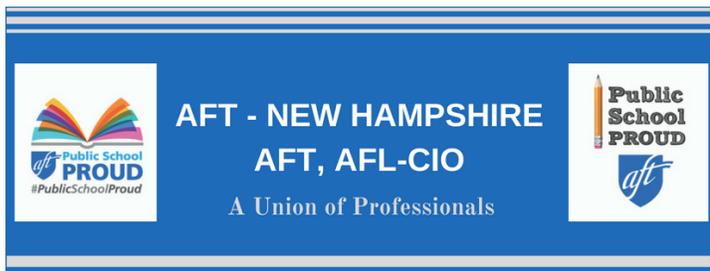

Following the Wrong Path:

What Can Education Savings Account Programs
In Other States Tell New Hampshire About SB 193?



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Following the Wrong Path: An Analysis by AFT-New Hampshire

Following the Wrong Path: What Can Education Savings Account Programs In Other States Tell New Hampshire About SB 193?

Issues: Weakened Accountability, Lost Funding, Constitutionality, Risk to Taxpayer Dollars

Introduction: Public schools are a pillar of New Hampshire communities, and critical to the American democratic experiment. The New Hampshire Constitution clearly states legislators are obligated to “cherish the interest of literature and the sciences, and all seminaries and *public* schools,” and “that no money raised by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination.”¹ Education savings accounts shift money *away* from public schools and provide public dollars to parents to pay for private religious school tuition or other private education expenses. As compared in the tables in this report, SB 193 mirrors “education savings account” privatization schemes in five other states. If SB 193 is passed into law, New Hampshire should expect similar taxpayer and academic accountability problems as these states.

For example, the Arizona Auditor General reviewed the education savings account program in that state and found over the course of six months \$102,000 in misspending from “parents who spent program monies after enrolling children in public school, parents who did not submit required quarterly expense reports, and parents who purchased unallowed items.”² The auditor recommended the legislature form a work group to strengthen the oversight of the program’s spending. As compared in the tables below, New Hampshire’s SB 193 outsources administration of its program to a private nonprofit, potentially exacerbating the oversight problems documented in Arizona. Moreover, unlike Arizona’s law, SB 193 does not require surety bonds (or other insurance that the school has enough money to reimburse New Hampshire for any misused funds) of private schools, further putting taxpayers dollars unnecessarily at risk.

The Arizona auditor also documented the dramatic enrollment growth in the program, from 144 students in 2012 to 1,331 in 2015.³ Payments for the program increased from \$1.6 million in 2012 to \$16.8 million in 2015. Florida and Mississippi spending on their ESA programs totaled \$15.9 million and \$2.8 million, respectively, in 2015.⁴ This data is in line with a study by Reaching Higher New Hampshire that warns of funding losses—and potential property tax increases—from a potentially significant drop in student enrollment in New Hampshire school districts if SB 193 became law. These funding losses will be disproportionately felt by cities and property-poor school districts. In addition, the stabilization grants included in SB 193 will

¹ N.H. Const. art. 83

² Arizona Auditor General, “Arizona Department of Education—Department Oversees Empowerment Scholarship Accounts Program Spending, but Should Strengthen its Oversight and Continue to Improve Other Aspects of Program Administration,” June 29, 2016 <https://www.azauditor.gov/reports-publications/state-agencies/education-department/report/arizona-department-education-2>

³ *Id.*

⁴ *Id.*



require new state spending; conservative estimates by Reaching Higher New Hampshire found the state would need to raise and appropriate an additional \$2.2 million in 2018. As the ESA program grows, that annual spending increase will climb to \$10.1 million by 2023, conservatively totaling \$31 million over the next five years.⁵ School districts in New Hampshire may not only lose State, but also Federal funds. Formulas for Federal funding largely depend on the number and concentration of students meeting program requirements who attend public schools in the district. For example, a U.S. Government Accountability Office study of choice programs in the state found that these programs complicated school district efforts to provide IDEA and Title I-A equitable services.⁶

SB 193 is not smart education policy; it falls into some of the same traps as programs in other states. Even states with the program have had second thoughts. In Nevada, where eligibility requirements for a voucher are the loosest, the legislature did not fund the program in 2017 after the program's initial funding mechanism was found unconstitutional. New Hampshire legislators should oppose the diversion of funds from public schools to private and religious schools through education savings accounts.

