



Chapter:

Administrative Rules

Introduction

Purpose

ESAs should empower families with a user experience that makes it easy to apply for funds and to use those funds on eligible education services. The role of administrative rules in an ESA program is to establish the processes and timelines that all parties must follow to ensure that families seeking additional education options can access the program seamlessly.



Review Statute

- Analyze the statutory language to determine whether the agency should adopt rules and identify which provisions require or necessitate rule implementation.
- Establish a timeline for drafting, posting, seeking public comment, and adopting proposed rules, in accordance with relevant laws and procedures.



Design

This chapter aims to assist state administrative agency officials and their support organizations in translating an ESA law into a set of administrative rules by:

- Explaining the importance of administrative rules in clarifying the law for program participants;
- Defining the role of administrative rules in the design of a successful ESA program for all participants, and
- Identifying areas of importance for administrative rule-making for an ESA program and providing examples from early-adopter states where applicable.

It is important to note that the development of rules should be a public process, giving stakeholders the opportunity to provide input and feedback. This guide will provide an overview of the importance of stakeholder feedback. While this guide provides a general framework for state rulemaking, the actual procedures used in each state vary. Stakeholders should review their state's administrative rulemaking law for specific information on the formal process, including any exceptions for emergency rulemaking.

The Yes Foundation implementation team is available to provide additional support.

Administrative Rules Design Guide

Purpose

State governments initiate new programs when state legislatures pass a law establishing them. State laws establishing new programs typically include language related to the program's intent and the broad outlines of how it will be funded and function. However, state laws do not always provide specificity on program implementation or how the agency will operationalize the policy.

Often, the law explicitly requires that the government agency responsible for administering the program establish rules for program operations that align with the law's requirements and intent. Additionally, the agency staff will create more specific processes, timelines, documents, forms, and public communications to ensure the program can operate.

Steps to Create and Implement a State Government Program

Step 1

State legislatures pass a law establishing a program, outlining its intent, and requiring the creation of administrative rules.

Step 2

State agency governing bodies create and possibly vote to approve administrative rules that further clarify the law.

Step 3

State agency staff develop the timelines, processes, documents, and public communications necessary to operate the program successfully.

About Administrative Rules

Administrative rules, also known as regulations or policies in some states, are more detailed instructions issued by executive agencies to provide clarity and guidance on executing laws effectively. While laws establish the overall legal framework, administrative rules can offer specific steps, requirements, and standards necessary to achieve the intended goals.

Administrative rules are vital components of the program implementation process. They provide specific guidelines and procedures that complement and clarify the broader framework set by laws. Their importance lies in bridging the gap between legislative intent and practical application, ensuring a smooth and consistent execution of a program aligned with its original purpose.

The administrative rulemaking process is the official adoption of rules by the agency's governing body. This process can happen through a series of steps, including a public comment period, one or more public votes, or whatever is required by that state's laws governing rulemaking. State agencies must ensure that the rulemaking process follows the law, that the rules are aligned with the law, and that they do not create additional barriers or requirements beyond what the law provides.

State agencies engage in a formal rulemaking process to achieve the following objectives:

- Ensure that all stakeholders are aware of a proposed rule and its requirements so they can comply with the rule.
- Allow stakeholders an opportunity to express their views on the proposed rule.
- Gather information that can help staff develop and implement the rule.
- Allow for a full and fair analysis of the impact and validity of a proposed rule.
- Provide transparency.

Agency Tip: If the governing policy language does not explicitly address this, consider your state's typical rulemaking timeline and compare it to the implementation timeline of the ESA Program. Consider an abbreviated or emergency rulemaking process. The Yes Foundation implementation team can assist you in navigating this process.



Using Administrative Rules for Program Design

Administrative rules are created by the governing bodies of state agencies to design the components of a program established by law. They provide guidance for all parties involved in program implementation and participation. One good example of how laws, rules, and agency processes might work together on a program such as an ESA would be how eligibility for program participation for families is determined and communicated.

First, a law establishing a new program may require that applicants have an income below 150% of the federal poverty line to be eligible for participation and that their applications be processed and decided upon "in a timely manner."

Administrative rules would then establish two critical clarifications. First, rules might outline the type of documents that would be accepted to determine family income and whether it falls into the range for eligibility, such as pay stubs, tax returns, or participation in other government benefit programs. Secondly, rules would establish that eligibility determination should be conducted "timely" within 30 days of application submission.

