

**Scharf-Norton Center for Constitutional Litigation at
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**IN THE SUPERIOR COURT OF
ARIZONA IN AND FOR THE COUNTY
OF MARICOPA**

CHAUNCEY HALLFORD; L.M., L.A., and
S.H., by CHAUNCEY HALLFORD as next
friend; PIPER SEARFOSS; J.S, C.S, and
A.S., by PIPER SEARFOSS as next friend;
KAYLA SVEDIN; S.S. and L.S., by KAYLA
SVEDIN as next friend; PRISCA WALTON;
E.W. and P.W., by PRISCA WALTON as
next friend,

Plaintiffs,

vs.

ARIZONA DEPARTMENT OF
EDUCATION; KATHY HOFFMAN,
Superintendent of Public Instruction, in her
official capacity; KARLA ESCOBAR,
Director of the Empowerment Scholarship
Account, in her official capacity; MARK
BRNOVICH, Attorney General of Arizona, in
his official capacity.

Defendants.

Case No. CV2020-000148

**AMENDED COMPLAINT
for Declaratory and Injunctive Relief**

1. This case challenges the unlawful adoption of rules, policies, and procedures by which the Arizona Department of Education (“ADE”) arbitrarily and capriciously governs the Empowerment Scholarship Account (“ESA”) program. The ESA program allows qualified Arizona families to purchase educational options that best suit their children’s special needs by awarding them 90 percent of the public funds that would otherwise be allocated to their public education. The plaintiffs—Arizona parents and their children with special needs—participate in this program because district and charter schools cannot provide a free and appropriate education for their children.

2. The Arizona legislature established the ESA program “to provide educational options for special education students.” Arizona Senate Fact Sheet, 2011 First Reg. Sess. S.B. 1553.¹ The program “represents a novel approach to provide a choice to parents to select the school that is best for their children” because “no matter how good a public school is[,] it cannot meet the needs of every student.” Arizona House Committee Minutes, 3/21/2011. In fact, Arizona Superintendent of Public Instruction Kathy Hoffman recently stated that Arizona’s “special education system is stretched so thin that schools and districts are constantly faced with difficult decisions on where to make cuts in order to provide even the most basic services special education students need.” *Yellow Sheet Report*, February 11, 2020, Press Release, at 5–6. Yet

¹ ESA statutory language provides that “Arizona empowerment scholarship accounts are established to provide options for the education of students in this state.” A.R.S. § 15-2402. Thus, the program eventually expanded to include children who attend a D- or F-rated district school, children of parents who are on active military duty or killed in the line of duty, foster and adopted children, siblings of ESA recipients, children who live on an Indian reservation, and children of parents who are legally blind or deaf, providing options to the most vulnerable among Arizona’s children. A.R.S. § 15-2401.

the purpose of the ESA program is to provide “the means for parents to find *the solution that best meets the needs of their children.*” Arizona House Committee Minutes, 3/21/2011 (emphasis added). Through the program, Plaintiffs have found options that meet their children’s needs.

3. In direct opposition to the purpose of the ESA program, however, ADE’s arbitrary, capricious, and illegal administration of the program prevents families from choosing the solution that best meets the needs of their children. Specifically, ADE promulgates a set of invalid rules—found primarily (but not exclusively) in its *ESA Parent Handbook*—that undermines the program by unlawfully restricting educational choice and financially hindering parents and children. These rules are invalid because ADE failed to follow the rulemaking procedures required by the Arizona Administrative Procedure Act, and ADE’s enforcement of the rules is therefore unlawful.

4. In addition, ADE routinely administers the program in a manner that is so arbitrary and capricious that it prevents families from consistently accessing the educational options, services, and therapies their children so desperately need. ADE also routinely fails to adhere to the ESA statutes, thereby exceeding its power under the law in some instances and ignoring its responsibilities under the law in others, which further contributes to the arbitrary and capricious administration of the program and harms the most vulnerable among Arizona’s children.

5. Plaintiff parents seek an injunction and declaratory relief to forbid ADE from imposing these rules, restrictions, and associated costs against them; they also seek equitable relief requiring ADE to comply with the applicable statutes.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff CHAUNCEY HALLFORD is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. She is the parent and next friend of Plaintiffs L.M., L.A. and S.H.

7. Plaintiff L.M. is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. L.M. falls into an identified category of special needs under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff L.M. participates in the ESA program and has done so since the 2017–2018 school year.

8. Plaintiff L.A. is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. L.A. falls into an identified category of special needs under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff L.M. participates in the ESA program and has done so since the 2018–2019 school year.

9. Plaintiff S.H. is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. S.H. falls into an identified category of special needs under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff S.H. participates in the ESA program and has done so since the 2017–2018 school year.

10. Plaintiff PIPER SEARFOSS is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. She is the parent and next friend of Plaintiffs J.S., C.S., and A.S.

11. Plaintiff J.S. is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. J.S. falls into one of the categories of special needs

under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff J.S. participates in the ESA program and has done so since April 2018.

12. Plaintiff C.S. is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. C.S. falls into one of the categories of special needs under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff C.S. participates in the ESA program and has done so since January 2019.

13. Plaintiff A.S. is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. A.S. falls into one of the categories of special needs under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff A.S. participates in the ESA program and has done so since January 2019.

14. Plaintiff KAYLA SVEDIN is a citizen of the United States and a resident and domiciliary of Pinal County in the State of Arizona. She is the parent and next friend of Plaintiffs S.S. and L.S.

15. Plaintiff S.S. is a citizen of the United States and a resident and domiciliary of Pinal County in the State of Arizona. S.S. falls into one of the identified categories of need under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff S.S. participates in the ESA program and has done so since the beginning of the 2019–2020 school year.

16. Plaintiff L.S. is a citizen of the United States and a resident and domiciliary of Pinal County in the State of Arizona. L.S. falls into one of the identified categories of need under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff L.S. participates in the ESA program and has done so since the beginning of the 2019–2020 school year.

17. Plaintiff PRISCA WALTON is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. She is the parent and next friend of Plaintiffs E.W. and P.W.

18. Plaintiff E.W. is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. E.W. falls into one of the categories of special needs under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff E.W. participates in the ESA program and has done so off and on since the 2016–2017 school year.

19. Plaintiff P.W. is a citizen of the United States and a resident and domiciliary of Maricopa County in the State of Arizona. P.W. falls into one of the categories of special needs under 20 U.S.C.A. § 1401 and A.R.S. § 15-761. Plaintiff P.W. participates in the ESA program and has done so off and on since the 2016–2017 school year.

20. Defendant ARIZONA DEPARTMENT OF EDUCATION is a state agency charged with overseeing, administering, and enforcing the ESA program.

21. Defendant KATHY HOFFMAN is the Superintendent of Public Instruction for the State of Arizona and in that capacity is legally charged with overseeing, administering, and enforcing the ESA program and associated statutes. She is sued in her official capacity only.

22. Defendant KARLA ESCOBAR is the Director of the ESA program for the State of Arizona, and in that capacity is legally charged with ensuring the ESA program adheres to all relevant state and federal regulations, coordinating payments to the parents with the Treasurer's Office and accurately processing ESA applications in a timely manner. She is sued in her official capacity only.

23. Defendant MARK BRNOVICH is the Attorney General of Arizona and in that capacity is legally charged with overseeing, administering, and enforcing the ESA program and associated statutes. He is sued in his official capacity only.

24. Jurisdiction over this action and its claims is provided by A.R.S. §§ 12-123, 12-1831, 12-1801.

25. Venue is proper pursuant to A.R.S. § 12-401.

FACTS COMMON TO ALL CLAIMS

26. Governed by A.R.S. §§ 15-2401–15-2405, the ESA program was created in 2011 “to provide educational options for special education students” and to empower “parents to find the solution that best meets the needs of their children.” Arizona House Committee Minutes, 3/21/2011. Through the ESA program, “qualified students” can access many educational options that are not otherwise available to them through the public school system. A.R.S. § 14-2402(B). A “qualified student” is defined, *inter alia*, as a child suffering a disability. A.R.S. § 15-2401(7).

27. Plaintiffs HALLFORD, SEARFOSS, SVEDIN, and WALTON are parents of qualified students who participate in the ESA program. Plaintiffs L.M., L.A., S.H., J.S., C.S., A.S., S.S., L.S., E.W., and P.W. participate in the ESA program as qualified students who each suffer a disability. As ESA program participants, each plaintiff “is or may be affected” by ADE’s rules and by ADE’s existing agency practices and/or substantive policy statements that Plaintiffs allege to constitute rules. A.R.S. § 41-1034. In addition, Plaintiffs are harmed by ADE’s arbitrary, capricious, and illegal administration of the ESA program.

Plaintiffs HALLFORD, L.M., L.A., and S.H.

28. Plaintiff HALLFORD has participated in the ESA program for three (3) years. Her son, Plaintiff L.M., is fourteen (14) years old and suffers from autism, an intellectual delay, and a speech and language impairment. L.M. has attention-deficit/hyperactivity disorder (“ADHD”), obsessive-compulsive disorder (“OCD”), and dyslexia. He also has health impairments that prevent him from attending school regularly, and he will need long-term care for the duration of his life.

29. Prior to entering the ESA program, L.M. was assaulted by neurotypical children at his former school and developed such severe anxiety and depression that his stemming and autism behaviors dominated his and his family’s lives. Additionally, he was unable to learn because his special education class was too disruptive because of low-functioning children who slammed and banged things all day, yet his grade-level classroom was too advanced. As a result, L.M. was in sixth grade but reading at a kindergarten level. After less than a year in the ESA program, with the help of specialized tutoring services, L.M. was able to read at a fifth grade level.

30. Plaintiff HALLFORD’s daughter, Plaintiff L.A., is eleven (11) years old and suffers from autism, an emotional disability, other health impairments, and a specific learning disability. L.A. has ADHD, significant OCD, dyslexia, severe depression, eosinophilic esophagitis, and an eating disorder. These impairments affect her ability to attend school consistently.

31. By the time she entered second grade, L.A.'s impairments were so severe that she failed to advance despite attending summer school and receiving after-school tutoring and a reading specialist for two (2) years. By third grade, she had no friends and experienced anxiety so severe that she withdrew into herself and refused to leave the home.

32. After a year in the ESA program, L.A. went from reading at a kindergarten level to reading at a fifth-grade level. She fully participates in several activities and has flourished with the one-on-one tutoring the ESA program allows her to receive for her dyslexia.

33. Plaintiff HALLFORD's daughter, Plaintiff S.H., is five (5) years old and has autism, ADHD, depression, and anxiety, and a heart condition. S.H.'s autism and concomitant inappropriate behavioral response patterns affect her educational performance, and she will need long-term care for the duration of her life. The ESA program allows S.H. to thrive nevertheless because she receives an education that is completely tailored to each of her special needs, including in-home occupational and speech therapy.

34. The ESA program enables Plaintiff HALLFORD to spend each day from 7 a.m. to 8 p.m. taking her three children to specialized tutoring, occupational therapy, physical therapy, speech therapy, piano, karate, and ballet. Although she is exhausted from also taking the children to their allergists, gastroenterologists, urologists, neurologists, geneticists, and various other doctors on top of all the other educational therapies the children receive, she is grateful for the tremendous academic and social progress her children have made because of the ESA program. Plaintiff HALLFORD states that her children are "the success story for their

caseworker” at the behavioral center they attend and “proof that if you give a child the individual tools they need to succeed, they will.”