Education Savings Account Programs in the States

Where It's Happening. In 2011, Arizona became the first state to enact an ESA bill into law.⁷ By June 2015, Nevada,⁸ Florida,⁹ Tennessee¹⁰ and Mississippi¹¹ had joined Arizona. In 2017, Arizona amended its law to widen the pool of eligible students. Like SB 193, all five states' ESA laws share some provisions with the corporate-funded ALEC's model Education Savings Account Act,¹² but they are not homogenous. They differ in terms of which parents can get ESAs; the amount of public money that is given to parents; the allowable uses of those funds; the oversight of the funds; where the funds go; and how schools and parents are held accountable.

Who Can Use Them. The table below provides an overview of the eligibility provisions for each state's ESA program. In Florida, Mississippi and Tennessee, program eligibility is limited to certain students with disabilities or students needing special education services. In Arizona and Nevada, a larger universe of students is eligible. State eligibility requirements also differ on

⁵ Reaching Higher New Hampshire, "Reaching Higher NH Analysis on SB 193 finds Disproportionate Impact on Cities and Property-Poor Districts," December 6, 2017 <https://reachinghighernh.org/2017/12/06/reaching-higher-nh-study-sb-193-finds-disproportionate-impact-cities-property-poor-districts/>

⁶ U.S. Government Accountability Office, "School Choice Programs Are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students." (August 11, 2016) <http://www.gao.gov/products/GAO-16-712>

⁷ See Ariz. Rev. Stat. §§ 15-2401–2404.

⁸ See Nev. Rev. Stat. §§ 353B.700–930.

⁹ See Fla. House Bill 7029 (2016 Regular Session), *codified as amended throughout* Fla. Stat. Ch. 1002 *et seq.*, available at <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=55816>.

¹⁰ See Tenn. Code Ann. §§ 49-10-1401–1406.

¹¹ See Miss. Code Ann. §§ 37-181-1–21.

¹² Model Policy, "The Education Savings Account Act," American Legislative Exchange Council. available at <https://www.alec.org/model-policy/the-education-savings-account-act/>



whether previous public education enrollment is required. This is mainly an issue of cost. In Nevada, the bill as introduced did not require any previous public school enrollment to be eligible for a savings account; parents already sending children to private schools would have been eligible for the program. The fiscal note for the bill included these costs, forcing the Republican legislature to insert in the final bill a requirement that students eligible for a savings account must be enrolled in a public school for at least 100 days.¹³ The state has yet to fund the program due to the legislature's refusal to fund after the program's funding mechanism was challenged in court.¹⁴

Prior to the 2017 amendments, participation in Arizona's program was governed by a complicated set of requirements focused on more vulnerable student populations. Students who attend low-performing schools; have a documented need for certain special education services; have a parent or legal guardian who is legally blind, deaf, or hard of hearing; are in foster care or came from foster care; live on reservations; already receive a special education voucher from another school choice program; have a sibling already in the program; or have an active military parent all qualify for a scholarship account. Now, all public students are eligible for the program, but no more than 30,000 can sign up by 2022.¹⁵

SB 193's eligibility requirements most closely mirror Arizona's *prior* to the 2017 amendments, with an additional eligible student population based on the Federal poverty line. In addition, the bill does not require prior public school attendance. As such, the State can expect at least as much student loss from public schools, and the accompanying costs, as these other states.

¹³ For example, see discussion by the Nevada Home School Network, available at <http://nevadahomeschoolnetwork.com/homeschool-support/education-savings-account/> (“There are many creative ways within the ESA Program for children to receive an education and this may be a viable option for some families in our state.”)

