

RAISING INDIANA: HOW LESSONS LEARNED FROM ARIZONA'S EMPOWERMENT SCHOLARSHIP ACCOUNTS CAN IMPROVE INDIANA'S EDUCATION SCHOLARSHIP ACCOUNTS

PATRICK SANDERS*

INTRODUCTION

In 2021, the Indiana General Assembly created the Indiana Education Scholarship Account Program (“INESA”) for Indiana special education students.¹ The Indiana Treasurer of State administers Education Scholarship Accounts to “allow[] parents to opt out of the public school system and customize education to their child’s needs.”² These accounts allow parents of eligible students, or emancipated eligible students, to spend INESA funds “on approved educational programs, therapies, services, tuition and fees, and other expenses related to the student’s education.”³ INESA on its face seems beneficial to students needing special education, but the program’s statutory scheme leaves many gaps that create a possibility for abuse, a lack of accountability for students and service providers, and a potential unnecessary burden on state resources.

INESA is just one of many state programs nationwide that implement education savings accounts (“ESA”). ESAs are a type of voucher program that “route[s] public per-pupil funding into government-authorized savings accounts for families with students not attending public schools.”⁴ Families are able to use these accounts for approved uses including private school tuition, tutoring, and online learning.⁵ The amount awarded to families can range from twenty-seven percent of the state’s per-pupil spending to nearly one-hundred percent.⁶ Indiana’s ESA program allows for a scholarship award of up to \$20,000 for

* J.D. Candidate, 2026, Indiana University Robert H. McKinney School of Law; B.A. 2008, Illinois State University—Normal, Illinois. I want to thank Professor Cynthia Baker for her guidance with both the writing of this Note and with my externships with the Indiana state government. Thank you to my family and friends who have carried me with your support. Above all, thank you to all special education teachers for your dedication to your students.

1. *Education Scholarship Account Program*, EdCHOICE, <https://www.edchoice.org/school-choice/programs/education-scholarship-account-program/> [https://perma.cc/2337-NJM9] (last visited Oct. 16, 2025).

2. *Indiana Education Scholarship Account*, IND. TREASURER OF STATE, <https://www.in.gov/tos/inesa/home/> [https://perma.cc/2AVC-ZLQ2] (last visited Oct. 16, 2025). *But see* IND. CODE § 20-51.4-3-2 (2026). On July 1, 2026, the Indiana Department of Education will become the administrating authority for the INESA program. As of the time of this Note’s publication, the Treasurer of State still administers the program, so this Note will refer to the Treasurer of State as the administrating authority.

3. *Indiana Education Scholarship Account Program*, IND. DEP’T OF EDUC., <https://www.in.gov/doe/students/indiana-education-scholarship-account-program/> [https://perma.cc/6LMC-RAUV] (last visited Oct. 16, 2025).

4. Emily Ronco, *State Actions on Education Savings Accounts*, NAT’L CONF. OF STATE LEGISLATORS (May 3, 2024), <https://www.ncsl.org/education/state-actions-on-education-savings-accounts> [https://perma.cc/6QL3-USXC].

5. *Id.*

6. *Id.*

Indiana students with a disability, depending on the student's level of disability and the district in which the student lives.⁷ Siblings of these students may receive up to \$8,000 each year.⁸

Arizona established the nation's first ESA program in 2011.⁹ The Arizona Empowerment Scholarship Account Program provides funds for tuition, textbooks, and services for students with disabilities.¹⁰ Gradually, Arizona expanded the pool of eligible students to include students belonging to other specific groups, such as students in military families and students in low-performing schools.¹¹ In 2022, Arizona granted universal eligibility by expanding eligibility to any state resident attending a K-12 school.¹² Because of this expanded eligibility, 87,220 students participated in Arizona's ESA program in the 2024–2025 school year.¹³ An expansion to universal eligibility might be an indication of the program's success, but the program has been under investigation by the Arizona Attorney General's Office for misuse of public monies stemming from the Arizona statute's lack of definition for "supplementary materials" that parents are allowed to purchase with the program's funds.¹⁴

Despite the potential risks of fund misallocation, as evidenced by Arizona's program, Indiana's INESA program is part of a growing nationwide trend toward using education savings account programs. At least thirty-six states contemplated ESA legislation in 2023.¹⁵ As of 2025, there are eighteen states that have adopted programs similar to the INESA program.¹⁶ Some states, including North Carolina, New Hampshire, and Montana, still have limited eligibility to disabled students or families with a limited income.¹⁷ However, Arkansas, Iowa, Utah, and Florida have followed Arizona's lead and have enacted universal eligibility for their ESA programs.¹⁸ West Virginia's Hope Scholarship Program grants ESA funds to students leaving public schools who had attended a public school for forty-five school days during the previous or current school year, and nearly 5,800 students participated in the program in the

7. IND. TREASURER OF STATE, *supra* note 2.

8. *Id.*

9. Ronco, *supra* note 4.

10. ARIZ. REV. STAT. ANN. § 15-2402 (2025).

11. Ronco, *supra* note 4.

12. *Id.*

13. *Empowerment Scholarship Accounts*, ARIZ. DEP'T OF EDUC., <https://www.azed.gov/esa> [<https://perma.cc/A8CA-FWZ8>] (last visited Mar. 16, 2025).

14. Paola Rodriguez, *AZ Department of Education under investigation for how it approves school voucher spending*, AZPM (July 11, 2024), <https://news.azpm.org/p/news-topical-edu/2024/7/11/221003-az-department-of-education-under-investigation-for-how-it-approves-school-voucher-spending/> [<https://perma.cc/J2L2-2MD3>].

15. Ronco, *supra* note 4.

16. *What is an Education Savings Account (ESA)?*, EDCHOICE, <https://www.edchoice.org/school-choice/education-savings-account/> [<https://perma.cc/P4BA-BPB4>] (last visited Oct. 16, 2025).

17. Ronco, *supra* note 4.

18. *Id.*

2023–2024 school year.¹⁹ In 2024, 470,801 students participated in some kind of ESA program, a significant increase from the 19,211 participating students just five years prior.²⁰

Currently, Indiana’s ESA program is limited to students who require special education services and their siblings.²¹ To be eligible, a K-12 student must be an Indiana resident who has a disability that is being addressed by an individualized education program (“IEP”) or equivalent approved plan.²² The student must not be enrolled in a public school receiving state tuition funding.²³ The annual income of the student’s household must not exceed “more than 400% of the amount required . . . to qualify for the federal free or reduced-price lunch.”²⁴ The student must also take either a statewide summative assessment based on the student’s grade level or assessments that comply with the student’s IEP or equivalent plan.²⁵ A student’s ESA is valid for one year and may be renewed annually, provided that the student is still eligible for the program.²⁶

Indiana’s Educational Scholarship Account program has grown in popularity since its inception.²⁷ For the 2023–2024 school year, the number of Indiana families using an ESA had increased by 200% over the previous year.²⁸ In the same time period, the number of nonpublic schools educating ESA students also increased by more than 350%.²⁹ For the 2024–2025 school year, 856 students were approved for the program, with 630 students on a waiting list, up from the 540 students approved for an ESA in 2023.³⁰ While the current student numbers might seem small in Indiana, the student numbers in Arizona and West Virginia demonstrate the potential for a significant increase in ESA participants.

As part of Indiana’s growing trend towards school choice programs, there is legislative momentum towards creating an expanded program that would pay

19. *Id.*

20. Alli Aldis, *One Million Students in School Choice Programs, By the Numbers*, EDCHOICE (June 18, 2024), <https://www.edchoice.org/engage/one-million-students-in-school-choice-programs-by-the-numbers/> [https://perma.cc/8QDE-CEAA].