Plaintiffs SEARFOSS, J.S, C.S, and A.S.

35. Plaintiff SEARFOSS has participated in the ESA program for two (2) years. Her son, Plaintiff J.S., is eleven (11) years old and suffers from autism, ADHD, dyscalculia, dyslexia, dysgraphia, an intellectual delay, and anxiety. J.S.’s impairments have adversely impacted his educational performance such that he was unable to make any progress toward his goals after receiving special education services for an entire year at the charter school he previously attended. In addition, J.S. often harmed himself and called himself “stupid” while attending his previous school.

36. Prior to entering the ESA program, J.S. was performing significantly below grade level. With the help of his customized program, he has improved by four (4) years in only two (2) years. Within four (4) months of entering the program, J.S. stopped harming himself and became excited about doing math.

37. Plaintiff SEARFOSS’s son, Plaintiff C.S., is ten (10) years old and suffers from autism, OCD, dysgraphia, and anxiety. C.S.’s extreme emotional reactions and developmental disabilities affect his educational performance such that he needs specially designed instruction. C.S. is also gifted yet suffers from such extreme anxiety that he once ripped out his own hair, experienced extreme stomach pain, and then vomited because he could not finish a multiplication chart at the charter school he previously attended. The anxiety he experienced there led him to withdraw from school work for six months.

38. After entering the ESA program, C.S. has been able to resume his education and is thriving in his homeschool environment, where he is able to receive the individual attention and calming support he requires during instruction.

39. Plaintiff SEARFOSS's son, Plaintiff A.S., is seven (7) years old and suffers from autism, apraxia, dyslexia, and a muscle impairment. A.S. has problems with social/emotional reciprocity and language skills, behavioral rigidity, difficulty regulating his emotions and processing sensory input, and significant problems with social communication. Additionally, he has significant articulation delays that affect his acquisition of academics, especially basic reading skills. The ESA program has allowed him to successfully learn in an environment that not only addresses his aversion to bright lights and noise but that also provides him with other necessary accommodations due to feeding and elimination issues he experiences daily.

40. Plaintiff SEARFOSS is grateful for the tremendous academic and social progress her children have experienced because of the ESA program. As a low-income family, she states, they would not be able to afford individual educational programs for their children without ESA funds, and she fears her children would fall into darkness and be forgotten. Without the ESA program, she believes that her children would never make it very far in life and could become a drain on society. With the ESA program, they can become self-sufficient.

Plaintiffs SVEDIN, S.S. and L.S.

41. Plaintiff SVEDIN has participated in the ESA program since the first quarter of the 2019–2020 school year. Her daughter, Plaintiff S.S., is eight (8) years old and meets special

education eligibility under the category of autism. She has dyslexia, dyspraxia, dysgraphia, and anxiety disorder, including OCD and ADHD, tic disorder, and sensory processing aberrations.

42. Plaintiff SVEDIN's daughter, Plaintiff L.S., is four (4) years old and suffers from a speech and language impairment. She has an articulation delay that causes her to have difficulty expressing her wants and needs in the classroom. Her teachers have difficulty understanding her, and she has "meltdowns" because of her nascent awareness of the difficulty others have in understanding her. L.S. has cyclic vomiting as well as convulsive and absence seizures. She is currently under evaluation by a neurologist to determine the cause of these health impairments. Her speech and language delays coupled with her seizures affect her educational performance.

43. The ESA program has empowered Plaintiff SVEDIN to customize an education that addresses the individual needs of both of her daughters, and the results have been nothing short of amazing.

Plaintiffs WALTON, E.W. and P.W.

44. Plaintiff WALTON has participated in the ESA program on and off for three (3) years. Her son, Plaintiff E.W., is six (6) years old and suffers from autism and has an intellectual disability. He has a severe communication delay with limited expressive language and therefore cannot effectively express his needs to school staff. E.W.'s autism, intellectual disabilities, and communication and social delays affect his educational performance.

45. Plaintiff WALTON's daughter, Plaintiff P.W., is six (6) years old and suffers from autism and an articulation disorder. She exhibits difficulty in the areas of withdrawn behavior,

adaptability, and social skills as well as hyperactivity, anxiety, depression, somatic complaints, and attention problems. Her developmental disability significantly affects her verbal and nonverbal communication, social interaction, and performance in an educational environment.

46. Plaintiff WALTON is informed and believes, and on that basis alleges, that she resides in a district where the nearest schools regularly perform poorly and have received D or F grades pursuant to A.R.S. § 15-241. The schools in her neighborhood are, in her judgment, incapable of providing E.W. and P.W. with the services they need for their growth and education. However, the ESA program not only allows Plaintiff WALTON's children to receive the specialized education they require, but it also allows Plaintiff WALTON to monitor their progress and to adopt new educational therapies when indicated. With the ESA program, in other words, she is able to take a hands-on approach to ensure that her children are improving.

ADE's administration of the ESA program

47. ADE administers the ESA program pursuant to a series of invalid rules promulgated in its *ESA Parent Handbook* ("handbook"), which it publishes on its website and updates annually. The current version is attached as Exhibit 1.

48. ADE regularly informs ESA participants that they must follow the rules laid out in the handbook. Plaintiffs are informed and believe, and on that basis allege, that ADE's employees regularly consult and abide by the handbook when administering the ESA program.

49. Among the rules ESA promulgates through its handbook is the requirement that parents submit "quarterly expense reports" detailing their expenditure of ESA funds. Ex. 1 at 33–35. The reports are due on September 30, December 31, March 31, and June 30 of each year.

The handbook states that “if an expense report is submitted by the deadline[s] listed above, funding will be dispersed [*sic*] any time between the 15th through the 30th of each funding month. Failure to submit an expense report within 30 days of the deadline may result in termination from the program.” Ex. 1 at 34.

50. Although the handbook initially allowed participants to submit these reports by mail, ADE changed its policy three months later to require online submission. Compare Exhibit 1 at 34 with ADE statement at <https://www.azed.gov/esa/>. An expense report must include, *inter alia*, receipts, processing fees, rate amounts, etc. Ex. 1 at 35. The handbook states that “incomplete expense reports will be rejected” and that if a report is rejected, the parent will have five (5) days to resubmit with proper documentation. If the parent fails to do this, the handbook states that the parent will be “terminated from the program.” *Id.*

51. Up until July 2019, ADE’s policy was to disburse ESA funds according to the intervals set forth in the handbook. However, without warning, ADE changed its policy to condition the disbursement of ESA funds on the submission and approval of prior expense reports.

52. On July 17, 2019, Defendant ESCOBAR spoke at a meeting with ESA participants and stated that “Quarter 2 will not be funded if [the] Quarter 1 expense report is not submitted and approved.”

53. As a consequence of ADEs abrupt policy change regarding the conditioning of funds on expense reports for Quarter 2—coupled with the fact that ADE’s review and approval

process is both slow and cumbersome—ADE was late disbursing ESA funds for Quarter 2. This resulted in several injuries to ESA families.

54. For example, Plaintiff SVEDIN was forced to take money from her tax-free flexible spending account, or FSA, to pay for tutoring services that she would have paid for with ESA funds but for ADE’s sudden policy change. Plaintiff SVEDIN will never recover that money—which her family reserves for childcare emergencies—because parents may not reimburse themselves from their ESA accounts.

55. ADE’s tardy disbursement of ESA funds also harms ESA recipients by forcing them to pay late-payment fees that the program does not cover pursuant to the handbook. In addition, parents lose credibility with service providers.

56. For example, Plaintiff HALLFORD suffers grave embarrassment when she is forced to tell vendors that her ESA funds are late and then beg for lenience because she cannot afford to pay for services out of pocket.

57. Additionally, Plaintiff SVEDIN was forced to discontinue a therapeutic class for her daughter for one month, yet her daughter’s disability does not allow her to gracefully process sudden changes in routine.

58. Furthermore, because repetition and consistency are so critical for autistic children, ADE’s invalid policy changes harm children by disrupting their routines and causing them to lose hard-won progress.

59. Among other rules ADE enforces is its requirement that parents “repay” funds for whatever ADE deems to have been “misspent.” “Misspent” funds routinely include funds used

for educational purposes or expenditures for which ADE has rescinded a prior approval. ADE imposes its “repayment” requirement by sending a “10-day letter” informing parents of its contention that they have misspent ESA funds and commanding them to “repay” the allegedly misspent funds within a specified period of time or risk closure of their ESAs.

60. Plaintiffs are informed and believe, and on that basis allege, that when ESA participants “repay” funds to ADE pursuant to its “repayment” demands, those “repaid” funds are *not* returned to that participant’s ESA but are instead placed in ADE’s general funds.

61. For example, Plaintiff SEARFOSS received a “10-day letter” on April 30, 2019, demanding repayment of nearly \$9000. Although she was only forced to repay a fraction of that amount after ADE determined that a majority of the funds were for acceptable educational purposes rather than “misspending,” the funds she ended up “repaying” were not restored to her son’s ESA but were instead permanently lost to him.

62. Furthermore, when a participant’s account is closed—whether voluntarily or otherwise—ADE snatches up that student’s previously awarded funds rather than allowing the student to keep the award.

63. For example, Plaintiff WALTON received a “10-day letter” on January 1, 2017, demanding repayment of nearly \$3000. Even after she appealed the matter and fully settled the issue with ADE such that she was never required to repay any of the funds, ADE closed her son’s account with a balance of \$1200 prior to reinstating the account, and E.W. permanently lost access to those funds though E.W. did nothing wrong and despite ADE’s dismissal of its original demand for repayment.

64. Plaintiffs are informed and believe, and on that basis allege, that ADE routinely suspends, terminates, and/or refuses to reinstate ESA accounts for entire families when it determines “misspending” has occurred with regard to one child even if there is no “misspending” with regard to that child’s siblings.

65. For example, Plaintiff WALTON was informed that P.W.’s ESA would not be reinstated while her appeal of “misspending” for E.W.’s ESA was pending. As a result, WALTON was forced to keep P.W. enrolled at a school that did not adequately meet P.W.’s needs until ADE restored E.W.’s ESA.

66. Additionally, ADE’s policy of demanding repayment for “misspent” funds is enforced in an arbitrary and capricious manner because ADE often approves a purchase for one family while determining that a different family has “misspent” its ESA funds for the exact same item.

67. In the case of Plaintiff HALLFORD, this has occurred within her family. ADE has denied an expenditure for one child while approving the expenditure for the other two children.

68. Because the approval process is so confusing and arbitrary, families routinely spend vast amounts of time trying to obtain approvals. And although ADE offers a telephone line for ESA participants to call for assistance or questions regarding the handbook’s rules and the ESA program, wait times routinely exceed three hours.

69. Because ADE forces families to abide by the handbook’s invalid rules, they are denied full access to the educational options they are mandated to receive under the ESA statutes.

70. For example, Plaintiff SEARFOSS cannot fully customize her children's homeschooling curricula under ADE's rules and policies regarding what constitutes "curriculum."

71. In its prior iteration of the handbook, ADE stated that a curriculum must be pre-packaged. *See 2018–2019 ESA Parent Handbook*, Version 1, Rev. 11/19/18, at 9.²

72. The current handbook offers no real guidance regarding allowed curriculum expenditures.

73. However, ADE routinely denies homeschooling parents the opportunity to customize curricula to students' individual needs by disallowing expenditures for "supplemental materials" that have either been recommended for their children by therapists or that parents have determined to be necessary for the curricula they have designed themselves. Rather than providing options for education, ADE denies options and stifles innovation.