¹⁴ Arianna Prothero, “‘Vouchers for All’ Program Will Remain Unfunded in Nevada,” Education Week, June 5, 2017 http://blogs.edweek.org/edweek/charterschoice/2017/06/nevadas_ambitious_vouchers_for_all_program_will_remain_unfunded.html

¹⁵ Arizona Senate, Senate Bill 1431 (Engrossed), Fifty-third Legislature, First Regular Session, 2017



	Who Is Eligible?	Public School Required?	Students for Fiscal Year 2016 ¹⁶
SB 193	Students that (1) come from households earning less than 300% of the Federal Poverty Line, (2) have an Individualized Education Plan (IEP), (3) attend a poor-performing school, or (4) have an application for a tax credit scholarship that has gone unfunded or a rejected charter school application.	No	N/A
Arizona	All child eligible to attend public school in the State, capped at 30,000 by 2022	100 days unless entering as an otherwise eligible kindergartner or a military family.	2,212
Florida	Certain special education students	No	1,609
Mississippi	Students who have or have recently had an IEP (individualized education plan).	No	333
Nevada	All public school students.	100 days	N/A
Tennessee	Certain current public school special education students and certain special education students eligible to enroll in public school kindergarten.	Enrolled two previous semesters unless entering public school for first time.	N/A

How Much Funding? In general, students receive funding that is pegged at 90 or 100 percent of the basic aid that students would generate under the state funding formula. Basic aid can be seen as the target amount of funding that states set as the floor for how much state and local funding will be spent for each student.

But states differ in how they apply their formula to ESA students. In Arizona and Nevada, funding is set at 90 percent of the basic amount for students without special needs. In both states, special needs and low- income students are eligible for additional funds. . Tennessee applies the funding formula so that students receive the basic aid amount plus any extra funding they would generate under the formula for their special needs. In Mississippi, the initial voucher amount is set by statute at \$6,500—in fiscal year 2016, the estimated base cost per student from the State’s Adequate Education Program funding formula was \$5,354¹⁷—and the law requires that amount to rise and fall year to year by the same proportion as the State’s base student funding formula. SB 193 provides 95 percent of the per pupil adequate education

¹⁶ Arizona Auditor General, “Arizona Department of Education—Department Oversees Empowerment Scholarship Accounts Program Spending, but Should Strengthen its Oversight and Continue to Improve Other Aspects of Program Administration,” June 29, 2016 <https://www.azauditor.gov/reports-publications/state-agencies/education-department/report/arizona-department-education-2>

¹⁷ Mississippi Department of Education, “FY 2016 Budget Request,” available at <http://www.mde.k12.ms.us/docs/legislative-services-library/mde-k12-fy-16-request-appropriation-subcommittee-hearings-jan-2015-otss-adj-.pdf?sfvrsn=2>

grant amount, plus any differentiated aid, placing it well in line with the funding levels of programs in other states.

Funding for the program shifts dollars away from public schools. Payments for the program in Arizona increased from \$1.6 million in 2012 to \$16.8 million in 2015. Florida and Mississippi spending on their ESA programs totaled \$15.9 million and \$2.8 million, respectively, in 2015.¹⁸ This data is in line with a study by Reaching Higher New Hampshire that warns of funding losses—and potential property tax increases—from a potentially significant drop in student enrollment in New Hampshire school districts if SB 193 became law. Even with new spending through stabilization grants totaling \$2.2 million, Reaching Higher New Hampshire estimates school districts will still lose \$5.8 million in 2018.¹⁹

	What Is the Amount?	Fiscal Year 2015 Total to ESAs	FY 2015 Average Award ²⁰
SB 193	95 percent of the per pupil adequate education grant amount, plus any differentiated aid, 50 percent of the per pupil adequate education grant amount for children entering kindergarten	N/A	N/A
Arizona	90 percent of base per-pupil funding; 100 percent if a student is below 250% of the poverty line; special education students receive additional funds based on level of student disability.	\$16,774,000	\$12,900
Florida	100 percent of base state per-pupil aid and program and district funds based on a student’s grade, county, and current special education spending levels.	\$15,976,000	\$10,000
Mississippi	\$6,500 per student, subject to revision in proportion to changes in the Mississippi Adequate Education Program base student cost.	\$2,820,000	\$6,500
Nevada	90 percent of per-pupil funding; students below 185 percent of the poverty line receive 100 percent per-pupil funding; special needs students receive additional funds.	N/A	N/A
Tennessee	100 percent of basic education funding of student’s local education agency, plus the formula’s special education allotment for that student.	N/A	N/A

Allowable Uses. States set wide parameters for how ESA money can be used. Most states cover private school tuition, textbooks, curriculum and extracurricular services. Some allow the

¹⁸ Id.

