms to manage Education Savings Accounts with the supervision of the Treasurer.
- (I) The ESA Board may contract with private firms to conduct random audits of Education Savings Accounts to ensure compliance with the provisions of this Act.
- (J) The ESA Board shall contract with a private firm to conduct an annual financial audit of the Program and shall make the findings of the audit available online.

## **SECTION 7. NO REBATES TO PARENTS**

- (A) No individual or entity receiving payment from an Education Savings Account shall share with, refund

to, or provide a rebate to the Parent or Participating Student any of the funds from an Education Savings Account.

- (B) Parents shall not receive or accept rebates, refunds, or payments from an Eligible Private School or a provider of educational services using funds from an Education Savings Account.
- (C) Unless granted permission after application to the ESA Board, Parents shall not use funds in an Education Savings Account to pay themselves or their relatives within the second degree of consanguinity for educational services.
- (D) Violation of the provisions of this section shall be punishable as a misdemeanor.

## **SECTION 8. ENFORCEMENT STANDARDS**

- (A) Upon finding that a Parent or Participating Student has intentionally failed to comply with the provisions of this Act, the ESA Board may suspend a Participating Student from the Education Savings Account Program. Provided, the ESA Board must first provide the Parent and Participating Student with written notice and an administrative telephone hearing, or at the Parent's or Participating Student's request, an opportunity to appear at the ESA Board and present evidence refuting the charge. Any Participating Student at risk of being suspended from the Program may appoint an advocate to represent him or her in addition to the Parent.
- (B) Upon a finding that a Participating Student should be suspended from the Program, and after an appeal as described in subsection C shall have been decided against the Participating Student or the time for appeal has expired, the ESA Board shall:
  - (1) Notify the Treasurer to terminate the Account of the Participating Student;
  - (2) Notify the Parent in writing that the Account has been terminated and that no further transactions will be allowed;
  - (3) Transfer any remaining funds to the general revenue fund.
- (C) A Parent may appeal to the district court of the county in which the Participating Student resides within thirty days after the decision made by the ESA Board pursuant to subsection B of this Section. Any appeal shall be governed by the usual rules of civil procedure for district courts.
- (D) In any appeal from a ruling of the ESA Board, the ESA Board shall be represented by the District Attorney for the county in which the appeal is being litigated.
- (E) If a Parent or Participating Student prevails in the appeal described in this Section, the Parent shall be awarded costs of court and reasonable attorneys' fees and the Treasurer shall immediately reinstate the Education Savings Account. The ESA Board shall have no right of appeal beyond the district court, but the Parent or Eligible Student shall have an appeal by right to the Court of Civil Appeals.

## **SECTION 9. NO NEW REGULATION OF PRIVATE SCHOOLS**

- (A) Acceptance by private schools of Participating Students in the Education Savings Account Program shall not expand the regulatory authority of the state or any school district to impose any additional regulation on private schools.
- (B) Nothing in this Act shall be construed to authorize or permit any state agency to exercise control or supervision over any nonpublic school or students being educated by other means.
- (C) Educational service providers which accept payment from an Education Savings Account shall not be considered agents of the state or federal government.
- (D) No liability shall arise on the part of the state, the Treasurer, the ESA Board, the State Board of Education, the State Department of Education, or a school district based on participation in the Program by an Eligible Student.

## **SECTION 10. REPORTING AND PUBLIC INFORMATION**

- (A) All records related to the administration of the Program shall be subject to the Open Records Act, except as prohibited by federal and state privacy laws, including the Family Educational Rights and Privacy Act (FERPA).
- (B) The ESA Board shall develop procedures to track and report to the public the progress of the Program and academic outcomes of Participating Students, and may contract with a private firm or a state agency to accomplish this purpose.
- (C) The Department shall maintain and publish a list of nationally norm-referenced tests identified for purposes of satisfying the testing requirements of this Act. The tests shall meet industry standards of quality in accordance with rules promulgated by the State Board of Education.
- (D) Upon request of the ESA Board, the Department shall compile test results submitted by Participating Students and develop reports summarizing the results of those tests. Any unique identifying information about Participating Students shall be removed so that no Participating Student may be identifiable. The provisions of this subsection shall not be effective until at least fifty Eligible Students have enrolled in the program.