21. IND. CODE § 20-51.4-2-4 (2025).

22. *Id.*

23. IND. CODE § 20-51.4-4-1(a)(5) (2025).

24. *INESA Families*, IND. TREASURER OF STATE, <https://www.in.gov/tos/inesa/parent-page/> [https://perma.cc/PCH2-PT4B] (last visited Mar. 16, 2025).

25. § 20-51.4-4-1(a)(6).

26. § 20-51.4-4-1(d).

27. Casey Smith, *Indiana’s Education Scholarship Accounts see boosted participation ahead of 2024-25 Term*, IND. CAP. CHRON. (July 1, 2024, at 16:00 ET), <https://indianacapitalchronicle.com/briefs/indianas-education-scholarship-accounts-see-boosted-participation-ahead-of-2024-25-term/> [https://perma.cc/93M7-WY7X].

28. *Id.*

29. *Id.*

30. Aleksandra Appleton, *Participation in Voucher-like Education Choice Programs Soars in Indiana After Legal Changes*, CHALKBEAT IND. (Sep. 6, 2024), <https://www.chalkbeat.org/indiana/2024/09/06/voucher-like-programs-for-career-special-education-see-more-students-enroll/> [https://perma.cc/G83T-J5CB].

for qualified expenses for all Indiana students.³¹ Senate Bill 255, proposed in 2024, would have eliminated all income caps on current “school choice” grants and allowed any Indiana parent to apply for an annual grant that can be used for “qualified” education expenses including “tuition and fees, exam fees, services for students with a disability, transportation, payments for tutoring, and costs associated with extracurricular activities, apprenticeships or other programs.”³² S.B. 255 did not pass, but the Indiana General Assembly passed legislation that will eliminate household income ceilings for voucher programs starting in the 2025–2026 school year.³³

With further increases in ESA participation, Indiana could create state budget burdens similar to those that Arizona experienced after its dramatic increase in ESA student participation.³⁴ Because Indiana has already experienced the potential for fraud in its charter school program,³⁵ the INESA program has the same potential for fraud and abuse that Arizona is currently experiencing. Furthermore, Indiana’s statutory framework for the INESA program provides minimal accountability measures for the academic success of participating students.³⁶

Arizona can serve as a cautionary tale to prevent Indiana’s ESA program from expanding beyond a reasonable scope, so this Note will compare Indiana’s Education Scholarship Accounts with Arizona’s Empowerment Scholarship Accounts. Furthermore, policymakers in Indiana can learn from their counterparts in other states who have developed their own ESA programs. This Note proposes that, much like Arizona’s ESA program, Indiana’s ESA program currently suffers from a lack of statutory accountability measures to protect the program from financial abuses and academic failures.

Part I of this Note explains the legal developments of the ESA programs of both states. Part II provides an overview of the Arizona ESA program. Part III then outlines Indiana’s ESA program. Part IV examines the limitations and legal issues facing the two ESA programs and explains the primary failures of both systems. Finally, Part V provides legal solutions that could fill the statutory gaps in Indiana’s ESA program. These legal solutions will ultimately benefit both the State of Indiana and its students by providing stronger accountability measures for entities providing services in the INESA program.

31. Casey Smith, *Indiana Senator Eyes 2025 for “School Choice” Overhaul*, IND. CAP. CHRON. (Jan. 19, 2024, at 6:30 ET), <https://indianacapitalchronicle.com/2024/01/19/indiana-senator-eyes-2025-for-school-choice-overhaul/> [https://perma.cc/5VS3-LDG9].

32. *Id.*

33. See *infra* Part IV.B (describing statutory amendments to the Indiana Choice Scholarship Account Program and Indiana Educational Scholarship Account Program).

34. See *infra* Part IV.B (describing Arizona’s budget concerns following expansion of Empowerment Scholarship Account eligibility).

35. See *infra* Part IV.A (summarizing current litigation alleging fraud against two Indiana charter schools).

36. See *infra* Part IV.C (analyzing the assessment requirements for the INESA program).

I. HISTORY OF ESA PROGRAMS IN ARIZONA AND INDIANA

A. Arizona's Legislative and Judicial History for School Vouchers

Arizona was the first state to introduce an educational savings account program in 2011.³⁷ However, the Empowerment Scholarship Account Program was not Arizona's first attempt at a voucher program aimed at helping students in need. Arizona established two voucher programs before the Empowerment Scholarship Account Program's creation, but both of these previous programs were held unconstitutional by the Arizona Supreme Court.³⁸ The Arizona Scholarships for Pupils with Disabilities Program provided "pupils with disabilities . . . the option of attending any public school of the pupil's choice or receiving a scholarship to any qualified school of the pupil's choice."³⁹ The Arizona Displaced Pupils Choice Grant Program provided state funds to students in foster care so they could attend a private primary or secondary school of their choice.⁴⁰ Both programs allowed sectarian and non-sectarian schools to participate without any requirements to alter their curriculum or practices.⁴¹

In *Cain v. Horne*, the plaintiffs contended that both programs violated the Arizona Constitution.⁴² The court examined the Arizona Constitution's "Religion Clause" (prohibiting appropriation of public money to religious establishments) and "Aid Clause" (prohibiting appropriation of public money to aid churches and private and sectarian schools).⁴³ The Arizona Supreme Court held that the two programs violated the Aid Clause because the programs transferred state funds directly from the state treasury to private schools, regardless of the fact that the funds first passed through the hands of parents through checks or warrants.⁴⁴

A few years later, the plaintiffs in *Niehaus v. Huppenthal* challenged the constitutionality of the Empowerment Scholarship program under the same Aid and Religion Clauses of the Arizona Constitution that were the focus in *Cain*.⁴⁵ This time, the Arizona Court of Appeals held that the program did not violate the Religion Clause because the program "is a system of choice that does not

37. Libby Stanford & Mark Lieberman, *Educational Savings Accounts, Explained*, EDUC. WEEK (Mar. 27, 2023), <https://www.edweek.org/policy-politics/education-savings-accounts-explained/2023/03> [<https://perma.cc/93S2-4JK5>].

38. *Cain v. Horne*, 202 P.3d 1178, 1185 (Ariz. 2009). See also Leah Blake, Comment, *A Call for State Legislators to Reconsider Their Stance on School Choice and School Funding*, 36 BYU J. PUB. L. 291, 306 (2022); Kevin P. Brady, *The Paradox of State-Funded Private Choice Vouchers, Accountability Measures, and Legal Protections for Students with Disabilities*, 344 EDUC. L. REP. 635, 640 (2017).

39. *Cain*, 202 P.3d at 1180 (quoting ARIZ. REV. STAT. ANN. § 15-891(A) (repealed 2022)).

40. *Id.*

41. *Id.*

42. *Id.* at 1181.

43. *Id.* at 1180.

44. *Id.* at 1184.

45. *Niehaus v. Huppenthal*, 310 P.3d 983, 985 (Ariz. Ct. App. 2013).

have the effect of advancing religion.”⁴⁶ In contrast with previous voucher programs that were struck down, the spending of Empowerment Scholarship Account funds “depends solely upon how parents choose to educate their children.”⁴⁷ Moreover, the court held that the program did not violate the Aid Clause because families have discretion on how to spend their funds, which may include services provided by public schools as well as religious ones.⁴⁸ As a result, the Court of Appeals affirmed the district court’s denial of injunctive relief.⁴⁹ The Arizona Supreme Court declined to review the decision.⁵⁰ The *Niehaus* court therefore created a legal foundation for other states to adopt ESA programs.