74. Because ADE routinely administers the ESA program in a manner that is arbitrary and capricious and routinely fails to adhere to the ESA statutes, it has exceeded its power under the law in some instances and ignored its responsibilities under the law in others.

COUNT ONE

Administrative Procedure Act

75. Plaintiffs incorporate by reference and reassert the preceding paragraphs as though fully set forth herein.

² <https://cms.azed.gov/home/GetDocumentFile?id=5c25284f1dcb250a1c4e90eb>.

76. A.R.S. § 41-1022 requires that before an agency makes, amends, renumbers, or repeals a rule, the agency must first file a notice with the Secretary of State and allow for and accept public comment and notice on the rulemaking.

77. The *ESA Parent Handbook* consists of a set of “rules” as defined in A.R.S. § 41-1001(19) because it contains an agency statement of “general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency” (i.e., ADE’s statement of general applicability regarding the ESA program).

78. Plaintiffs are informed and believe, and on that basis allege, that the *ESA Parent Handbook* was not promulgated pursuant to the procedures set forth in the Arizona Administrative Procedure Act (A.R.S. § 41-1001 et seq.).

79. Plaintiffs are informed and believe, and on that basis allege, that no waiver or exception to that requirement applies.

80. On April 11, 2017, the Attorney General’s office stated that the *ESA Parent Handbook* does not consist of rules and therefore does not fall within the requirements of the Administrative Procedure Act.

81. However, ADE requires ESA recipients to comply with the handbook or risk losing access to their accounts. Ex. 1 at 6.

82. Thus, ADE applies the handbook as if its contents constitute rules, policies, and procedures; indeed, the stated purpose of the handbook “is to establish and supply official instruction concerning policies, procedures, and implementation of the ESA program.” Ex. 1 at 7.

83. ADE also promulgates other rules that are not found in the handbook. For example, Plaintiffs are informed and believe, and on that basis allege, that ADE interprets the handbook and the ESA statutes as requiring parents to dis-enroll their children from district or charter schools prior to *applying* for an ESA rather than dis-enrolling their children prior to *signing* an ESA contract.

84. This harms parents, including Plaintiff WALTON, who must first receive assurance that their children have an ESA before they can dis-enroll their children from the only education currently available to them (district or charter schools).

85. As ESA program participants, each plaintiff in this lawsuit “is or may be affected” by ADE’s rules and by ADE’s existing agency practices and/or substantive policy statements that Plaintiffs allege to constitute rules. A.R.S. § 41-1034.

86. However, because ADE failed to follow the rulemaking procedures set forth in the Arizona Administrative Procedure Act, these rules are invalid.

87. Moreover, ADE’s enforcement of invalid rules against ESA families is arbitrary, capricious, and an abuse of its discretion.

88. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend that their actions in respect to Count One are lawful in all respects.

COUNT TWO

Unlawful Demands for “Repayment”

89. Plaintiffs incorporate by reference and reassert the preceding paragraphs as though fully set forth herein.

90. Plaintiffs are informed and believe, and on that basis allege, that ADE routinely exceeds its statutory authority by suspending or terminating children’s ESAs for so-called “misspent funds” even when there is *no evidence* of intentional or fraudulent misspending or other substantial misuse of ESA funds.

91. ADE then proceeds to unlawfully engage in “collections,” demanding that families “repay” the funds to ADE—even when the funds were plainly used for educational purposes.

92. For example, Plaintiff SEARFOSS received a demand to repay ADE \$8298.25 on April 30, 2019, but she was ultimately only forced to pay a fraction of that amount because ADE determined that nearly all of the so-called misspending was not actually misspending at all.

93. Plaintiff WALTON received a similar demand for repayment of \$2984 on June 3, 2019, and her son’s ESA was suspended for *six* months.

94. ADE eventually dismissed the demand after determining that the so-called misspending was identical to an expenditure ADE had previously approved in January 2017.

95. Regardless, ADE has no lawful authority to demand “repayment” of ESA funds under the ESA statutes.

96. A.R.S. § 15-2403(E) permits but does not require ADE to “*refer* cases of *substantial misuse* of monies to the attorney general for the purpose of collection” (emphasis added).

97. And although section (C) permits ADE to suspend an account under certain circumstances, including “*knowingly* misus[ing] monies or *knowingly* fail[ing] to comply with

the terms of the contract with intent to defraud,” ADE has no authority to demand “repayment” or engage in “collections” on its own behalf.

98. Plaintiffs contend that attempts to recoup benefits under the ESA program are not only outside ADE’s statutory authority but also violate the common law prohibition on recoupment of public benefits. *Cf. Lucido v. Rippetto*, 73 Cal. App. 3d 1, 3 (1977).

99. Moreover, because ADE’s demands for repayment are not based in law, its enforcement of this policy is arbitrary, capricious, and an abuse of its discretion.

100. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend that their actions with respect to Count Two are lawful in all respects.

COUNT THREE
Unlawful Disbursement to the General Fund of “Repaid” Funds

101. Plaintiffs incorporate by reference and reassert the preceding paragraphs as though fully set forth herein.

102. Plaintiffs are informed and believe, and on that basis allege, that when participating parents “repay” ESA funds pursuant to ADE’s claim that the parent has misspent the funds, those “repaid” funds are *not* returned to that student’s ESA account but are instead placed in ADE’s general funds.

103. Plaintiffs are informed and believe, and on that basis allege, that ADE has no lawful authority to place “repaid” funds anywhere other than back in the participant’s own ESA to be applied to that student’s education.

104. Pursuant to A.R.S. § 15-2402(I), the state may only return ESA funds to the state under limited circumstances.

105. Plaintiffs contend that ADE is acting as an adjudicator, without observing the appropriate protocol, when it “punishes” *students* rather than their misinformed parents by requiring parents to repay ADE for so-called misspent funds rather than allowing the funds—which were awarded to the student for the student’s education—to be returned to the student’s account.

106. Plaintiffs contend that if ESA program coordinators are engaging in adjudications, they must comply with A.R.S. § 15-2403(C) and only apply those rules which are *validly* made pursuant to A.R.S. § 41-1001 et seq.

107. Moreover, because ADE’s failure to return “repaid” funds to students’ ESAs is not based in law, its enforcement of this policy is arbitrary, capricious, and an abuse of its discretion.

108. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend that their actions in respect to Count Three are lawful in all respects.

COUNT FOUR
Unlawful Condition of Payments on Approval of Expense Reports

109. Plaintiffs incorporate by reference and reassert the preceding paragraphs as though fully set forth herein.

110. As described above, ADE requires participating parents to file quarterly “expense reports” detailing their ESA expenditures. ADE then evaluates these reports and either approves or denies them. ADE expressly conditions future payments to parents on approval of previous quarterly expenditure reports.

111. ADE also makes clear that prior approval of a quarterly expense report is subject to revision and reversal—and that such reports are subject to disapproval—at any time in the future.

112. For example, Plaintiff SEARFOSS was not informed until May 2019 that expenses from July 2018 were denied.

113. Under A.R.S. § 15-2402(C), ADE is required to disburse ESA funds at regular intervals once a parent has signed a contract to use ESA funds as set forth in A.R.S. § 15-2402(B).

114. Thus, ADE has no statutory authority to condition the disbursement of ESA funds on the submission and approval of past expense reports.

115. Under A.R.S. § 15-2403(B), ADE may annually “audit” ESA accounts to ensure compliance and conduct random quarterly and annual audits.

116. But ADE’s authority to “audit” accounts does not permit ADE to condition the disbursement of ESA funds on any such audits.

117. Thus, ADE’s decision to condition the disbursement of ESA funds on the submission and approval expense reports exceeds ADE’s statutory authority and is arbitrary, capricious, and an abuse of its discretion.

118. Moreover, ADE’s evaluation and approval process for quarterly expense reports is extremely slow, cumbersome, and time-consuming; as a consequence, ADE’s payments to ESA participants is often late, resulting in breaches of contract.

119. Plaintiffs are informed and believe, and on that basis allege, that there are numerous ESA participants who have received late payments as a consequence of ADE's conditioning of funds on the submission and approval of prior quarterly expense reports.

120. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend that their actions in respect to Count Four are lawful in all respects.

Declaratory Relief Allegations

121. Plaintiffs incorporate by reference and reassert the preceding paragraphs as though fully set forth herein.

122. An actual and substantial controversy exists between Plaintiffs and Defendants as to their respective legal rights and duties.

123. Plaintiffs contend that the challenged rules, policies, and actions of ADE and the Arizona Attorney General as described above are invalid, unlawful, arbitrary, capricious, and an abuse of ADE's discretion.

124. Plaintiffs are informed and believe, and on that basis allege, that Defendants contend otherwise on all counts.

125. Plaintiffs contend that ADE has failed to accept public notice and comment requirements required of the agency under the Arizona Administrative Procedure Act. Consequentially, there is no substantial evidence to show that the agency decision making was *not* arbitrary, capricious, or an abuse of discretion, and so the rules are unlawful.

126. Accordingly, declaratory relief is appropriate.

Injunctive Relief Allegations

127. Plaintiffs incorporate by reference and reassert the preceding paragraphs as though fully set forth herein.

128. Due to Defendants' enforcement of the challenged rules and policies, and other actions as alleged above, Plaintiffs and others similarly situated are now and will continue to be deprived of their rights as guaranteed by A.R.S. § 15-2401 et seq.

129. If not permanently enjoined by this Court, Defendants and their agents, representatives, and employees, will continue to implement the challenged rules and policies and pursue actions as specified herein, which deprive Plaintiffs of their legal rights and cause them to face great uncertainty with respect to future financial plans, the stability and enforcement of their ESA contracts, and the future education of their children with special needs. Plaintiffs have no plain, speedy, and adequate remedy at law for such an injury.

130. Accordingly, injunctive relief is appropriate.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court take the following actions:

A. Declare that ADE's *ESA Handbook* is a set of an invalid rules promulgated without compliance with the Arizona Administrative Procedure Act and is therefore unlawful, and enjoin ADE and/or the Attorney General from either giving effect to the rules stated therein or from informing parents that they must comply with it;

- B. Declare that ADE has no lawful authority to demand “repayment” of ESA funds that it deems to have been misspent, and enjoin ADE and/or the Attorney General from making such demands in the future;
- C. Declare that ADE has no lawful authority to place “repaid” ESA funds anywhere other than into the specific participant’s own ESA account, and enjoin ADE from placing such funds anywhere other than back into the participant’s own ESA account;
- D. Declare that ADE has no lawful authority to condition ESA funds on the submission and approval of prior expense reports, and enjoin ADE and/or the Attorney General from imposing any such requirement;
- E. Award Plaintiffs reasonable attorney fees pursuant to the private attorney general doctrine;
- F. Award Plaintiffs costs as prevailing parties; and
- G. Award such other and further relief as may be just, equitable, and proper.

RESPECTFULLY SUBMITTED this 14th day of February 2020.

/s/ Veronica Thorson
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CERTIFICATE OF SERVICE

ORIGINAL E-FILED this 14th day of February 2020, with a copy delivered via the ECF system to:

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Arizona Department of Education

Empowerment Scholarship Account Program Parent Handbook: School Year 2019-2020

July 1, 2019

Arizona Department of Education©
1535 W. Jefferson Street Bin #41
Phoenix, AZ 85007
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Welcome to the Empowerment Scholarship Account (ESA) Program. We are happy to have you and your child be part of such an exciting program. By opting out of the public-school system, you can seek an array of alternative educational services from private school to home-based education. The ESA program allows you to control your child's educational needs. Our mission is to serve ESA families effectively, and efficiently. Whether you are a new parent or a parent continuing the program, this handbook along with our staff will provide guidance and support to help you navigate through the ESA program. Below is our Quick Reference Guide that will assist in making sure your ESA account maintains good standing year after year.