¹⁹ Reaching Higher New Hampshire, “Reaching Higher NH Analysis on SB 193 finds Disproportionate Impact on Cities and Property-Poor Districts,” December 6, 2017 <https://reachinghighernh.org/2017/12/06/reaching-higher-nh-study-sb-193-finds-disproportionate-impact-cities-property-poor-districts/>

²⁰ Arizona Auditor General, “Arizona Department of Education—Department Oversees Empowerment Scholarship Accounts Program Spending, but Should Strengthen its Oversight and Continue to Improve Other Aspects of Program Administration,” June 29, 2016 <https://www.azauditor.gov/reports-publications/state-agencies/education-department/report/arizona-department-education-2>



money to be used to provide home schooling. Still others allow the money to cover transportation costs for the students. States differ on where unused funds go after the school year. SB 193’s allowable uses are in line with programs in other states.

Allowable Use of ESA Dollars by State						
	SB 193	Arizona	Florida	Mississippi	Nevada	Tennessee
Tuition	Yes	Yes	Yes	Yes	Yes	Yes
Textbooks, therapies, tutoring, curriculum	Yes	Yes	Yes	Yes	Yes	Yes
Extracurricular activities	No	Yes	Yes	Yes	Yes	Yes
Online school	Yes	Yes	Yes	Yes	Yes	Yes
Home school	Yes	No	Yes	No	No ²¹	Yes
Transport costs	Yes	No	No	Yes	Yes	Yes
Unused funds	Reverts to state if child exits program	Reverts to state if child exits program	Eligible to convert to college savings account	Reverts to state if child exits program or graduates from high school	Reverts to state if child exits program	Eligible to convert to college savings account

Accountability. Most education savings account programs have been passed with minimal fiscal oversight or academic accountability requirements for private schools and participating parents. SB 193’s program uniquely utilizes a private nonprofit scholarship organization to administer the program. This outsourcing of the program complicates the ability of the State to properly oversee the spending of public monies by parents, and adds an additional layer of bureaucracy between the Treasury and parent spending. The Arizona Auditor General reviewed its program and found over the course of six months \$102,000 in misspending from “parents who spent program monies after enrolling children in public school, parents who did not submit required quarterly expense reports, and parents who purchased unallowed items.”²²

Without proper direct public oversight, SB 193’s ESA program has even greater potential for abuse. SB 193 also directly deposits money to parents (instead of a reimbursement structure) and does not require surety bonds of private schools, further putting taxpayers dollars unnecessarily at risk.

²¹ Nevada differentiates between home-based instruction under the ESA—where a student has to take a state test—and home schooling, which is a pre-existing legal status that has no test-taking requirement.

²² Arizona Auditor General, “Arizona Department of Education—Department Oversees Empowerment Scholarship Accounts Program Spending, but Should Strengthen its Oversight and Continue to Improve Other Aspects of Program Administration,” June 29, 2016 <https://www.azauditor.gov/reports-publications/state-agencies/education-department/report/arizona-department-education-2>

Education savings account programs in the states have few protections to ensure that only high-quality schools and educational programs are eligible for vouchers. SB 193 fits this pattern. Private schools in the State would not be required to admit all students, and private schools being paid with taxpayer money do not have to follow the same academic accountability requirements as public schools in the State.

The common fiscal oversight provisions in states involve how often audits occur and how the state makes payments to parents. In Florida and Mississippi, parents are reimbursed after submitting documentation that money was spent on coverable education services. In the remaining states, public money is deposited into an account opened by the parent, after the parent has signed an agreement with a state to spend it on coverable education services. All states require a participating school or entity to post a surety bond or other proof that the school has enough money to reimburse the state for any misused funds.