In 2022, Arizona expanded eligibility for Empowerment Scholarship Accounts to all K-12 students and pre-K students with disabilities.⁵¹ There are no income limits or testing mandates, and the accounts are funded at ninety percent of the state’s per-pupil base funding.⁵² State estimates from 2024 demonstrated that participating students receive between \$7,000 and \$8,000 annually, with special needs students receiving additional funds based on any special needs or required accommodations.⁵³

B. Indiana’s Legislative and Judicial History for School Vouchers

Indiana’s path towards an ESA program faced legal challenges like Arizona’s. In 2011, Indiana enacted House Enrolled Act 1003 which established the Indiana Choice Scholarship Program.⁵⁴ At the time, the Indiana Choice Scholarship program was the nation’s largest school voucher program in terms of student eligibility.⁵⁵ The program expanded in 2013 following legislation that introduced additional eligibility pathways and eliminated the cap on students that could participate in the program.⁵⁶

However, a group of taxpayers challenged the Choice Scholarship program’s constitutionality in *Meredith v. Pence*.⁵⁷ The taxpayer-plaintiffs

46. *Id.* at 987.

47. *Id.*

48. *Id.* at 987–88.

49. *Id.* at 984.

50. *Empowerment Scholarship Accounts*, EDCHOICE (Dec. 18, 2023), <https://www.edchoice.org/school-choice/programs/arizona-empowerment-scholarship-accounts/> [https://perma.cc/CMB3-WLG4].

51. *Id.*

52. *Id.*

53. *Id.*

54. Katherine Cierniak, Rebecca Billick & Anne-Maree Ruddy, *The Indiana Choice Scholarship Program: Legal Challenges, Program Expansion, and Participation 1*, Policy Brief, IND. UNIV. CTR. FOR EVALUATION & EDUC. POL’Y (Feb. 2015), <https://files.eric.ed.gov/fulltext/ED558597.pdf> [https://perma.cc/CJ5H-DA5R].

55. *Id.*

56. *Id.* at 2.

57. *Meredith v. Pence*, 984 N.E.2d 1213, 1216 (Ind. 2013).

claimed that the school voucher program violated the Indiana Constitution because it uses taxpayer funds for teaching religion in religious private schools.⁵⁸ The plaintiffs also argued that the program unconstitutionally gave public education funds to private schools instead of the constitutionally mandated system of public schools.⁵⁹ The Indiana Supreme Court held that the program did not violate the Education Clause of the Indiana Constitution because the program allowed the General Assembly to carry out its duties “to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement” and to provide a public school system.⁶⁰ The court also saw no violation of the Indiana Constitution’s prohibition on state expenditures to religious institutions because the families of eligible students, not schools, were the “direct beneficiaries” of the program, and because participating in the program was “entirely voluntary.”⁶¹ The Indiana Supreme Court therefore upheld the constitutionality of the voucher program.⁶²

Much like in Arizona’s *Niehaus* case, the Indiana Supreme Court created another legal foundation for state education spending. *Meredith* provided a legal catalyst for other Indiana state-funded voucher programs, especially those geared toward special education students.⁶³ Indiana enacted the Indiana Education Scholarship Account Program in 2021 and then launched the program in 2022.⁶⁴

II. THE ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT PROGRAM

The Arizona Empowerment Scholarship Account Program began as a program providing funds for students with disabilities.⁶⁵ A “qualified student” is an Arizona student eligible to enroll in an Arizona K-12 public school or a preschool program for children with disabilities.⁶⁶ However, the list of eligible students gradually expanded to include Arizona students in military families; students in low-performing schools; students in foster care; students who live on Native American reservations; and students whose parents are legally blind, deaf, or hard of hearing.⁶⁷ In 2022, eligibility expanded to include all K-12 students in Arizona.⁶⁸

58. *Id.* at 1217.

59. *Id.*

60. *Id.* at 1222.

61. *Id.* at 1228–29.

62. *Id.* at 1216.

63. Brady, *supra* note 38, at 647.

64. EDCHOICE, *supra* note 1.

65. Elizabeth Adamo Usman, *Reality Over Ideology: A Practical View of Special Needs Voucher Programs*, 42 CAP. U. L. REV. 53, 74 (2014).

66. ARIZ. REV. STAT. ANN. § 15-2401.01 (2025).

67. Ronco, *supra* note 4.

68. Nick Sullivan, *What is the Empowerment Scholarship Account Program in Arizona?*, AZCENTRAL (July 9, 2024), <https://www.azcentral.com/story/news/local/arizona-education/>

Empowerment Scholarship Account recipients must use a “portion of the Arizona empowerment scholarship account monies allocated annually to provide an education for the qualified student in at least the subjects of reading, grammar, mathematics, social studies and science.”⁶⁹ The Arizona statute provides a list of approved expenses which include tuition and fees, textbooks, curricula and supplementary materials, insurance payments, transportation, and school uniforms.⁷⁰

The Arizona Department of Education conducts annual audits of the entire program, but the Department also administers an annual review of individual accounts, selected at random, to see if students using the vouchers are in compliance with the program.⁷¹ The Arizona scholarship program appoints a six-member parent oversight committee consisting of parents of qualified students, each appointed by, respectively, the Governor, President of the Senate, Speaker of the House of Representatives, and the minority leaders of both the House and Senate.⁷² The committee reviews the program’s implementation, parents of qualified students’ concerns, and how complaints associated with administering the program are being handled.⁷³

III. THE INDIANA EDUCATION SCHOLARSHIP ACCOUNT PROGRAM

As stated above, Indiana adopted its ESA program a full decade after Arizona’s program. As this section will outline, INESA’s statutory scheme is more robust than the statutes that authorize the Arizona Empowerment Scholarship Program.

A. Requirements and Obligations for Eligible Students

An eligible student for the INESA program (“Eligible Student”) must be an Indiana resident who is between the ages of five and twenty-two.⁷⁴ That student must have a disability that requires special education when the account is established, and the student must have either an IEP, an SP, or a CSEP.⁷⁵ An IEP is an individualized education plan developed by a Case Conference Committee at the student’s local public school that describes how a student will engage with the curriculum and which “special education and related services”

2024/07/09/what-is-the-arizona-esa-program-empowerment-scholarship-account/74340073007/[https://perma.cc/KMV8-MA2H].

69. ARIZ. REV. STAT. ANN. § 15-2402(B)(1) (2025).

70. § 15-2402(B)(4).

71. ARIZ. REV. STAT. ANN. § 15-2403 (2025).

72. ARIZ. REV. STAT. ANN. § 15-2405(A) (2025) (The Governor appoints two members, while the other individuals each appoint one member).

73. § 15-2405(E).

74. IND. CODE § 20-51.4-2-4 (2025).

75. *Id.*

the student needs to succeed in the classroom.⁷⁶ A Service Plan (“SP”) is a written document that “describes the specific special and related services” the student’s public agency will provide when the student is placed in a nonpublic school by their parents.⁷⁷ A Choice Special Education Plan (“CSEP”) is a plan for students who were awarded an Indiana Choice Scholarship and is developed by the student’s choice education planning team.⁷⁸

Eligible Students must meet the annual income qualification requirement set under the Indiana Choice Scholarship Program.⁷⁹ Under this requirement, students must belong to a “household with an annual income of not more than four hundred percent (400%) of the amount required for the individual to qualify for the federal free or reduced price lunch program.”⁸⁰ For the 2023–2024 school year, this threshold was \$220,000 for a family of four.⁸¹ Siblings of a student with an established ESA are also eligible to participate in INESA, even if that sibling has no special needs requirements.⁸² However, ESA funds cannot be used to “cover any disability-related expenses unless that sibling also has an IEP.”⁸³ ESA recipients are not permitted to combine funding with Indiana’s Choice Scholarship voucher program, but recipients are allowed, if eligible, to combine funding with Indiana’s School Scholarship Tax Credit program.⁸⁴

The funds in an Eligible Student’s ESA must be used for Qualified Expenses for either: (1) the student’s study in the subject of reading, grammar, mathematics, social studies, or science; or (2) applicable services required for the student’s IEP or other similar plan.⁸⁵ The following are permitted as Qualified Expenses for which Participating Entities can receive funds:

- (1) Tuition and fees, which includes curricular materials, at a qualified school, public school, or other ESA participating entity;
- (2) Fees for certain student assessments and examinations;
- (3) Educational services for an eligible student who is a student with a disability;

76. See 511 IND. ADMIN. CODE 7-32-48(a) (2025). See also 511 IND. ADMIN. CODE 7-32-12 (2025) (defining Case Conference Committee); 511 IND. ADMIN. CODE 7-42-3 (2025) (listing the participants required to be part of the Case Conference Committee). The Case Conference Committee is the group of people, including parents, educators, and public officials, whose responsibilities include the development, creation, and revision of a student’s IEP.