Again, welcome to the ESA program; we are here for you and your child.

Quick Reference Guide on ESA's

- An ESA student cannot be enrolled in a public district school, charter school, or public online school.
- An ESA student cannot be receiving a School Tuition Organization (STO) at the same time as an ESA.
- Expense reports are required quarterly, even if there are zero expenses to report. These reports are completed electronically through the [ESA Expense Report Portal](#). Failure to submit an expense report may result in the forfeiting of funds or termination from the program.
- All charges require a detailed invoice of the charge and must be uploaded or attached to the expense report.
- Expenses must be paid for within the quarter they occur. Expenses that occur in following (later) quarters cannot be paid except for tuition, registration fees, enrollment fees, summer programs, etc. Written permission is required for all others.
- Credentials are required for all teachers, instructors, tutors, and providers and or facility. Evaluations require a licensed professional. Services offered in the private or public schools by tutors/teachers or therapist do not require credentials if paid through the school.
- Medical expenses and or co-pays cannot be charged to your ESA. Any non-medical services must be paid with either your ESA or billed through your medical insurance (no combination).
- Make sure you know the due dates for expense reports and funding periods.
- Check the ESA webpage regularly for updates.
- ESA calendar and other parent training resources are also available on the website.
- You are not obligated to share your ESA award amount or contract with your private school, vendors, or providers. Private schools should not keep the ESA card on file.

- The contract and account information are between the applicant and the Arizona Department of Education (ADE) only; The ESA program does not communicate with 3rd parties.
- Knowingly hiring other ESA recipients or family members to provide services is prohibited.
- Within the contract year, account holders must spend a portion of the ESA funds on at least one of the following: reading, grammar, math, social studies, and science.
- ADE highly recommends making your preferred method of contact email, as this is the best way to have the most up-to-date information regarding the ESA program.

There are many resources available to ESA families.

ESA Staff is available to assist you: Monday-Thursday 9am-4pm and Friday 9am-3pm.

ESA staff can be reached by:

- Phone: 602-364-1969
- Email: ESA@azed.gov

Chapter 1: Introduction

The importance of providing a world-class education to all Arizona children cannot be overstated or hold more emphasis in our state today. Historically, Arizona has pioneered breakthrough programs that have grounded themselves in supporting district and charter school initiatives, expanding school choices, increasing transparency, and delivering a high-quality education. Under the direction of the Arizona State Legislature, the Arizona Department of Education (ADE or the Department) has created the Empowerment Scholarship Account (ESA) Program to continue along the path of innovative education reform.

What is an Empowerment Scholarship Account?

An Empowerment Scholarship Account (ESA) is an account administered by ADE and funded fully by state tax dollars to provide options for the education of qualified students in this state.

90% of the student's State aide (does not include any federal funding or other funding) would be allocated to the applicant parent of the qualified student to provide an education which **must include at a minimum the following subjects: reading, grammar, mathematics, social studies and science.** The ESA program allows parents of qualified students to utilize public monies to purchase other educational services from private schools, education providers, and vendors.

Keep in mind that the ESA contract is between the applicant parent (Account Holder) and the Arizona

Department of Education (ADE). While we highly recommend you not sharing details of your contract or award, information that you choose to share with schools, vendors, or providers is at your discretion.

Unfortunately, the ESA program is not allowed to provide guidance or recommendations to families about schools, vendors, or providers.

Accepting an Empowerment Scholarship Account

By accepting an ESA, the applicant of the qualified student(s), agrees to abide by an annually signed contract and handbook agreement. At any time, the Department reserves the right to revoke your ESA for violating contract, policies, or laws (*please refer to your contract for all terms and conditions*) including the following:

- Not enroll the student in a public school (includes charters and public online schools).
- Not enroll the student in a summer public school program (includes charters and public online schools).
- Release the public-school system from educating the student or providing services. School districts are released from their obligation and, unless stipulated in statute, may decline enrollment and assistance if the qualified student is under an ESA contract.
- Not accept any School Tuition Organization (STO) scholarship or tax credit scholarship while on an ESA for the school year.
- Provide completed quarterly expense reports by the given deadline.
- Spend a portion of the ESA funds annually by June 30th on an educational expense.
- Not enroll the ESA student in a ½ day Kindergarten public school program without paying the public school.

By opting out of the public-school system, parents can seek a range of alternative educational services; ranging from services at a private school to home-based education.

With an ESA ...	
Account holders receive a prepaid bank card with 90% of state aide funding.	Students cannot attend public, charter, or public online school unless paying for services and or classes
Account holders have control over the student's education and utilize some resources that may not be available through the public-school system.	On an ESA, students do not receive a high school diploma from a public school.
Take full legal responsibility for your student's education. "with rights comes responsibilities".	Funding stops once a student completes the 12 th grade for ESA (all children move in a cohort from the grade they entered ESA). Students with a disability may be able to continue the ESA program until the age of 22 with documentation from the public school.

Account holders must submit quarterly reports and adhere to an annual contract with ESA.	Students cannot receive <u>any</u> School Tuition Organization (STO) scholarship OR tax credit-based scholarships concurrently with an ESA.
Account holders must spend a portion of the student's annual award by June 30 th .	Funds may only be spent on <u>approved</u> educational services, providers, or materials. When in doubt PLEASE contact ESA staff.

Handbook Purpose

The purpose of the ESA handbook is to establish and supply official instruction concerning policies, procedures, and implementation of the ESA program. Please note that policies are subject to change any time during the contract year. The ESA staff will notify parents of any change(s) and when those change(s) will become effective.

Handbook Updates

The ESA handbook is reviewed by ESA staff under the guidance of the Attorney General's office. Policies can and will be added and/or redacted in response to newly-enacted legislation, court decisions, and/or suggestions for best practices. Per Arizona Revised Statutes (A.R.S) § 15-2403(H), "[t]he Department may adopt rules and policies necessary for the administration of the empowerment scholarship accounts."

The most up-to-date handbook is available electronically on the ESA website www.azed.gov/esa For topics not covered in the handbook please contact your ESA Staff.

Contract Types

There are three different types of contracts within the ESA program, initial, renewal, and exited.

- 1. Initial ESA Contract:** The Initial ESA contract is given after initially qualifying for an ESA or after an account holder has left the program, reapplied, and qualified again for an ESA.
- 2. Renewal Contract:** The Renewal Contract is given to existing contracted account holders who are in good standing at the end of the contract year, who also still qualify to receive a K-12 education. Account holders do not need to reapply each year. If the student is over the age of 18 or has completed 12th grade, then verification from the public school that the student still needs a K-12 education will be required to receive a renewal contract. If verification from the public school is not received, then the student will be eligible for an Exited Contract.
- 3. Exited Contract:** The Exited Contract is sent to account holders who have a student who no longer qualifies for a K-12 education, but they still have remaining funds that can be spent towards the student's education. This contract type explains that the student will not receive any additional funding but is eligible to continue to spend funds if they follow the contract and handbook requirements.

How to Stay Updated

ESA staff has a responsibility to ensure parents are given accurate information in a timely manner, so parents can fulfill their responsibility to follow the rules and policies of the program.

Parents are strongly encouraged to visit our website www.azed.gov/esa for information and resources. We highly recommend that you read all communication; and make sure that you add ESA.Communications@azed.gov to your contacts to avoid emails going to your spam or junk folders. Please keep in mind that if you reply to an email from the ESA Communications inbox, you will not get a reply, it is an unmonitored email address. This email is used strictly to communicate with account holders and applicants.

We communicate officially via email (*official correspondence and any major policy and or statute changes/updates will be mailed to parents who are not able to provide us with an email*). If you need to update your email or want to make sure we have a valid email, please contact your ESA staff at esa@azed.gov. All requests to change demographic or contact information must come in writing.

ESA Staff also offers other resources and serves our families by:

- Newsletters
- ESA Informational Meetings and Trainings
- Website: www.azed.gov/esa

Changes related to emails, addresses, and phone numbers

If your email, mailing address, or phone number changes, please notify your ESA staff immediately via email at esa@azed.gov.

Residency Verification

In accordance to A.R.S. § 15-2401(5) "parent means a resident of this state who is the parent or legal guardian of a qualified student. 15-2401(7) defines a qualified student as a resident of this state. Therefore, a parent or legal guardian will be asked to provide proof of residency at the time of application OR at any time while on the ESA program.

The applicant parent/legal guardian must provide **one** of the following current documents, which shows full name and residential address or physical description of the property where the student resides (no P.O. Boxes):

Per ADE's Arizona Residency Guidelines, ESA will accept the following:

- Valid Arizona (AZ) driver's license
- Valid AZ identification card

- Valid AZ Address Confidentiality Program authorization card
- Property deed
- Mortgage documents
- Property bill tax
- Rental agreement or lease (*including Section 8 or off-base military housing*)
- Utility bill (*water, electric, gas, cable, phone*)
- Bank or credit card statement
- W-2 wage statement
- Payroll stub
- Certification of tribal enrollment (*506 Form*) or other identification issued by a recognized Indian tribe located in AZ
- Other documentation from a state, tribal, or federal agency (*Social Security Administration, Veterans' Administration, AZ Department of Economic Security, etc.*)
- Temporary on-base billeting facility (*military families only*)

Secure Information

The Department has the obligation, under the Family Educational Rights and Privacy Acts (FERPA) to ensure all information is kept confidential and secure. The Department and ESA staff will never release personally identifiable information regarding your child, including financial information or personal details (this includes contract information) to private schools, providers, vendors, or stakeholders.

ESA Staff will only communicate with you, the applicant parent, and the parent you have assigned as an additional parent or legal guardian. For the protection of your privacy, the Department encourages you to use caution when providing your personal information to third parties. This includes, but is not limited to, social security numbers, dates of birth, ESA bank account information, or ESA application information such as ESA Application IDs or ESA logins and account passwords. To further protect yourself against the possibility of fraud, it is also recommended that you never release the custody of your ESA bank card or the card number to third parties (including schools).

Applicants are also encouraged to enroll in Bank of America's Online Banking system at: www.bankofamerica.com/onlinebanking/online-banking.go. Setting up an account gives cardholders the ability to track their purchases and is a good way to ensure fraud is not occurring on your account.

Private School and Homeschool Affidavits

A.R.S § 15-2402(B)(5) requires that the parent of a qualified student **not** file an affidavit of intent to homeschool. This means that your ESA contract serves as your "affidavit" or proof that the student is indeed receiving an education as required by Arizona law.

Chapter 2: Spending and Program Requirements

Hundreds of pages are dedicated in law to guide government spending that ensures transparency to the taxpayer; in education it is no different. Public schools have dozens of reports that must be submitted to show accountability throughout the system.

When the ESA program was passed into law, only one page was dedicated to guide parents on how to spend their child's awarded funds to effectively carry out the same mission as a public school. Purposefully, the law was passed to "empower" parents to make the choices that would best serve their student's needs with as little burden as possible.

Important things to keep in mind:

1. The ESA program does not have an approved school, vendor, or provider list.
2. It is at your discretion (applicant parent/legal guardian) to choose the provider and ensure that he/she have the proper credentials prior to receiving a service.
3. Hiring a family member of the student on an ESA is not allowed.
4. Knowingly hiring another ESA recipient parent and paying them with ESA funds is disallowed.
5. Services must be paid for during the same quarter in which they are received; meaning invoice dates must match the quarter that services are provided.
6. Pre-payment for services is not allowed.