Academic oversight in state ESA programs is minimal. For example, the only requirement for a qualified school in Arizona is that the school not discriminate based on race, color or national origin. The law specifies that “[a] qualified school shall not be required to alter its creed, practices, admissions policy or curriculum in order to accept students whose parents pay tuition or fees from an empowerment scholarship account” and places the burden on the state to show that regulations implementing the program are “necessary and [do] not impose any undue burden on qualified schools.”²³ Mississippi does require a school or other eligible recipient of State funds to be accredited by a State or regional agency. Most states require schools to comply with the health, safety and criminal background check regulations required of public schools. Florida, Nevada and Tennessee require a private school to administer at least one state or national standardized test.

On the basis of accountability alone, legislators in New Hampshire should reject SB 193. This bill lacks even the rudimentary accountability protections included in other states’ ESA programs.

²³ Arizona Revised Statutes §15-2404; Arizona Revised Statutes §15-2401

Accountability Provisions						
	SB 193	Arizona	Florida	Mississippi	Nevada	Tennessee
Account Holder	Parent contracts with scholarship organization overseen by eight member commission	Parent contracts with the state	Parent contracts with the state	Parent contracts with the state	Parent contracts with the state	Parent contracts with the state
Audits	Annual audits	Annual and random quarterly audit by DoE or contractor	Annual audit by Auditor General	Random audits by DoE or contractor	Annual audits	Random audits by DoE or contractor
Payment frequency	Deposit to scholarship organization then deposit to parent accounts	Quarterly deposit to parent accounts	Quarterly reimbursement to parents	Quarterly reimbursement to parents	Annual deposit to parent accounts	Quarterly deposit to parent accounts
Surety bond or other financial insurance	No	Yes	Yes	Yes	Yes	Yes
Standardized test for ESA student required	State or national standardized test, or an annual portfolio review and one other measurement tool	No	Must take state or national standardized test	No	Must take state or national standardized test	Must take state or national standardized test
Private school must be accredited	Yes	No	No	Yes	Schools must have private school license	Yes
Health, safety, and criminal background check regulations	Yes	Yes	Yes	Yes	Yes	Yes
Private school must accept all applicants	No	No	No	No	No	No

Conclusion: ESAs Are a Flawed Enterprise New Hampshire Should Not Import

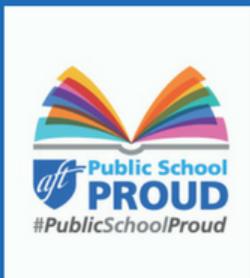
Voucher programs like SB 193 have already failed in other states. New Hampshire should not repeat their mistakes. If passed into law, the program will put taxpayer dollars unnecessarily at risk and have a detrimental effect on school district finances.

Defunding schools in the name of “choice” is the opposite of what parents want. Polling shows that parents want great neighborhood schools, not more “school choice.” In a Sept. 2017 Hart poll of 1,200 public school parents nationwide, parents overwhelmingly (73 percent) say that their children’s school is doing a good or excellent job. In the poll, parents strongly prefer “a good quality neighborhood public school” (71 percent) to “more choices of which schools I can send my children to” (29 percent).

Voucher programs have also not been shown to increase student achievement. A recent Department of Education study of the federally mandated voucher program in Washington D.C., found that the program had a negative impact on math achievement, and had no impact on parent and student satisfaction with their school.²⁴ This research adds to a growing body of literature that finds voucher programs rarely help and in some cases hurt individual student achievement.

Parents, educators, and community members support strong public schools and work every day to make them better. Vouchers are at best a distraction for policymakers interested in improving student achievement and offering a high quality education to all kids. Legislators should oppose the diversion of funds from public schools to private and religious schools through vouchers, education savings accounts or tuition tax credits.

²⁴ <https://ies.ed.gov/ncee/pubs/20174022/pdf/20174022.pdf>



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