77. 511 IND. ADMIN. CODE 7-32-84 (2025).

78. 511 IND. ADMIN. CODE 7-49-2 (2025).

79. § 20-51.4-2-4(4).

80. IND. CODE § 20-51-1-5 (2025).

81. EDCHOICE, *supra* note 1. See also IND. DEP’T OF EDUC., EDUCATION SCHOLARSHIP ACCOUNT (ESA) PROGRAM: 2023-2024 ANNUAL REPORT 4 (2024), <https://www.in.gov/doe/files/2023-2024-ESA-Annual-Report.docx.pdf> [<https://perma.cc/3766-9SBQ>] (providing a table listing annual household income limits for household sizes of one to ten people).

82. § 20-51.4-2-4(3)(B).

83. EDCHOICE, *supra* note 1.

84. *Id.*

85. IND. CODE § 20-51.4-1(a)(4) (2025).

- (4) Payments associated with the use of paraprofessional or educational aides;
- (5) Payments for receiving therapeutic services;
- (6) Services contracted for and provided by a school corporation, charter school, magnet school, or qualified school, such as individual classes, extracurricular activities, or additional programs, resources, defined in the student's education plan;
- (7) Occupational therapy, provided in accordance with the student's educational plan;
- (8) Fees for service transportation to and from an approved provider;
- (9) Tuition and fees to attend training programs and camps that have a focus on vocational skills, academic skills, life skills, independence, or soft job skills;
- (10) Additional services and therapies prescribed by the eligible student's treating physician;
- (11) Fees for the management of the ESA account;
- (12) Expenses to enroll in and attend sequences, courses, apprenticeships, and programs of study designated and approved under Indiana's Career Scholarship Account Program.⁸⁶

Eligible Students must take statewide summative assessments for their applicable grade levels unless the student has an alternative assessment plan under an IEP, SP, or CSEP.⁸⁷ There is no mention in Indiana statutes as to how student performance on these assessments will affect their eligibility in the program. However, students in the ESA program, like all special education students in Indiana, must reconvene with their public school of legal settlement's case conference committee every three years to re-evaluate whether the student is still eligible for an IEP or equivalent plan.⁸⁸

B. Requirements and Obligations for Participating Entities

An ESA participating entity ("Participating Entity") is an "individual or entity authorized by the treasurer of state to participate in the ESA program."⁸⁹ Approved Participating Entities can include:

- (1) qualified nonpublic schools;
- (2) an individual or tutoring agency that provides private tutoring;
- (3) an individual or entity that provides services to a student with a disability in accordance with an IEP or equivalent plan;

86. IND. CODE § 20-51.4-2-9 (2025).

87. § 20-51.4-4-1.

88. 511 IND. ADMIN. CODE 7-50-4 (2025).

89. IND. CODE § 20-51.4-2-4.7 (2025).

- (4) an individual or entity that offers a course or program to an eligible student;
- (5) a licensed occupational therapist; or
- (6) entities that provide assessments.⁹⁰

As of March 1, 2024, there were 392 unique Participating Entities approved for ESA participation, split between 329 unique approved businesses and 63 unique schools.⁹¹ Of the participating schools, 44 were qualified nonpublic schools with the remaining schools registering as a school business entity.⁹²

Individuals and service providers can become a Participating Entity by submitting an application to the Treasurer of State, who then approves the application if the individual or entity meets eligibility criteria.⁹³ The Treasurer of State keeps the application open throughout the year with approvals made on a rolling basis.⁹⁴ Individual providers are required to demonstrate their credentials either through professional certificates, college degrees, or documented work as a paraprofessional.⁹⁵ If a parent would like a child's current service provider to become an approved Indiana ESA provider, the Treasurer of State encourages parents to offer their recommendations via a provider contact form.⁹⁶

Business entities must provide proof of their business registration in Indiana such as a copy of business license, articles of incorporation, LLC documentation, or non-profit charter.⁹⁷ They must also provide proof of all accreditations held, including a list of all employed providers with any individual licenses or accreditations.⁹⁸ A Qualified School (nonpublic school providers) must provide proof of accreditation either through the state or a third party, its school identification number, its tuition and fee schedule, and its relationship to special education services.⁹⁹ A public or charter school that offers individual courses, programs, or extracurricular activities is required to provide its school number.¹⁰⁰

ESA account holders pay Participating Entities through an online portal provided by the Treasurer of State.¹⁰¹ Participating Entities that accept payments made from an ESA account must provide a receipt for each payment made.¹⁰²

90. IND. CODE § 20-51.4-5-2 (2025).

91. IND. DEP'T OF EDUC., *supra* note 81, at 5.

92. *Id.*

93. § 20-51.4-5-2(b).

94. IND. DEP'T OF EDUC., *supra* note 81, at 5.

95. *INESA Providers*, IND. TREASURER OF STATE, <https://www.in.gov/tos/inesa/provider-page/> [<https://perma.cc/9K3W-7PG4>] (last visited Oct. 16, 2025).

96. IND. TREASURER OF STATE, *supra* note 24.

97. IND. TREASURER OF STATE, *supra* note 95.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. IND. CODE § 20-51.4-5-2(d) (2025).

Other than providing these invoices to students and parents, there are no additional reporting or administrative responsibilities associated with participation in ESA. There is no statutory authority that requires a Participating Entity to report an ESA student's academic performance while receiving the Entity's services. Based on this statutory language, the Indiana Treasurer of State appears to be more concerned that these Participating Entities can operate a business than provide a quality education.

C. Obligations for Indiana State Departments

The Indiana Treasurer of State allots each eligible student ninety percent of that student's basic tuition support allotted to the student by the state.¹⁰³ The student also receives one hundred percent of the special education dollars allotted to the student if that student chooses not to receive any special education services offered by student's local public school.¹⁰⁴ These amounts are dependent on the state's budgetary availability.¹⁰⁵ In 2024, the program's total appropriation amount was \$10 million.¹⁰⁶ The Indiana General Assembly in 2025 proposed to increase that amount to \$15 million,¹⁰⁷ but the final legislation kept this amount at \$10 million.¹⁰⁸ The Treasurer of State deposits funds into ESA accounts quarterly.¹⁰⁹ The Treasurer provides the portal for ESA account holders to make payments directly to Participating Entities.¹¹⁰

The Treasurer of State may revoke an individual's or entity's status as a Participating Entity upon finding that the individual or entity accepts payments made from an ESA account and either has: "(1) failed to provide any educational service required by state or federal law to an eligible student receiving instruction from the ESA participating entity; or (2) has routinely failed to meet the requirements of an ESA participating entity under the ESA program."¹¹¹ A Participating Entity who is also the parent of an Eligible Student is prohibited from receiving ESA funds for teaching a course or program only to that student and may have its status revoked for doing so.¹¹² Indiana statutes do not provide any guidelines for what would constitute a failure to provide an educational service or a failure to provide to meet the requirements of a Participating Entity, apparently leaving that decision to the Treasurer of State's discretion.