Approved Spending Categories for ALL Students

Approved Spending Categories for ALL students:

<u>Approved Spending Categories</u>	<u>Description</u>
-------------------------------------	--------------------

Tuition or fees at a qualified school AND required textbooks at a qualified school	A qualified school is defined as: a private school located in Arizona serving PK-12 th grades. The school must not discriminate on the basis of race, color, or national origin
Tutoring services or services	All services must be delivered by an individual or facility who is accredited by a state, regional or national accrediting organization. Accreditation cannot be expired. ***See credential requirements
Curriculum	Defined as a complete course of study for a particular content area or grade level including any supplemental education materials required by the curriculum. This includes lesson plans and educational workbooks
Tuition or fees for a nonpublic online learning program	Online learning programs or courses
Fees for nationally standardized norm-referenced achievement tests	Advanced Placement exams and/or other exams related to college or university admissions such as ACT or SAT and prep exams
Coverdell education savings account contributions	For the benefit of the qualified student in the ESA account Holder's name, however there is no legal way to move funds to a Coverdell 530 with the ESA bank cards therefore funding Coverdell 530 accounts is not possible currently
Tuition or fees at an eligible postsecondary institution and the purchase of required textbooks by that institution	Community college as defined in 15-1401, a university under the under the AZ board of regents or an accredited private postsecondary institute
Account fees	Lost or stolen card fee and expediting services only
Services provided by a public school	Approved individual classes and fees for extracurricular programs at a public school
Uniforms	Uniforms must be purchased from OR through a qualified school

A Deeper Look at Spending

A.R.S. § 15-2403(H) states, "The department may adopt rules and policies necessary for the administration of empowerment scholarship accounts..." And with thousands of options for parents to choose from, ESA cannot produce a list of all approved and non-approved expenses. In the following pages, this handbook will give some examples of the twelve approved spending categories.

Tuition or Fees AND Required Textbooks at a Qualified Private School

Many families on the ESA program pay a private school. As an approved expense, tuition may only be

used for the ESA student named on the ESA contract. The ESA account holder must request a **complete paid invoice** from the school which will be submitted with the expense report and must include the following:

- Name of private school
- Name of student
- Transaction date (must align with the quarter)
- Tuition or fees charged
- Total amount paid (PLEASE NOTE: Amount MUST match the amount charged to the ESA card)

Failure to submit a complete paid invoice will result in the parent having to repay the amount and or termination.

While tuition may be straight forward, fees are not. Many schools charge fees in areas that are not approved by the program (e.g. transportation, computer hardware, technological devices, consumable supplies or materials, etc.). As a result, fees should be itemized. The following are a list of approved fees that may be charged by the private school:

- Registration fees
- Application/Enrollment fees
- Required book fees
- Lab fees (Science labs, Math labs, etc.)
- Facility fees
- Uniform fees
- Computer Lab fees (this fee is not a fee to allow the purchase of a personal notebook/ computer)
- Supply fee (this fee does not include consumable items such as pens, paper, markers, art supplies, construction paper, pencils, folders, backpacks, cleaning supplies, glue, scissors, food, etc.)
- Tutoring fees
- Textbooks or book fees
- Processing fees (PayPal, Square, credit card fees)
- Activity or sports fees

ESA funds may not be used for:

- Sports uniforms, equipment, materials or items required for a sports activity
- Late payment or Cancellation fees
- Late pick-up fees
- Day Care fees
- After school care fees
- Before school care fees
- Transportation fees

- Supply fees (which include consumable items/materials), before and after school care, computers, technological devices (iPads, iPods, USB drives, notebooks, desktops, calculators, etc.)
- Field trip fees
- Lunch fees

These fees will be considered disallowed and the account holder will be required to repay the Department; quarterly funds will not be disbursed until repayment has been made in full.

Kindergarten Tuition

A student cannot be enrolled in a full-day kindergarten program offered by the public-school district or charter who charges tuition for the 2nd half of the day because the student would still be enrolled in the public school for the first half of the day. This violates the ESA contract as a student would be enrolling in a public-school district or charter and receiving ESA funds at the same time. When in doubt, please contact ESA staff for assistance.

Uniforms

In accordance with A.R.S. § 15-2402(4)(n), uniforms purchased from or through a qualified school are approved. The Department reserves the right to ask you to provide details regarding the school's uniform or dress code.

ESA will not approve the purchase of items that are not required as a uniform such as:

- | | |
|---------------------|------------------------|
| ○ Hair accessories | ○ Sport uniforms |
| ○ Socks | ○ Sport accessories |
| ○ Tights or hosiery | ○ School team clothing |
| ○ Shoes | ○ Lanyards |

Tutoring or Teaching Services

Tutoring or teaching services must be provided by an individual or facility accredited by a state, regional, or national accrediting organization. Before paying for tutoring services from a provider, please note:

- **Hiring of family members OR other ESA parents and their family members is prohibited** – ESA funds cannot be used to hire family members OR other ESA family members to provide approved tutoring services.
- **Required credentials** – Parents must submit credentials on behalf of the tutor, although a tutor or a facility can submit their credentials for the student, it is the parent's responsibility to make sure that the credential(s) were submitted and approved.

No expired credentials will be accepted. If services are discontinued and a new tutor is hired, new credentials are required to be submitted.

Credentials must be submitted with your expense reports. Please keep in mind that quarterly funding will not be disbursed if the credential(s) for a tutor or facility are expired or not on file.

For a tutor to be approved, one of the following must be submitted:

Approved Tutor/Teacher Credentials

<u>Credential</u>	
Bachelor's degree or higher	Copy of degree or transcripts (official or unofficial) and must be on file
State Teaching Certificate	Cannot be expired and a copy must be on file
State Substitute Teaching Certificate	Cannot be expired and copy must be on file

**At any time, you may be asked to resubmit credentials*

The following is a list of specific subjects that require a specific credential. To be approved, ONE of the following for each specific subject must be submitted.

Approved Credentials for Specific Subjects

<u>Specific Subject</u>	<u>Approved Credentials</u>
Physical Education (P.E.)	<p>Certified Personal Trainer</p> <p>State Teaching Certificate with P.E. endorsement</p> <p>Sports Medicine Endorsement/Certificate</p> <p>Associate degree or higher</p> <p>Credential in the area of instruction (recommended to review with ESA)</p> <p>Facility Credential</p>
Swimming	<p>Water Safety Instruction (WSI) Certificate</p> <p>SWIM USA Certificate</p> <p>American Red Cross Certificate for Swimming and Water Training</p>

	American Red Cross Certificate for Lifeguards
Driver's Education	<p>Teaching Certificate with Driver's Ed Endorsement</p> <p>Three semester hour course taken from an accredited institution (certificate of completion must be submitted)</p> <p>45 hours of state approved classes in each of the following safety education, driver and highway safety education, and driver's education laboratory experience (submit official transcript or certificate with 45 hours of state approved classes in each of the classes listed)</p>
Dance	<p>Dance Master of America Certificate</p> <p>National Association of School of Dance Certificate</p> <p>Dance Educators of America Certificate</p> <p>State Teaching Certificate with Dance endorsement</p> <p>Associate degree or higher</p> <p>Credential in the area of instruction (recommended to review with ESA)</p>
Music	<p>State Teaching Certificate in Music</p> <p>Associate degree or higher</p> <p>Credential in the area of instruction (recommended to review with ESA)</p>
Art	<p>State Teaching Certificate in Art</p> <p>Associate degree or higher</p> <p>Credential in the area of instruction (recommended to review with ESA)</p>
Drama	<p>State Teaching Certificate in Drama</p> <p>Associate degree or higher</p> <p>Credential in the area of instruction (recommended to review with ESA)</p>

Foreign Language	State Teaching Certificate in a Foreign Language Associate degree Credential in the area of instruction (recommended to review with ESA)
Martial Arts	Certified Personal Trainer State Teaching Certificate with P.E. endorsement Sports Medicine Endorsement/Certificate Associate Degree or higher United States Martial Arts Association (USMA) or related credential
Gymnastics	Certified Personal Trainer State Teaching Certificate with P.E. endorsement Sports Medicine Endorsement/Certificate Associate Degree or higher USA Gymnastics or related credential
Yoga	Certified Personal Trainer State Teaching Certificate with P.E. endorsement Sports Medicine Endorsement/Certificate Associate Degree or higher Registered Yoga Teacher (RYT) credential Credential in the area of instruction (recommended to review with ESA)

****Degrees or transcripts issued by a foreign educational institution must be evaluated for U.S. grade or degree equivalence by a vendor qualified to make such evaluations. Transcripts can be verified by a vendor that is a member of the National Association of Credential Evaluation Services (NACES) or other association qualified to make these determinations.*

Sports such as baseball, football, soccer, etc. offered through a local league may be approved by the Department if you can provide a credential for the league or individual providing the service.

Activities such as archery, chess, band, vocal lessons, etc. may be approved, credentials must be provided for the individual or facility providing the service.

Educational summer camps may be approved if the individual or facility has a credential. Summer classes or educational summer camps offered through a private school will be approved as private school tuition.

Please make sure that you are obtaining a complete invoice from your school, tutor, facility, or league (more details regarding expenses to follow in the next chapters of the handbook).

ESA understands that not all students learn the same, therefore, ESA students can participate in a group or an individual environment with the specific subjects listed above.

Some of the specific subjects listed above may require additional fees. ESA funds cannot be used to cover the following:

- Sport uniforms
- Sport equipment
- Sport competition fees
- Swimsuits, shoes, or accessories
- Dance attire/costumes, shoes, or accessories
- Dance competition fees
- Gymnastic attire/costumes, shoes, or accessories
- Gymnastic competition fees
- Yoga attire, shoes, or accessories
- Musical instruments (rental is allowed; rental contract must be provided)
- Consumable items for art classes
- Gym or facility memberships
- Camp fees (dance, football, gymnastics, martial arts, baseball, etc.)
- Consultation fees
- Tutor prep/planning
- Travel and/or food for tutor

These fees will be considered disallowed and the account holder will be required to repay the Department; quarterly funds will not be disbursed until repayment has been made in full.

Curriculum

A.R.S. § 15-2401(2) defines curriculum as a complete course of study for a particular content area or

grade level, including any supplemental material required by the curriculum, approved by the Department.

Since there are no specific lists of approved curricula (just guidelines), many parents have difficulty determining what is prohibited from being purchased and what is approved in accordance with ESA statutes.

This chapter gives examples and explanations regarding issues pertaining to curriculum purchases. It is also important to keep in mind that A.R.S. § 15-2402 (B) states that a portion of ESA must be used in at least the subjects of reading, grammar, mathematics, social studies, and science.

- Non-approved supplemental materials:

- Toys
- Games
- Puzzles
- Dolls
- Workshops
- Consumable Supplies
- Art Supplies
- Room Organizers
- Bedding
- Furniture
- Amazon Prime Fees or similar fees
- Area geographical rugs
- CDs or DVDs
- **When in doubt call ESA staff**

- Approved educational materials:

- Reading books
- Educational workbooks
- Educational flash cards
- Educational reference books
- Textbooks
- DVDs or CDs for curriculums
- Instructional books
- Audio/digital books
- Atlases, dictionaries, thesaurus
- Counting manipulatives
- Educational Science Kits
- Educational Social Studies Boxes

Any subscription to educational kits or boxes may be purchased for an entire year, please keep in mind that if you withdraw your child during an ESA contract you will have to repay the Department for the remaining subscription (your subscription will be prorated and charged back to you).