## **SECTION 11. APPROPRIATIONS**

- (A) The legislature shall appropriate funds specifically for the purpose of funding Participating Students' Education Savings Accounts, and shall appropriate funds to the ESA Board and Treasurer sufficient to establish and administer the Program.
- (B) For the fiscal year beginning in 2019, and annually for a period of four (4) years thereafter, the ESA Board, in consultation with the Oklahoma Department of Education, shall:
  - (1) Prior to July 15, determine the number of Eligible Students Originating from an Oklahoma Public School District that have enrolled in the Program for the following school year;
  - (2) Determine the maximum number of students not originating from Oklahoma public school districts who can enroll in the Program for that year, ensuring that students not originating from Oklahoma public school districts do not exceed thirty-five percent (35%) of the total population of students in the Program; and
  - (3) On July 15, conduct a lottery to determine which students not originating from Oklahoma public school districts will be permitted to enroll in the Program if the number of applicants exceeds the number determined pursuant to paragraph 1 of this subsection.
- (C) The purpose of subsection B of this Section is to ensure that the cost savings associated with Eligible Students leaving the Oklahoma public school system meets or exceeds the cost to the State of funding Education Savings Accounts for students already not in public schools. The intent of the legislature is that the overall ratio of students in the Program consists of at least sixty-five percent (65%) Eligible Students originating from public schools, and not more than thirty-five percent (35%) not originating from public schools.
- (D) Beginning on the first day of fiscal year 2024-25, and thereafter, the provisions of subsections B and C of this Section shall become inoperable, and there shall be no limit on the number of students not originating from Oklahoma public school districts that can enroll in the Program.



## References



<sup>1</sup>Schlomach, Byron and Vance H. Fried, *Designing an Education Savings Account 2016* (Oklahoma City, OK: 1889 Institute, January 2016), <http://nebula.wsimg.com/3e65befa20f16820263db580741ff62f?AccessKeyId=CB55D82B5028ABD8BF94&disposition=0&alloworigin=1>.

Butcher, Jonathan, *Education Savings Accounts and Improving Oklahoma Student Achievement* (Oklahoma City, OK: 1889 Institute, February 2015), <http://nebula.wsimg.com/83e2e0f3e69541338ffa7e47d7371773?AccessKeyId=CB55D82B5028ABD8BF94&disposition=0&alloworigin=1>.

<sup>2</sup>"Education Savings Account," website, Nevada State Treasurer, <http://www.nevadatreasurer.gov/SchoolChoice/Home/>.

<sup>3</sup>Richwine, Jason, "When Social Programs Hurt Kids," *National Review*, November 21, 2016, <http://www.nationalreview.com/corner/442357/preschool-study-government-social-programs-hurting-kids>.

<sup>4</sup>In the very short or immediate run, there are no variable or marginal costs. Everything is fixed. If one student leaves a school, in the vast majority of circumstances, there are no personnel or operations/maintenance savings. On the other hand, if a new student attends it is arguable there are no added costs. In both cases, however, formula funding changes significantly. Some might say that there are no operations/maintenance savings when a child leaves a school. However, the likelihood is that significant numbers of children will leave a given public school under a choice program and, in fact, there will be significant savings in operations/maintenance on an average per-student basis statewide. The 60 percent threshold chosen for operations/maintenance savings is somewhat arbitrary, but the bulk of all school costs in all areas of expense are in labor and as public schools depopulate, fewer personnel will be needed in all areas of school operations.

<sup>5</sup>Author calculations based on "State Expenditure Details Based On All Funds Submitted By Districts," website, Oklahoma State Department of Education, [https://sdeweb01.sde.ok.gov/OCAS\\_Reporting/StateExpenditureDetails.aspx](https://sdeweb01.sde.ok.gov/OCAS_Reporting/StateExpenditureDetails.aspx) and "Oklahoma Education Spending and Revenue," website, Oklahoma Council of Public Affairs, <https://ocpathink.org/tools/education-data>.

Note that since these figures were last published, data have been made less available by state law.

<sup>6</sup>Figures derived from the total amount appropriated for the Flexible Benefit Allowance and the total amount of state/federal contributions to Oklahoma's Teacher Retirement system as reported, respectively, by:

Financial Services Division, *Technical Assistance Document* (Oklahoma City, OK: Oklahoma State Department of Education, February 2016), 1, <http://sde.ok.gov/sde/sites/ok.gov.sde/files/documents/files/FY%202016%20TAD.pdf>, and

Finance Department of the Oklahoma Teachers Retirement System, Comprehensive Annual Financial Report

for the Fiscal Year Ended June 30, 2016 (Oklahoma City, OK: Oklahoma Teachers Retirement System, December 16, 2016), 125, <https://www.ok.gov/TRS/documents/2016%20CAFR.pdf>.

<sup>7</sup>Schlomach and Fried, *Designing an Education Savings Account 2016*.

<sup>8</sup>Peshek, Adam, Director of Education Choice for the Foundation for Excellence in Education, telephone interview, December 5, 2017.

<sup>9</sup>Author calculations using Financial Services Division, *Technical Assistance Document* (Oklahoma City, OK: Oklahoma State Department of Education, February 2016), 1, <http://sde.ok.gov/sde/sites/ok.gov.sde/files/documents/files/FY%202016%20TAD.pdf>.