103. IND. TREASURER OF STATE, *supra* note 2.

104. *Id.*

105. *Special Education Services (APC) Award Amounts Indiana Education Scholarship Account (ESA) 2024-2025 School Year*, IND. TREASURER OF STATE, <https://www.in.gov/tos/inesa/files/Special-Education-Services-Funding-Levels-2024-25.pdf> [https://perma.cc/AGV3-WTC8].

106. EDCHOICE, *supra* note 1.

107. H.B. 1001, § 3, 124th Gen. Assemb., 1st Reg. Sess. (Ind. 2025).

108. H.E.A. 1001, § 3, 124th Gen. Assemb., 1st Reg. Sess. (Ind. 2025).

109. IND. CODE § 20-51.4-4-2(a) (2025).

110. IND. TREASURER OF STATE, *supra* note 95.

111. IND. CODE § 20-51.4-5-4 (2025).

112. IND. CODE § 20-51.4-5-7 (2025); § 20-51.4-5-4(a)(3) (effective July 1, 2026).

The Treasurer of State will retain an independent accounting firm to administer an annual audit of the program, the results of which will be transmitted to the Governor and the General Assembly.¹¹³ In addition, the Treasurer of State administers an annual survey to ESA account holders that asks about their relative satisfaction with the ESA program and solicits “opinions on any topics, items, or issues that the treasurer of state determines may improve the effectiveness of the ESA program or the education experience of the eligible student or the eligible student’s family.”¹¹⁴ The Treasurer of State submits the results of this survey to Indiana’s governor and legislative council.¹¹⁵

The Department of Education must provide services “that offer objective advice upon request to parents of an eligible student or an emancipated eligible student relating to services that can help meet the eligible student’s or emancipated eligible student’s particular needs.”¹¹⁶ However, the statute is unclear how the Department of Education should give out that advice. The Treasurer of State, the entity that actually administers the INESA program, provides a questionnaire on its website that parents can use to interview potential private schools.¹¹⁷ However, the Treasurer of State’s website does not provide advice for ESA families to choose other types of Qualified Expenses such as tutoring or therapies.¹¹⁸

IV. POTENTIAL LIMITATIONS AND LEGAL ISSUES OF ESAS

An understanding of the ESA program’s requirements and administration prompts important questions about what limitations they might face in their implementation. A fundamental limitation of any voucher program is that it reduces the “public” aspect of public education.¹¹⁹ Law professor Julie F. Mead set up four major aspects of public education by stating: “At a minimum, publicness also includes public purpose, public access, public accountability, and public curriculum. Vouchers and neo-voucher programs preserve public funding but diminish or eliminate the other four aspects of publicness.”¹²⁰ However, the court in *Meredith v. Pence* found “[t]he plaintiffs proffer no evidence that maximum participation in the voucher program will necessarily

113. IND. CODE § 20-51.4-3-3 (2025).

114. IND. CODE § 20-51.4-3-4(a) (2025).

115. § 20-51.4-3-4(c).

116. IND. CODE § 20-51.4-3-6(a) (2025). To clarify, this is currently the Department of Education’s responsibility while the Treasurer of State still administers the program.

117. See *Parent Questionnaire for Nonpublic Schools*, IND. TREASURER OF STATE, <https://www.in.gov/tos/inesa/files/Parent-Questionnaire-for-Nonpublic-Schools.pdf> [<https://perma.cc/92FX-TG7Z>].

118. See IND. TREASURER OF STATE, *supra* note 24.

119. Julie F. Mead, *The Right to an Education or the Right to Shop for Schooling: Examining Voucher Programs in Relation to State Constitutional Guarantees*, 42 FORDHAM URB. L.J. 703, 742–43 (2015).

120. *Id.* at 743.

result in the elimination of the Indiana public school system.”¹²¹ Due to the Indiana Supreme Court’s decision, neo-voucher programs have no boundaries to encroach on the aspects of public-ness that Professor Mead outlined.¹²²

The latter two aspects of public-ness, public accountability and public curriculum, are particularly lacking under ESAs’ deregulatory design. Kevin Welner, director of the National Education Policy Center and an education policy professor at the University of Colorado, views ESAs and other voucher programs as a “deregulatory reform” that will lead to the deregulation of schools.¹²³ “The idea is to be deregulated For advocates of vouchers, transparency is not a good thing.”¹²⁴ Because ESAs are flexible, “it’s impossible for the state to track whether the public funds are actually helping students improve learning.”¹²⁵

ESA account holders are receiving educational and therapeutic services from a variety of sources, so it is difficult for states to determine the educational impact of each purchase or service. Furthermore, the abundant number of purchases of ESA related goods and services enable fraudulent practices. Cracks have already begun to form in Arizona’s ESA program that are mirrored in Indiana’s program.

A. Potential for Fraud in ESA Programs

The lack of transparency that Professor Welner described raised its head in Arizona’s ESA program. A 1998 report by the Arizona Auditor General revealed that parents had misspent or fraudulently spent over \$700,000 in ESA program funds at entities such as beauty supply retailers, sports apparel shops, and computer technical support providers.¹²⁶ In a February 2022 report, Arizona’s Department of Education expressed concern that parents had not reported receipts for more than 17,000 transactions made with account program debit cards during the last quarter of 2022, while it had receipts for another 100,000 transactions during that period.¹²⁷

121. *Meredith v. Pence*, 984 N.E.2d 1213, 1223 (Ind. 2013) (emphasis omitted).

122. See also Preston Green, Julie Mead & Suzanne Eckes, *Covenants to Discriminate: How the Anti-LGBT Policies of Participating Voucher Schools Might Violate the State Action Doctrine*, 19 U.N.H. L. REV. 163, 169–72 (2021). An added concern is that taking special education students out of public schools can make them vulnerable to discrimination based on characteristics like race, first language, and sexual identity.

123. Stanford & Lieberman, *supra* note 37.

124. *Id.*

125. *Id.*

126. Yvonne Wingett Sanchez & Rob O’Dell, *Parents spent \$700K in school voucher money on beauty supplies, apparel; attempted cash withdrawals*, AZCENTRAL (Oct. 30, 2018, at 18:36 MT), <https://www.azcentral.com/story/news/politics/arizona/2018/10/29/misspent-school-voucher-funds-exceed-700-k-little-recovered/1780495002/> [<https://perma.cc/6CC7-EHH5>].

127. Stanford & Lieberman, *supra* note 37.

Even under the guise of a curricular expense, Arizona's ESA program has faced scrutiny for approved expenses.¹²⁸ When an expense is not on the list of allowed expenses in the parents' handbook provided by the state, the parents need to submit a curriculum demonstrating the purpose and scope of the proposed expense.¹²⁹ However, parents have used this approach to justify extravagant purchases, including aeroponic indoor gardens, luxury car driving lessons, pianos, and sessions at ninja warrior training centers.¹³⁰ As a result, the Arizona Attorney General's Office has begun investigating how the program defines and approves "curricula and supplementary materials."¹³¹

Arizona Attorney General Kris Mayes has revealed that over \$650,000 was defrauded from Arizona's Empowerment Scholarship Account program as of March 2024.¹³² In July 2023, three women were indicted for defrauding over \$87,000 from the program by creating fake voucher vendor companies and charging the state with falsified education receipts.¹³³ In February 2024, an Arizona grand jury indicted five former Arizona Department of Education employees on allegations that the employees defrauded around \$600,000 from the program by approving applications for seventeen students, five of which were fictitious, using forged birth certificates and special education evaluations.¹³⁴ While one of the defendants was found not guilty at trial, the other four defendants pled guilty to individual charges of fraud, money laundering, and forgery.¹³⁵

In comparison, Indiana has already faced a scandal involving its own school choice program. Individuals from the charter schools Indiana Virtual School and Indiana Virtual Pathways Academy currently face criminal charges of wire

128. Laurie Roberts, *It's not 'overly restrictive' to ask why parents bought \$900 Lego sets with our money*, AZCENTRAL (July 11, 2024, at 7:51 MT), <https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2024/07/10/arizona-esa-school-voucher-spending/74357631007/> [https://perma.cc/7DPL-HP5M].