Any supplemental materials not listed above **must** be required by the curriculum; pursuant to A.R.S S 15-2401(1).

Many experiments or curriculums may call for items that can be classified consumable educational supplies. A general rule to remember regarding consumable materials is:

- Single-use vs. Repurposing
 - Single-use is any item(s) that can be used once and then discarded
 - Repurposing is any item(s) that can be used multiple times or be given other forms of use
- Many materials purchased for educational use can be easily repurposed, including computers, magazines, lab equipment, iPads, pens, pencils, salt, sugar, batteries, light bulbs, matches, clocks, construction paper, pencils, color pencils, markers, crayons, glue, scissors, food,

furniture (organizers), binders, notebooks, rulers, etc. and will **not** be approved.

- Other material such as pipets, beakers, microscope, lens for microscope, protractor, maps, globes may be approved. Always check with ESA staff before purchasing any supplemental items. Again, keep in mind that if an item has a screen, can be plugged in, or requires batteries it cannot be approved because it would fall under technology.

Memberships to magazine subscriptions, book clubs, audio book clubs, museums, zoos, etc. are **not** approved.

Tuition or Fees for a Nonpublic Online Learning Program

Some students learn better in the comfort of their home and at their own pace. ESA approves tuition or fees and required textbooks for private online schools or online learning programs/courses.

- ESA funds cannot be used for family memberships.
- ESA funds can be used to purchase yearly or monthly memberships (maximum 1-year membership).
- The membership is for the individual ESA student
 - Helpful Hints: When purchasing a membership make the ESA student the account holder, billing will be made for the parent OR add the student's name to your name.
 - Examples:
 - Name: Billy Doe (student)
 - Billing name: John Doe (parent)
 - OR
 - Billing name: John Doe-Billy

If you withdraw or are terminated during the ESA contract year from the ESA program, you will be **required** to repay the unused part of the membership.

- If there are multiple students on the ESA program, each must purchase their own access or online learning program membership.
- If purchasing a family online learning membership for multiple students on the ESA program, each card must be used.

Fees for Achievement and Placement Tests or College Entry Exams

Parents may utilize ESA funds to pay for their student to participate in a nationally standardized norm-referenced achievement test to help determine the student's ability to show mastery of appropriate grade level material, advance placement exams, or any exams related to college or university admission. Prep courses for these exams are also allowed.

530 Coverdell Education Savings Accounts

A 530 Coverdell Education Savings Account is a tax advantage investment designed to encourage

savings to cover future education expenses. More information regarding Coverdell accounts are found in section 530 of the Internal Revenue Code (26 U.S.C § 530).

A Coverdell account must:

- Be for the ESA student on contract and opened by the account Holder
- Reported to the IRS

ESA always recommends that you check with your financial institution on what your maximum contribution is for the year.

Keep in mind that you must first provide an education to their child before using any unspent funds towards a Coverdell Education Savings Account. Please keep in mind the following:

- Contributions amounts for your income bracket cannot be exceeded
- Must report Coverdell to the IRS
- ESA funds must be unloaded directly from your ESA card by the financial institution
- Cannot unload ESA monies to yourself and then deposit monies into Coverdell account

Coverdell 530 contributions, while technically allowed by law, are continuing to present challenges when parents try to fund them. This is because due to IRS changes, these accounts must be funded by cash or check; since ESA cards do not allow for cash withdrawals or cash back with purchases, there is no alternate method to move funds. Unfortunately, due to the inability to withdraw cash or wire transfer funds, this has eliminated parents' ability to fund a Coverdell 530 account given the current IRS requirements and transactional restrictions.

ESA families who have been grandfathered by using Gift of College can continue to use this 3rd party vendor for existing Coverdell accounts.

For any questions regarding a 530 Coverdell account or how to open an account, please contact your financial advisor or financial institution. ESA staff is not trained on Coverdell accounts.

Tuition or Fees and Required Textbooks at an Eligible Postsecondary School

In accordance to A.R.S. § 15-2401(4) ESA funds can be used for an eligible post-secondary institution such as:

- Community College: as defined in section 15-1401
- University: that is under the jurisdiction of the AZ board of regents or accredited private university

ESA funds **cannot** be used for room and board, meals, meal plans, or food.

ESA funds can be used to purchase textbooks required by the university or college classes as well as any textbooks required by the trade school or vocational school.

Fees for Management of the ESA Accounts

There are two types of fees that Bank of America may charge and will be covered by your ESA bank card:

- Lost/stolen Card fee: \$5.00
- Expedited shipping fee: \$15.00

Services Provided by a Public School

ESA funds may be utilized to pay for individual classes and/ or extracurricular programs provided by a public school such as drama club, band, cheerleading, sports, art classes, music classes, speech and debate, JTEDs, CTEDs, etc. Equipment and/or uniforms or attire are not allowable ESA expenses.

Please keep in mind that the schools and/or school districts are under no obligation to accept your student for these activities even if you are paying for the services, classes, or extracurricular activities with ESA funds.

If a public school accepts an ESA student, please make sure that the following is done to avoid suspension of your ESA account or termination from the ESA program:

- Contact your district and ensure they will accept your ESA card.
- If your child does attend and pays tuition, make sure the student is not enrolled in the school as a tuition payer Code 1.
 - Enrolling in a public school violates the ESA statute and contract and will result in immediate termination from the ESA program and repayment of used ESA funds.
- Make sure that the public school provides you with a complete paid invoice for all activities and or classes.

If you have any question regarding enrolling your student and paying for services at the public school, please contact the district office.

Disallowed Spending Categories

Disallowed items are listed throughout the handbook, any one single list is not comprehensive.

Just as we have allowed expenses, we also have disallowed expenses. In accordance with A.R.S. 15-2402(B)(6), the following are prohibited:

<u>Disallowed Spending Categories</u>	<u>Description</u>
Consumable educational supplies	Paper, pencils, pens, markers, erasers, folders, backpacks, batteries, light bulbs, salt, sugar, any food, clothing, glue, scissors, chalk, crayons, tissue paper, cleaning supplies, whiteboard, etc.
Computer hardware & other technological devices	Laptops, iPads, Desktops, iPods, keyboard, mouse, USB drives, calculators, DVD players, printers, robots, Wi-Fi, internet, anything with a screen, battery operated, plug-in, etc.
Transportation	Reimbursement for gasoline, buses, taxis, ride share, transportation provided by the school, mileage, etc.

According to A.R.S. 15-2403 (H), the Department may adopt rules and policies necessary for the administration on the ESA program.

The following are not approved for purchase with ESA funds:

- Play equipment
- Playgrounds
- Swimming pools
- Gardens
- Aquaponics
- Hydroponics
- Pets
- Bicycles
- Gym equipment
- Climbing equipment

Approved Spending Categories for Students with a Disability

Pursuant to 15-2402(4)(c), if the qualified student has been identified as a child with disability through a current IEP or evaluation (MET report) from an Arizona public school district or charter, according to A.R.S § 15-2401(7)(a)(i)(ii)(iii), he/she will be eligible to therapies, paraprofessional services, and tuition for vocational and life skills approved by the Department.

Educational Therapies and Services

In accordance to A.R.S. 15-2402(B)(4)(c)(i), educational therapies from a licensed or accredited practitioner or provider are approved. Therefore, an individual providing therapy or therapeutic services must provide you with a copy of their license or accreditation. The copy must be:

1. **Legible**
2. **Not expired**
3. **Issued by an accredited board**

Below is a list of currently approved therapies:

List of Approved Therapies

<u>Approved Therapies</u>	<u>Required Accreditation</u>
Physical Therapy (PT)	Physical Therapy license (PT assistants are approved)
Occupational Therapy (OT)	Occupational Therapy license (OT assistants are approved)
Speech Therapy	Speech Language Pathologist Therapy license (SLP assistants are approved)
Vision Therapy	Optometrist (pediatric, behavioral or developmental)
Hand Therapy	Physical Therapy license; PT assistant; OT assistant Occupational Therapy license or related therapy credential
Music Therapy	American Music Therapy Association (AMTA) Certification Board for Music Therapists (CBMT)
Equine Therapy; Hippotherapy; Therapeutic Riding	Professional Association of Therapeutic Horsemanship International (PATH) Equine Assisted Growth and Learning Association (EAGALA) Recreational Therapy Certificate Certified Therapy Horse Association (CTHA) North American Handicap Riding Association (NAHRA) Equine Therapy Association (ETA)

	National Association of Certified Professionals of Equine (NACPET) Physical Therapy license or PT assistant license Occupational Therapy license or OT assistant license
Aquatic Therapy	Aquatic Physical Therapy license Physical Therapy license Occupational Therapy license
Applied Behavior Analysis (ABA) and Verbal Behavior Analysis Cognitive Behavioral Therapy and Play Therapy	BCBA-D (Board Certified Behavioral Analyst – Doctorate) BCBA (Board Certified Behavioral Analyst) BCaBA (Board Certified Assistant Behavioral Analyst) Psychologist license Licensed Professional Counselor (LPC)
Art Therapy	American Art Therapy Association (AATA) Physical Therapy license Occupational Therapy license
Recreational Therapy	National Council for Therapeutic Recreation Certification (NCTRC) American Therapeutic Recreation Association (ATRA) Recreational Therapy License
Relationship Development Intervention (RDI) Therapy	RDI certificate Registered Behavior Technician (RBT) BCBA-D (Board Certified Behavioral Analyst – Doctorate) BCBA (Board Certified Behavioral Analyst) BCaBA (Board Certified Assistant Behavioral Analyst) Licensed Psychologist and counselor
Social Group Therapy	Psychologist license School counselor or special education teacher (certified) Licensed counselor Certification in Cognitive-Behavioral Therapy (CBT) Social Work Counselor Certificate Speech therapy or Occupational therapy license

At any time, you may be asked to resubmit credentials

Keep in mind that ESA funds cannot be used to pay for any fees or costs due:

- Late appointments
- Cancelled appointments
OR
- Missed appointments

These fees will be considered disallowed and the account holder will be required to repay the Department; quarterly funds will not be disbursed until repayment has been made in full.

Credentials can be submitted prior to paying for services or with expense reports. Quarterly funds will not be disbursed if the credentials for tutors or therapists are expired or not on file.

Please make sure that you are obtaining a complete invoice from your therapist (more details regarding expenses to follow in the next chapters of the handbook).

List of Non-Approved Therapies

Not Approved Therapies and Services		
Massage Therapy	Psychiatrists	Brain Mapping
Nutritionists	Chiropractors	Hyperbaric Oxygen Therapy
Eye Exams	Craniosacral Therapy	Acupuncture
Memberships	Physical Exams/Health Exams	Any type of Medical Services

Medical Insurances

Therapies provided to students must be “educational therapies” under Arizona law governing the ESA program. Under current ESA policy, co-pays, co-insurances, deductibles, or any forms of medical insurance cannot be used in combination with ESA funds.

If medical insurance is used in conjunction with ESA, your account will be suspended; you will be asked to pay back the amount, and you will not be funded your next quarterly disbursement until total payment is collected.

Assistive Technology

Assistive technology (AT) is defined as assistive, adaptive, and rehabilitative devices which promote greater independence by enabling students to perform tasks they were formally not able to accomplish or had difficulty accomplishing. AT includes a wide range of products from simple to complex and

inexpensive to expensive.

Under current ESA law A.R.S. § 15-2402(B)(4)(c)(iv) parents of students with disabilities are allowed to **rent** assistive technology. For the rented assistive technology item to be approved as an ESA expense, a renter's agreement for the equipment must be submitted with the expense report. ESA funds cannot be used to pay for assistive technology that is returned damaged or late.

If you have DDD services, you are encouraged to connect with your service provider through DDD and inquire if assistive technology can be provided through their department.

Accommodations

Accommodations do not change how much of the curriculum the student is expected to learn. It only changes how students access and express knowledge on a daily basis. Accommodations are changes in how the student accesses information and demonstrates learning. Accommodations do not substantially change the instruction level, content, or performance criteria. The changes are made in order to provide a student with equal access to learning and equal opportunity to show what he/she can do and knows.

The following accommodations are approved:

- Slant Board
- Pencil Grips
- Weighted Pens/Pencils
- Trackers for reading
- Magnifiers for reading
- Large print textbooks
- Adaptive writing utensils
- Prompt cue cards for behavior and educational support
- Audio books
- Braille
- Manipulatives for the use of demonstrating mathematical concepts

Paraprofessionals or Educational Aides

Paraprofessionals and aides are an approved expense for students with disabilities only (MET or current IEP from an Arizona public or charter school must be on file). Paraprofessionals are not the same as tutors/teachers; these individuals are there to assist the tutor/teacher or parent with the education of the student and have different requirements for credentials.

Approved Paraprofessional or Educational Aide Credentials

Credential	
Associate degree or higher	Copy of degree or transcripts (official or unofficial) must be on file
60 or more college credit hours from an accredited university, college, or community college	Copy of transcripts (official or unofficial) must be on file
Pass 1 of the 3 paraprofessional tests	Praxis ParaPro ACT Workkeys ParaEducator Official scores must be submitted; ESA will not accept proof of passing

Vocational and Life Skills Education

Vocational education programs prepare students to work in numerous trade jobs or crafts. Vocational education can also be referred as career education or technical education provided by a vocational/trade school or program.

A life skills education is the building block that allow students to apply knowledge they acquire to real problems and situations. It is a form of education that encourages students to effectively transition into adulthood by helping students develop sound judgment and good habits for long term stability, wellness, and success.

Combined, both are designed to help a student develop skills or interest in technical, trade or craft like careers and at the same time learning necessary skills such as self-reflection, critical thinking, problem solving and interpersonal skills. This allows a student to live and work independently. A.R.S. 15-2402(B)(4)(c)(iii), allows you, as the parent of a student with a disability, to pay tuition for vocational and life skills education approved by the Department.

ESA funds can be spent on tuition at vocational/trade schools or programs such as but not limited to:

- JTEDs, CTEDs, trade schools, community colleges, vocational schools, etc.

When
Misspending
or
Disallowed Expenses
Occurs

Misspending or Disallowed Expenses

To protect the ESA program and taxpayer dollars, the Department pursues all misspending or disallowed expenditures. Additionally, the Department has a zero-tolerance policy on misspending. Any amount not spent in an allowable category pursuant to the ESA contract and Arizona statute will result in your ESA account being suspended.

An account suspension letter with request for repayment of the amount or information such as proper documentation will be emailed or mailed to you. In this letter you will be given ten business days to contact ESA staff with any documentation to show any error or to submit repayment of the disallowed/misspent ESA funds. If within the ten business days, the account Holder has not contacted ESA, a termination letter with your right to appeal will be sent by an ESA compliance specialist.

After 30 calendar days from the termination letter date, if no appeal is made by the account Holder the account will be closed, unused funds will be deposited back into the Department's general fund, and any disallowed, misspent, or unsubmitted expenses will be sent to the Attorney General's Office of Collection or Fraud.

- If documentation is provided to show an error or suffice the purchase of item or provider:
You must contact the ESA compliance specialist
 - The account will be reinstated within 24 hours.
- If the disallowed expense or misspending cannot be satisfied:
 - The account will remain suspended and no quarterly funds will be disbursed until repayment is made.
 - Once repayment is made in full by a cashier's check or money order, your account will be reinstated within 24 hours from when payment is received by the ESA program.
 - If repayment is made in the form of a personal check, funds will remain suspended until the check has cleared with the Audit unit at ADE; this may take 5-7 business days.

In the case that a repayment plan is needed, the Department offers plans up to six months.

If a longer repayment plan is needed, the ESA director will work with the Attorney General's Office to offer repayment plans of up to 12 months.

When you are under a repayment plan, the following will occur

- An agreement will be created between you (Holder) and ADE.
- The agreement will specify the terms and the amount owed monthly.
- Your account will enter a blocked status.
- No funds will be dispersed during repayment.

Once payment on the disallowed/misspending has been satisfied, your account will be unblocked within 5-7 business days.

Chapter 3: ESA Bank Card

Once accepted into the ESA program, monies awarded to students are entrusted to the account holder in the form of a pre-paid bank card. The ESA card can only be used to educate the awarded student. For parents who have multiple students on the ESA program, make sure the card assigned to that student is used for that student **ONLY**.

ESA Prepaid Bank Card

Your ESA bank card will arrive in a plain, white envelope from Bank of America (please do not discard). If you accidentally happen to throw your card away, you must contact the B of A for a new card. The number to contact for a new card is 1-866-213-8564. Please note that the ESA program cannot request a new replacement card for you. Your ESA bank card may or may not arrive with your quarterly funds preloaded onto the card.

Important things to keep in mind:

- Follow the instructions on your ESA bank card to activate.
- No pin number is associated with the ESA bank card.
- No cash withdrawals, cash advances, or cashier checks can be issued with your ESA bank card.
 - Any account holder caught making a cash withdrawal will result in immediate suspension of your ESA card and could lead to termination from the program.
 - Any account holder caught making a decline purchase at a non-educational place (gas station, post office, grocery stores, restaurants, nail salons, etc.) will result in immediate suspension of your ESA card and could lead to termination from the program.
- We highly recommend that you set up online banking to track all spending, have access to your bank statements, and obtain up to the minute information regarding your account.
 - You may also call the number on the back for your ESA bank card for balance information.
- An account holder cannot walk into a banking branch and request information about your ESA bank card.

ESA staff is not notified when quarterly disbursements have been made to your account, therefore, it is your responsibility to contact the bank or check your account online for quarterly disbursements.

Allowable Forms of Payment for ESA Card

As mentioned earlier, ESA does not allow a parent to withdraw cash, request a cash advance, or obtain cashier's checks with the ESA bank card. If a parent wants to pay for services, monies from the ESA card must be sent directly to the private schools, vendors, tutors, or therapists from the ESA bank card. A parent will not be reimbursed for using personal funds.

ESA cards can only be used the following ways:

- Point of Sale (Swiping the card or manually inputting card number)
- School approved vendor (online payment system used by schools to retrieve the funds)
- PayPal
- Square

Use of VENMO is not allowed; using VENMO will result in immediate suspension of your ESA bank card and could lead to termination.

Private schools and/or vendors are not allowed to keep your card. Your ESA bank card must always be in your possession. If you have agreed to have funds deducted from your account, you and the private school and/or vendor should have a signed agreement between each other.

Chapter 4: Expense Reports

When an ESA parent enters into a contract with the Department, the parent is responsible and required to report all expenses made on the ESA bank card quarterly.

To maintain your child's ESA program eligibility and account for the spending of state taxpayer dollars:

- Expense reports must be submitted quarterly
- Complete invoices must be included when submitting expense reports
- All required credentials must be included when submitting expense reports

***If no spending occurred in a particular quarter, a parent **must** still submit an expense report.

Expense reports can be submitted on the [ESA Expense Report Portal](#); it's easy, fast, and convenient!

The Department is authorized to audit all expenditures and may request further information if needed from the account holder at any time.

ESA Expense Report Portal

The ESA Expense Report Portal is designed to allow parents to submit all expenses, including invoices and or credentials at one time at any time. The system auto populates bank information such as total amounts charged. So, all you need to do is make sure the invoice matches the dollar amount.

Parents are encouraged to use the online portal to upload expenses. Parent will need to create their own personalized ESA portal account once accepted into the ESA program.

- Only one account is required per parent
- If you have children that applied under another parent, that parent will need to set up his/her own account for that child

Once an account has been created, you will have the ability to submit, monitor, and track expenses. Additionally, in-progress expenses can be saved for later submission. This gives you the ability to add

additional expenses without fully submitted. Basically, it allows you to pre-upload. To begin using the system, access the Expense Report Portal click [here](#).

- Your username name will be the email address you provided at the time of application
- Temporary password will be sent to that email from ADEConnect
- If you do not receive an email within 4 hours of initial setup
 - Check your spam or junk folder (if no email)
 - Contact ESA at esa@azed.gov

The portal works best when using Internet Explorer; Microsoft Edge; or Google Chrome. The use of tablets or cell phones may cause improper display of website information.

The Department has a [web-video](#) to help you get started in creating your account.

Expense Report Schedule (deadlines)

To continue eligibility on the ESA program and receive quarter disbursements, an expense report must submit quarterly expense (4 times a contract year).

<u>Quarter</u>	<u>Disbursement</u>	<u>Expense Report Due Date</u>
1	July 15-July 30	September 30
2	October 15-October 30	December 31
3	January 15-January 30	March 31
4	April 15- April 30	June 30

If an expense report is submitted by the deadline listed above, funding will be dispersed any time between the 15th through the 30th of each funding month.

Failure to submit an expense report within 30 days of the deadline may result in termination from the program.

Manual Expense Report Submissions

Although it is strongly encouraged to submit your expense report via the online portal, for parents who are not able to access our online portal system, ESA expense reports can be submitted manually using our expense report document and submitted by:

- Email at esa@azed.gov
- Mail or hand deliver to 1535 W. Jefferson Street Bin #41, Phoenix, AZ 85007 Attn: ESA Program

Please note: Submission of an expense report does not mean your expense report is approved.

Expense Report Required Documents

When submitting an expense report, make sure all of the following are submitted:

- Invoices for each vendor, individual, product, etc.

Invoices for private schools MUST have the following:

- Name of student
- Name of private school
- Transaction date
- Tuition or fee amounts
- Total charged to card (Remember this total must match the bank total)

Invoices for tutors, paraprofessionals or therapists MUST have the following:

- Name of student
- Name of vendor, facility, therapist, tutor
- Transaction date
- rate amounts (hourly, weekly, monthly, quarterly)
- Processing fees (e.g. PayPal fee, Square fee, etc.)—*if applicable*
- Total charged to card (Remember this total must match the bank total)

Handwritten receipts, credit card slips, summary statements or email receipts from vendors/providers that do not include the information listed above, payment report, etc. will **NOT** be accepted. *It's important to look at the invoice to make sure all information needed is provided before submitting.*

Please note that incomplete expense reports will be rejected. If an incomplete expense report is rejected, the expenses will be rejected via the expense report portal.

- You will be given 5 calendar days to resubmit the proper documentation.
- After 5 days if a report is still incomplete, a suspension letter will be sent (your preferred way for correspondence giving you 10 business days to resubmit.
- After 10 business days if you report continues to be incomplete, you will be terminated from the program. A termination letter will be sent with your rights to appeal and timeframe for the appeal.

Important to remember: Any unused ESA funds continue to roll-over on a quarterly basis. Therefore, parents are not required to spend all of their quarterly disbursement at one time, but parents are required to spend something (any dollar amount) within their contract year in at least one of the subjects of reading, grammar, mathematics, social studies, and or science by the quarter 4 expense report date of June 30.