129. *Id.*

130. *Id.*

131. Rodriguez, *supra* note 14.

132. "Ghost Students": ESA Voucher Fraud Scandal, SAVE OUR SCHS. ARIZ. NETWORK (Mar. 12, 2024), <https://www.sosaznetwork.org/2024/ghost-students-esa-voucher-fraud-scandal/> [https://perma.cc/P8T5-W5Q8].

133. *Id.* See also Joe Dana & Dacia Johnson, *3 women facing charges in alleged ESA, health care schemes*, NBC 12 NEWS (Feb. 1, 2024, at 18:38 MT), <https://www.12news.com/article/news/education/arizona-women-indicted-in-alleged-esa-health-care-schemes/75-72a5dcdf-6980-462d-8eba-a64c28f1926c> [https://perma.cc/T8Z9-25KG].

134. Wayne Schutsky, *3 Arizona Education Department employees indicted in \$600,000 voucher fraud*, KJZZ (Feb. 29, 2024, at 17:22 MT), <https://www.kjzz.org/2024-02-29/content-1872764-3-arizona-education-department-employees-indicted-600000-voucher-fraud> [https://perma.cc/XMF2-UB8K].

135. Wayne Schutsky, *Former Arizona Department of Education employee found not guilty in school voucher fraud case*, KJZZ (Mar. 7, 2025, at 11:38 MT), <https://www.kjzz.org/education/2025-03-07/former-arizona-department-of-education-employee-found-not-guilty-in-school-voucher-fraud-case> [https://perma.cc/J9W5-2KMJ].

fraud and money laundering.¹³⁶ These crimes allegedly arose when the charter schools reported higher student attendance numbers to the state but only paid teachers based on actual student enrollment, causing the state to be overcharged by over \$85 million.¹³⁷ A state audit in 2020 reported that \$68 million of the \$85 million was improperly funneled through several for-profit companies owned by Thomas Stoughton, the schools' founder.¹³⁸ Federal prosecutors alleged that Stoughton and his associates spent the money on extravagant purchases including a Cadillac, Tiffany & Co. jewelry, and private school tuition.¹³⁹ Stoughton's indictment raises questions on whether Indiana is too lax on the government-related entities which authorize charter schools.¹⁴⁰

The types of financial abuse already found in Arizona and Indiana can easily make their way into the INESA program. Although INESA students do not have the flexibility to spend funds on individual purchases to the degree of Arizona Empowerment Students, INESA students can contract with any Participating Entity. The potential danger arises if the Treasurer of State authorizes Participating Entities with the same lax standard that allowed Stoughton's schools to operate. When privately operated schools are opened at a quick pace with access to state school tuition payments, the system is vulnerable to fraud.¹⁴¹ Once a Participating Entity is approved by the Treasurer of State, the Participating Entity only needs to provide receipts to parents, with no further obligations to submit to the Treasurer of State or the Department of Education.¹⁴² With potentially hundreds of Participating Entities that have no obligation to report student expenditures directly to the Treasurer of State, the INESA program faces a similar threat of the kind of fraud caused by the virtual charter schools, especially if the number of Participating Entities continues to expand.

136. Karen Campbell & Chase Houle, *4 charged in federal money laundering, wire fraud of funds at now-closed Indiana charter schools*, NBC 13 WTHR (Jan. 26, 2024, at 4:10 ET), <https://www.wthr.com/article/news/local/money-laundering-wire-fraud-indictments-allege-misuse-of-charter-schools-funds-virtual-pathways-academy/531-ff7fda91-3bba-4123-8a62-f8756ceb5822> [<https://perma.cc/E2CB-FT42>]. See generally Complaint to Recover Public Funds, *Indiana ex rel. Rokita v. Ind. Virtual Educ. Found., Inc.*, No. 29D05-2107-PL-004821 (Hamilton Cnty. Ct. July 8, 2021); Indictment, *United States v. Stoughton*, No. 1:24-cr-00014 (S.D. Ind. Jan. 17, 2024), Dkt. No. 1.

137. Karen Campbell & Chase Houle, *supra* note 136.

138. Amelia Pak-Harvey & MJ Slaby, *Former virtual charter school leaders face federal charges tied to alleged enrollment scam*, CHALKBEAT IND. (Jan. 23, 2024, at 17:52 ET), <https://www.chalkbeat.org/indiana/2024/01/23/virtual-charter-school-operators-indicted-for-alleged-enrollment-scam/> [<https://perma.cc/46YY-59CH>].

139. *Id.*

140. *Id.*

141. Tom Davies, *Lawyers drop virtual schools leader accused of vast enrollment fraud*, STATE AFFS. (Oct. 30, 2024), <https://pro.stateaffairs.com/in/courts/thomas-stoughton-online-school-lawyer> [<https://perma.cc/UN5S-TGB2>].

142. See *supra* Part III.B (outlining obligations for Participating Entities).

B. Budgetary Burdens of ESA Programs

In the year after Arizona expanded the eligibility of its Empowerment Scholarship Account program, participation increased to 75,000 students, resulting in costs to the state of around \$864 million.¹⁴³ Given the rise in popularity of the INESA program in its few years of existence, Indiana faces similar state budget issues caused by expanded eligibility.

Voucher programs like scholarship and savings accounts are touted as a way to give public school students more educational choices,¹⁴⁴ but these programs are increasingly utilized by families who are already paying for private schools.¹⁴⁵ According to *Time Magazine*, “more than 75% of initial voucher applicants [in Arizona] had never been in public school—either because they were new kindergartners or already in private school before getting a voucher.”¹⁴⁶ Similarly, nearly 68% of Indiana students receiving a voucher have never attended a public school.¹⁴⁷

In its relatively short existence compared to Indiana’s other voucher programs, INESA is already following these statistical trends. Of the group of ESA participating students in the 2022–2023 school year, only 43.19% of those students had attended a public school in the previous year.¹⁴⁸ That number dropped to 31.67% of participating students in the 2023–2024 school year.¹⁴⁹

Despite these statistics, the Indiana General Assembly is shaping its education spending to reflect a perceived statewide flight from public schools. The 2023–2025 Indiana budget directed 36% of new state tax funding for elementary and secondary education to private schools educating only about 7% of the students in Indiana, leaving 64% to public schools educating the

143. Sullivan, *supra* note 68.

144. Claire Raj, *Coerced Choice: School Vouchers and Students with Disabilities*, 68 EMORY L.J. 1037, 1055 (2019). See also Wendy F. Hensel, *Vouchers for Students with Disabilities: The Future of Special Education?*, 39 J.L. & EDUC. 291, 295 (2010); James E. Ryan & Michael Heise, *The Political Economy of School Choice*, 111 YALE L.J. 2043, 2045 (2002).

145. Paige Clark, *More and more voucher students never tried public school*, STATEHOUSE FILE (Oct. 1, 2021), https://www.thestatehousefile.com/more-and-more-voucher-students-never-tried-public-school/article_01b78b25-3e8e-5692-b6da-e8f6d5cd5c6c.html [<https://perma.cc/R5L5-GZ3U>]. See also Ian Farrell & Chelsea Marx, *The Fallacy of Choice: The Destructive Effect of School Vouchers on Children with Disabilities*, 67 AM. U. L. REV. 1797, 1863 (2018).

146. Joshua Cowen, *How School Voucher Programs Hurt Students*, TIME (Apr. 19, 2023, at 7:05 EDT), <https://time.com/6272666/school-voucher-programs-hurt-students/> [<https://perma.cc/V2JE-HFX3>].

147. Grace Salata, Cooper VanDriessche & Taylore Williams, *Voucher Dilemma: Taxpayer cost jumped from \$15.5 million to more than \$300 million*, INDYSTAR (Sep. 5, 2024, at 15:25 ET), <https://www.indystar.com/story/news/investigations/2024/09/04/voucher-earning-limit-sta40000-a-year-today-the-same-family-could-qualify-while-making-222000-a-year/74042543007/> [<https://perma.cc/NA3N-FU3F>].

148. IND. DEP’T OF EDUC., *supra* note 81, at 12.

149. *Id.*

remaining 93% of students.¹⁵⁰ In addition, the budget bill passed in 2025 by the Indiana General Assembly will eliminate the maximum annual household income for Indiana Choice Scholarship Account eligibility starting in the 2025–26 school year.¹⁵¹ Because ESA eligibility is determined by the Choice Scholarship Program’s income standard, this change by the General Assembly also removes the income ceiling for ESA Eligible Students.¹⁵² Removing the income requirements from two Indiana voucher programs will increase the amount of eligible students in both programs, resulting in more students taking their public education funding out of the public school system.

With more Indiana state education funds being shifted to private schools, public school funding is being stretched thinner to meet demands that are still significant. Expanding eligibility of the ESA program like Arizona did would exacerbate the budgetary demands upon public schools that Indiana’s other/existing voucher programs have already created.

C. Lack of Academic Accountability for ESA Students

In addition to these financial issues, Indiana’s laws concerning ESAs are unclear about expectations for students’ long-term academic performance. An ESA eligible student is required to take either statewide summative assessments based on the eligible student’s grade level or comparable assessments specified in the eligible student’s IEP or equivalent plan.¹⁵³ Students are only required to *take* the required assessments, but the statute fails to communicate whether students are expected to meet state standards for the eligible student’s grade level.¹⁵⁴

The Indiana Department of Education must aggregate state assessment test results of ESA students according to their grade level, gender, race, and family income level and make the results available on the department’s website.¹⁵⁵ However, ESA statutes do not specify how these test results will be used to determine the academic success of the ESA program.

150. Grace Salata, Cooper VanDriessche & Taylore Williams, *Voucher Dilemma Part 2: Unraveling impact of school choice program on education in Indiana*, INDYSTAR (Sep. 5, 2024, at 14:32 ET), <https://www.indystar.com/story/news/investigations/2024/09/05/unraveling-fiscal-impact-of-school-vouchers-on-education-in-indiana/75054166007/> [https://perma.cc/N6LR-UEGS].

151. H.B. 1001, 124th Gen. Assemb., 2025 Sess. (Ind. 2025). *Compare* IND. CODE § 20-51-1-4.3 (2023), *with* IND. CODE § 20-51-1-4.3 (2026).

152. H.B. 1001, 124th Gen. Assemb., 2025 Sess. (Ind. 2025). *See also* IND. CODE § 20-51.4-2-4(4) (2025).

153. *See* IND. CODE § 20-51.4-4-1(a)(4) (2025).

154. *See* § 20-51.4-4-1(a)(6).

155. IND. CODE § 20-51.4-5-3 (2025). As a reminder, this is the Department of Education’s current responsibility while the Treasurer of State administers the program.

V. PROPOSALS FOR INDIANA’S EDUCATION SCHOLARSHIP ACCOUNT PROGRAM

Current Indiana law is not structured to prevent the financial abuses that perpetuate Arizona’s ESA program from impacting Indiana.¹⁵⁶ The existing statutory scheme also fails to ensure academic accountability for those who avail themselves of the money provided through the INESA program.¹⁵⁷ Therefore, Indiana’s INESA statute must learn from Arizona’s mistakes and address the gaps in its accountability measures. Fortunately, solutions can be found in the statutes of other states that have adopted similar ESA programs. These solutions can help craft statutory language in the Indiana Code that will prevent abuse and increase accountability.

A. Legal Solutions to Hold the INESA Program Financially Accountable

Indiana statutes should better articulate how the INESA program will hold itself accountable to prevent financial waste and abuse. It is in the public interest for the program to responsibly distribute funds to ESA students given that it is more expensive to educate a student with a special education plan,¹⁵⁸ and it is also in the public interest for the INESA program to be mindful of its spending since ESA funds are being taken away from public schools that could be providing the services for the student’s IEP plans.¹⁵⁹

Despite all the shortcomings of Arizona’s ESA program, one aspect of the Arizona program that Indiana should adopt is the parent oversight committee.¹⁶⁰ As stated previously, Arizona has a parent oversight committee that reviews the implementation of its program, the concerns of qualified students’ parents, and the work of citizens who handle complaints associated with administering the program.¹⁶¹ A parent oversight committee would bring an increased level of accountability from a group of committed parents in comparison to INESA’s current method of parent feedback through a satisfaction survey.¹⁶²

156. *See supra* Part IV.A (highlighting the potential for fraud in both programs).

157. *See supra* Part III.A (indicating the lack of academic accountability measures for students in INESA statutes).

158. *See Per Pupil Allocation for Special Education*, IND. DEP’T OF EDUC. (Dec. 2, 2024), <https://www.in.gov/doe/files/APC-FUNDING-AMOUNTS-2024-2025.pdf> [<https://perma.cc/5REV-3NJ6>] (listing the 2024–2025 Indiana state tuition support amount for differing categories of students with disabilities). The amount that Indiana allocates to each pupil with special needs ranges from \$551 for students with language or speech impairments to \$11,659 for students with severe disabilities such as a traumatic brain injury or orthopedic impairment. *Id.*

159. *See supra* Part IV.B (analyzing how voucher programs funnel students’ funds away from public schools).

160. *See supra* Part II (describing the parent oversight committee that oversees the Empowerment Scholarship Program).

161. ARIZ. REV. STAT. ANN. § 15-2405(E) (2025).

162. *See* IND. CODE § 20-51.4-3-4(a) (2025).

Random audits of ESA account holders and Participating Entities are also an effective tool for increasing financial accountability. West Virginia's Hope Scholarship Account program has included these random audits in the program's statute.¹⁶³ The West Virginia Hope Scholarship Account Board has the authority, as part of the auditing process, "[to] remove a parent or eligible recipient from the Hope Scholarship Program and close a Hope Scholarship account for failure to comply with the terms of the parental agreement . . . , failure to comply with the applicable laws, failure of the student to remain eligible, or intentional and fraudulent misuse of Hope Scholarship funds."¹⁶⁴ In addition, "[i]f the board determines that an education service provider has intentionally and substantially misused Hope Scholarship funds, the board may bar the education service provider from continuing to receive payments."¹⁶⁵

Taking aspects of both Arizona's and West Virginia's programs, the Indiana General Assembly should create an Indiana Education Scholarship Parent Committee ("Parent Committee"). The Parent Committee should consist of seven parents of ESA students appointed by Indiana's Governor, Secretary of Education, Treasurer of State, Speaker of the House, President Pro Tempore of the Senate, and minority leaders of both the House and Senate of the General Assembly.