Chapter 5: Contract Renewal

For an ESA student to continue in the ESA program, a renewal contract must be submitted every year to the Department/ESA.

Continuing students do not need to reapply.

Renewal contracts will be sent out by mid-June (if legislation permits).

If you wish to continue in the ESA program, the deadline to submit your renewal contract is 30 days after the contract was sent to you. *Note: Quarter 4 expense report is also due June 30.*

If an ESA renewal contract is not received by the deadline date:

- Your account will be closed
- All unspent funds will be unloaded and returned to the State's general fund

Change in Disability Category

It is important to understand that once you decide to receive an ESA, your child loses his/her rights to a Free Appropriate Public Education (FAPE). Therefore, you are no longer entitled to any services provided by the public school or an Individualized Education Program (IEP). However, your child never loses their right to a three-year reevaluation desired or requested by you, the parent.

A student's ESA is renewed on a yearly basis notwithstanding any changes to his/her evaluation. Meaning if the student has an evaluation (MET report) on file with the ESA program, ADE will not require you to submit a new evaluation (MET report).

In the case that your child's disability category changes while on the ESA program, ADE would require a new reevaluation on file to update funding. This evaluation (MET report) must be from a public-school district.

- If your child attends a non-profit private school, the public-school district in which the private school is located is responsible for the evaluation process.
 - Example: I live in Tempe, but my son attends a non-profit private school in Chandler; Chandler Unified School District is responsible for the reevaluation.
- If your child attends a for-profit private school or is homeschooled, the public-school district in which you reside is responsible for the evaluation.
 - Example: I live in Mesa, but my daughter attends a for-profit private school in Gilbert; Mesa Unified School District is responsible for the reevaluation.
 - Example: I live and homeschool my child in Mesa, her last district of attendance was Tempe; Mesa Unified School District is responsible for the reevaluation.

****The ESA program cannot accept independent evaluations or private school evaluations**

Preschool Severe Delay (P-SD) Funding

If you are a parent of a student with a disability who was awarded an ESA under the disability category of Preschool Severe Delay (P-SD) and your student will turn 5 years on or before September 1st, a new reevaluation conducted by the public-school district must be submitted to appropriately fund your child's ESA.

Public school districts may provide school-age eligibility, we recommend you talk with your school to see if your child can be given a school age eligibility at the same time as a preschool age eligibility. This avoids you having to go back for a reevaluation.

In the case your public-school district is not able to give you a school age eligibility, the ESA program will require that your child be reevaluated for a school age category.

- If your child attends a non-profit private school, the public-school district in which the private school is located is responsible for the evaluation.
 - Example: I live in Tempe, but my son attends a nonprofit private school in Chandler; Chandler Unified School District is responsible for the reevaluation.
- If your child attends a for-profit private school or is homeschooled, the public-school district in which you reside is responsible for the evaluation.
 - Example: I live in Mesa, but my daughter attends a for-profit private school in Gilbert; Mesa Unified School District is responsible for the reevaluation.
 - Example: I live and homeschool my child in Mesa, her last district of attendance was Tempe; Mesa Unified School District is responsible for the reevaluation.

If your child turns 5 years old later throughout the school year (September 2 or later), the ESA program will continue to fund your child as P-SD throughout the school year contract as he/she will still be considered a preschooler for the school year. Meaning a new evaluation will be needed when he/she moves to Kindergarten for the new contract year.

When in doubt, please contact ESA staff for assistance.

Maintaining Eligibility for Renewal

To remain eligible to renew your ESA contract, you must have:

- Submitted quarterly expense reports
- Expense reports from previous quarters must be approved
- Spent monies on at least in reading, grammar, mathematic, social studies, and science for the contract year (July 1-June 30)
- Not owe the Department any monies for disallowed expenses.

Renewal contracts will be sent your preferred method of correspondence, and it is your responsibility to contact the ESA program if you have not received your contract.

If you are receiving a contract via email, your contract can be electronically signed with Adobe Sign®. You will receive your contract and documents through EchoSign®. Once the ESA program receives your renewal contract and required documents, a confirmation email will be sent to you.

Manual contracts can be emailed to: esa@azed.gov

OR mailed to:

Arizona Department of Education
Attn: ESA Program
1535 W. Jefferson St.
Bin #41
Phoenix, AZ 85007

The Bin # is crucial in receiving your renewal contract in a timely manner.

The deadline to submit your **renewal contract** is 30 days after the contract is sent to you. In the case that you failed to submit your renewal contract, ESA will close your ESA account and unload all funds.

Chapter 6: Why Termination Occurs

Below are some reasons parents have been terminated from the ESA program.

1. Enrolling and attending a public-school district, charter, or public online school
2. Attending summer school at a public, charter, or public online school and not paying for it
3. Receiving School Tuition Organization (STO) scholarships OR tax credit scholarships while on an ESA
4. Mispending ESA funds
5. Failure to submit expense reports within 30 days of due date
6. Fraudulent activity
7. Loss of custody
8. Providing false information (application, contract, bank form, etc.)
9. Not spending monies during the year (July 1 through June 30)
10. Found on a BAML's global anti-money laundering (AML) list—Note: The bank will close your account and we will not be able to reopen it

Unable to provide a social security number or tax identification number (TIN)—Note: The bank not issue a bank card.

Attending a Public or Charter School

While a student is on an ESA contract for the school year (July 1 through June 30), the account Holder agrees not to enroll the eligible student in a public-school district, charter school, or public online school. This includes summer school for any reason.

As written in the ESA contract, “pursuant to A.R.S § 15-2402(B)(2), during the Term, Holder will not enroll student in a public school. Enrollment of the Student in a public school during the Term constitutes a violation of this Contract and will result in immediate termination of this Contract.”

Receiving an STO or Tax Credit Scholarships

While a student is under an ESA contract for the year (July 1 through June 30), the account Holder agrees not to receive any STOs or tax credit scholarships concurrently with an ESA.

If the ESA funds do not cover the full cost of the private school and you are unsure how the remaining costs are being paid, please contact your private school to make sure you are not signed up to receive an STO or tax credit scholarship.

If you are still not sure or believe you may have received an STO or tax credit scholarship, please contact ESA staff immediately.

As written in the ESA contract, “pursuant to A.R.S § 15-2402(B)(3), during the Term, Holder agrees not to accept a scholarship grant for Student from a School Tuition Organization (STO). Acceptance of a scholarship grant for Student from an STO during the Term constitutes a violation of this Contract and will result in immediate termination of this Contract.”

Chapter 7: Leaving the ESA Program

A student exits the ESA program 1 of 4 ways:

1. **Voluntary withdrawal:** parent chooses not to participate in the program.
2. **Non-renewal:** parent chooses not to renew the following year’s ESA contract.
3. **Completing the ESA program:** student exits the program once he/she reaches the 12th grade cohort year (only students with a disability may be eligible to continue).
4. **Removal/Termination:** ESA terminates parent from the ESA program (not eligible to reapply).

Voluntary Withdrawal

The ESA program allows a parent to remove their child any time during the contract year from the ESA program. If you wish to remove the student from the ESA program, simply fill out the [Close Account Request Form](#).

If the account holder withdraws the student from the ESA program during the contract year or before the end of a quarter, any tuition payments should be pro-rated for the days attended by the student in that quarter, additional funds should be refunded the ESA debit card before the student returns to public or charter school. If the parent ends their ESA contract at the end of a quarter, all expenses must be properly submitted.

Upon receipt of the Close Account Request Form, the ESA program will review the student's account to ensure all outstanding documentation including invoices and credentials have been submitted. Should this review result in any questions, disallowed expenses or any required repayment of ESA funds, the Department will formally notify the account holder in writing via your preferred method of contact.

Once the Department has audited your account, your request to close the account will be finalized, releasing the account holder from the ESA contract. A letter will be issued, and all unused ESA funds will be returned to the State General Fund. The student and applicant will be deemed in good standing status and are eligible to reapply in the future.

Non-Renewal

Parents may choose not to renew their annual ESA contract. Non-renewal of an ESA contract is not considered termination. The student and parent will remain eligible to reapply in the future.

On July 1, your ESA bank card will be closed, and any unused funds will be unloaded. If repayment of funds is necessary, a compliance specialist will send you a letter requesting repayment and detailing why the funds must be repaid. Your account remains subject to an audit.

Completing the ESA Program

When a student enters the ESA program, the student will be moved in a cohort. This means if the student enters the ESA program in 3rd grade, the following year the student will move onto the 4th grade, even if the private school or the parent decides to keep the student back a year. The student progresses one grade every year until that student reaches 12th grade. All students are exited at 12th grade. An Exited Contract will be issued by ESA.

Once exited from the ESA program, the student will have four years or until they have completed post-secondary education to use any remaining funds that have rolled over from the past years. All policies and laws regarding the ESA program must still to be followed.

The account holder is still required to submit expense reports every quarter for the remaining four years as they have done in the years prior to exiting. Failure to submit an expense report within 90 days of the due date will result in termination from the program, which includes unloading any remaining funds.

After completing the ESA program and exiting at 12th grade, students are not explicitly prohibited from returning to their public school. However, each county superintendent receives an annual list of ESA participants and each school district may have specific district policies that may prohibit the re-enrollment of an ESA student beyond the age of 18 if it is determined that the student has completed their high school graduation requirements.

If a 12th grade student returns to public school at any time after the completion of ESA program, all unused ESA funds will be unloaded from the ESA bank card. Keep in mind that upon review of your

account, should funds need to be paid back to the Department, the ESA program will notify you by email or mail if no email address is provided. Failure to repay the requested funds may result in referral to the Arizona Attorney General's Office of Collections or Fraud.

Students with a Disability (after 12th grade)

In some cases, a student with a disability may be entitled to an education until the age of 22, per the IDEA. In these cases, the parent of a student with a disability will have to provide documentation from their public school showing that the student would require an ESA every year after reaching the 12th grade cohort.

This will start for the 2020-2021 school year, and more information will be provided before the start of the 2020-2021 school year contract.

Removal

The Department may remove a contract holder or student from the program for a variety of reasons as discussed in Chapter 6. If removed by the Department, the parent or student may not reapply for the ESA program in the future.

Chapter 10: Additional and Important Information

Below is some additional and important information that should be always be considered.

Things to Remember

- If a vendor states that they accept ESA funds, that does not mean they are approved or allowed; always check with the ESA program.
- If there is something you would like to purchase that is not mentioned in the handbook as an allowed or disallowed expense; always check with the ESA program

Contact Information

- Phone number: 602-364-1969
- Email: esa@azed.gov
- Website: www.azed.gov/esa

You will find the 2019-2020 ESA Calendar on the next page

2019-2020 ESA Calendar

July 2019 (Q1)						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August 2019 (Q1)						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September 2019						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

October 2019 (Q2)						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November 2019						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December 2019						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

January 2020 (Q3)						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

February 2020 (Q3)						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

March 2020 (Q3)						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 2020 (Q4)						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May 2020 (Q4)						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June 2020 (Q4)						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				



Funding dispersed anytime between the 15th through the 30th (see above)



Deadline to submit Expense Report



State Holidays: The Department is closed

Please keep in mind that by signing the ESA contract and handbook attestation, you agree to abide by all guidelines in the ESA contract, ESA handbook and ESA policies and laws.

If you have questions or need further clarification, please do not hesitate to contact ESA by phone at 602-364-1969 or via email esa@azed.gov.