The Parent Committee should have the authority to conduct random audits on Participating Entities. The Treasurer of State should also provide a portal for ESA account holders to file complaints that can be sent to the Parent Committee. These audits may investigate whether a Participating Entity is complying with INESA laws, whether the Participating Entity is providing adequate educational or therapeutic services, and whether the Participating Entity is engaging in fraudulent practices. The Parent Committee should then have the discretion to audit the Participating Entity that is the subject of the complaint. Upon the Parent Committee's recommendation, the Treasurer of State could then choose to exercise the Treasurer's statutory obligation to revoke the status of a Participating Entity.¹⁶⁶ Because ESA account holders would be able to report Participating Entities to the Parent Committee, Participating Entities would continue to provide invoices to parents, but there would be no need for Participating Entities to report additional documentation to the Treasurer of State other than what is already required.¹⁶⁷

163. W. VA. CODE § 18-31-10 (2025).

164. *Id.* See also W. VA. CODE § 18-31-3(b) (2025) (defining the West Virginia Hope Scholarship Board as the West Virginia's Treasurer, Auditor, Attorney General, Superintendent of Schools, Chancellor of Higher Education, Director of the Office of Minority Affairs, and three Hope Scholarship parents appointed by the Governor with the advice and consent of the Senate).

165. § 18-31-10.

166. See IND. CODE § 20-51.4-5-4 (2025).

167. See *supra* Part III.B (listing the documentation that Participating Entities must submit to the Treasurer of State).

B. Legal Solutions to Promote Student Academic Achievement

The INESA statutes also demonstrate a lack of guidance for determining the program's success in promoting academic achievement. Students only have to take mandatory assessments without any need to show improvement in these assessments,¹⁶⁸ and Participating Entities do not need to provide the Treasurer of State with any documentation demonstrating a student's academic or therapeutic progress.¹⁶⁹ Instead of relying on standardized testing to gauge whether a special needs student is showing improvement, the INESA program can create a more holistic approach to ESA student assessments.

Two states provide an alternative to the mandatory state assessments, like those that Indiana requires. Under New Hampshire's Education Freedom Account program, participating students must "provide an annual record of educational attainment."¹⁷⁰ Similar to its counterparts in Indiana, New Hampshire's program provides students with the option of taking either "a nationally-standardized, norm-referenced achievement test" or "the statewide student assessment test."¹⁷¹ However, New Hampshire also provides students with the option of maintaining a portfolio of their academic progress.¹⁷² This portfolio can include "a log which designates by title the reading materials used; samples of writings, worksheets, workbooks, or creative materials used or developed by the student."¹⁷³ Parents who choose this form of assessment are required to give this portfolio to a certified teacher or a teacher teaching in a nonpublic school to evaluate the student's educational progress.¹⁷⁴ Similarly, the Utah Fits All Scholarship Program gives parents the option to submit yearly portfolios "describing the scholarship student's educational opportunities and achievements under the program for the given year."¹⁷⁵

Even though INESA students are no longer receiving special education services from the public school district where they reside, each student must still reconvene every three years with the student's school corporation of legal settlement to determine whether the student is still eligible for special needs services.¹⁷⁶ Since the Case Conference Committee is still responsible for monitoring ESA students,¹⁷⁷ a yearly evaluation by a student's Case Conference

168. *See supra* Part III.A (describing ESA students' obligation to take statewide summative assessments or assessments in line with their special education plan).

169. *See supra* Part III.B (stating that Participating Entities only need to submit invoices to parents once the Entities are approved by the Treasurer of State).

170. N.H. REV. STAT. ANN. § 194-F:3(III)(d)(3) (2025).

171. § 194-F:3(III)(d)(3)(A)–(B).

172. § 194-F:3(III)(d)(3)(C).

173. *Id.*

174. *Id.*

175. UTAH CODE ANN. § 53F-6-402(3)(d)(i)(A) (West 2025).

176. 511 IND. ADMIN. CODE 7-50-4(a) (2025).

177. *Id.* § 7-50-4(d).

Committee of a student's portfolio would provide more insight into the success of the student's INESA program.

Therefore, INESA statutes should provide the authority for Case Conference Committees to review a portfolio of the ESA student's work. The portfolio should contain a log of the student's major assignments, projects, creative materials, or any other academic output that is appropriate given the ESA student's age level and disability. This portfolio should be accompanied by any assessments and reports from Participating Entities that provide academic services to the ESA student. Since an ESA student's parent is a member of the Case Conference Committee,¹⁷⁸ the committee can decide with that parent if the student has progressed academically in a satisfactory manner, and it can determine whether individual academic services are satisfactorily provided by a Participating Entity. The Case Conference Committee does not need to re-evaluate an ESA student's IEP plan every year, but the committee can provide recommendations to parents for improvements to the parent's use of Participating Entities.

C. Adding to Indiana's Special Education Regulations

Finally, Indiana should adopt regulations that would fill the statutory gaps in the INESA program. Currently, Indiana's special education regulations in Title 511, Article 7 only cover three limited topics regarding the INESA program. These sections include the development of ESA service plans,¹⁷⁹ the evaluation of an ESA student's special needs eligibility,¹⁸⁰ and the termination of an ESA student's account if the student enrolls in a public school.¹⁸¹ If the Indiana General Assembly is going to keep the wording in the INESA statute vague, then more Article 7 rules could address the gaps in the statute for Participating Entity accountability and a means to measure student achievement under the program. For instance, the Indiana State Board of Education can use rulemaking to develop procedures for the Indiana Department of Education to provide parents with information about how to choose Participating Entities.¹⁸²

However, the General Assembly recently took more control of the rulemaking process, including adding a second notice and comment period and

178. 511 IND. ADMIN. CODE 7-42-3(b)(5) (2025).

179. 511 IND. ADMIN. CODE 7-50-3 (2025).

180. § 7-50-4.

181. 511 IND. ADMIN. CODE 7-50-5 (2025).

182. *See* IND. CODE § 20-19-2-8 (2025) (granting rulemaking authority to the Indiana State Board of Education); IND. CODE § 20-19-3-4(a)(2) (2025) (stating the Department of Education's obligation to implement the State Board's policies and procedures). *See also supra* Part III.C (describing the Department of Education's obligation to give advice to ESA account holders about services covered by an ESA account).

requiring the rulemaking agency to publish a regulatory analysis.¹⁸³ If the General Assembly has chosen to take more control of the rulemaking process, it should take the responsibility to craft specific language in the ESA statutes if additional ESA regulations are slowed by the additional steps in the rulemaking process.

CONCLUSION

The Indiana Education Scholarship Account program is emblematic of the rise in the popularity of education savings account programs, which Arizona trailblazed by enacting its Empowerment Scholarship Account program in 2011. The INESA program provides flexibility for Indiana special education students who opt not to have their IEP or similar plan fulfilled by their public school. This flexibility comes at the cost of a lack of oversight and accountability for Participating Entities, a possibility of overreach that includes students who may not need the program, and a lack of statutory clarity or guidance to monitor students' academic achievement.

This Note compares Indiana's INESA program with Arizona's Empowerment Scholarship Program with the goal of enacting accountability measures in the program's statutes. With an increased call for school choice among Indiana's citizens, it is important to revisit the program that has provided over a decade's worth of progression and that served as the prototype for the INESA program. Arizona delivered on its promise to expand its program to all K-12 students, but that has also opened the door for abuse from participants and opportunities for fraud. Indiana will be subject to the same issues if it broadens the eligibility of the INESA program. If this broadening is inevitable, Indiana should focus on holding the program accountable through statutory and regulatory reforms. If the INESA program continues to grow and add more eligible students, Indiana can better serve this student population by providing a safe and reliable school choice program.

183. H.E.A.1623, 123d Gen. Assemb., 1st Reg. Sess. (Ind. 2023). *See also* Casey Smith, *Indiana Senate Approves Sweeping Administrative Rulemaking Overhaul*, IND. CAP. CHRON. (Apr. 18, 2023), <https://indianacapitalchronicle.com/2023/04/18/indiana-senate-approves-sweeping-administrative-rulemaking-overhaul/> [perma.cc/8LJU-R9QQ].