The governing agency would then use the guidance of the law and the rules to set and communicate the annual eligibility and application process. The combination of the rules and law would include how, when, and where parents should submit eligibility documents along with their application, the timeline for submission of this information, and the timeline for decision-making and communication of eligibility based on the 30-day requirement in the rules.

The Importance of Rules for Program Participants and Administrators

ESA programs can touch the lives of tens of thousands of families and enroll hundreds to thousands of individual service providers across a state. Their administration involves state agency staff, potentially a "scholarship organization" to administer components of the program and a financial services provider. These many parties to the program are all involved in interactions and transactions that risk being unclear, complicated, unfair, or arbitrary without the proper rules. A lack of or insufficient rules can even jeopardize the program's success and risk its ability to expand or threaten its continued existence.

In each of the areas described below, rules and agency processes must provide the following:

- Precision and Clarity: Instructions that enable implementers to understand the finer details of executing a law
- Flexibility and Adaptability: Adaptation to specific circumstances, making them a dynamic tool in responding to changing needs and evolving challenges
- Consistency and Fairness: Preventing potential bias and ensuring fair treatment for all stakeholders
- Efficient Oversight: Enabling effective enforcement of the law



Essential Elements in ESA Program Rules

Section	Contents
Eligibility Criteria	<ul style="list-style-type: none"> • Definition of eligible students • Definition of qualifying providers (schools, tutors, educational services) • Income or other qualifying factors for families
Program Enrollment & Application Process	<ul style="list-style-type: none"> • Application requirements and documentation • Timeline for application submission and approval • Renewal procedures
Funding & Allocation	<ul style="list-style-type: none"> • Calculation of funds per student • Disbursement methods and schedule • Permissible uses of funds • Procedures for fund tracking and accountability
Qualified Expenses	<ul style="list-style-type: none"> • List of eligible expenses (tuition, tutoring, educational materials, etc.) • Process for submitting expense claims or purchase requests • Restrictions on use of funds
Providers Requirements & Responsibilities	<ul style="list-style-type: none"> • Criteria for becoming a qualified provider • Required documentation and agreements • Performance and reporting requirements
Monitoring & Compliance	<ul style="list-style-type: none"> • Oversight mechanisms for funds and provider compliance • Auditing and reporting requirements • Procedures for handling misuse of funds

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Dispute Resolution & Appeals	<ul style="list-style-type: none"> • Process for resolving disputes between the program manager, families, and providers • Appeals process for denied applications or expenses
Program Administration	<ul style="list-style-type: none"> • Roles and responsibilities of the administering agency • Communication and outreach to stakeholders • Data privacy and protection guidelines
Evaluation & Reporting	<ul style="list-style-type: none"> • Metrics for program evaluation and success • Reporting requirements to legislative or oversight bodies • Continuous improvement processes based on feedback and data analysis

Eligibility

The law generally establishes broad categories for student and family participation in the program, both initially and on an ongoing basis. Rules should establish specificity and clarity around eligibility criteria, including the documents required for determination, how they are submitted, and the timeline. As with parent participation, administrative rules should establish the criteria for school and provider participation.

Program Enrollment and Application Process

Rules and agency processes should establish the process and timelines for applying, receiving communications on acceptance or denial of the application, and the procedures for enrollment. Parents and agency staff should be clear on how a family or provider can appeal an application denial, the timeline and process for making appeal decisions, and any additional recourse they may have if an appeal is denied.

Arizona's ESA program rules specify the timeline for the Department of Education to issue an award letter after an application is made and to issue a contract for participation for families. This level of detail gives families an understanding of when to expect communication from the Department and the ability to hold the Department accountable if those timelines are not met.

New Hampshire's rules require the scholarship organization that administers the program to publish a standard application form on its website and the procedures used for approving the participation of education service providers. Those procedures must include how they review education service providers' processes for conducting background checks for individuals working with students. These rules clarify for service providers who wish to participate while clarifying to providers and families that the program prioritizes student safety in the application review.

Funding and Allocation

Administrative rules for an ESA program should provide clear guidance on how scholarship awardees access their funds. These rules must define allowable expenses, procedures for payment and reimbursement, and conditions for rolling over funds from year to year. Families need a thorough understanding of how scholarship awards are calculated, the expected amount of funding, the timeline for receiving funds, and the methods for accessing these funds, including electronic means. Additionally, they should be informed about reporting requirements and have access to clear instructions for appealing decisions regarding allowable expenses.

Similarly, providers need clear procedures for reporting service costs, collecting payments, and handling reimbursements for overpayments or service cessation. They should also know which services, materials, and equipment are eligible for payment through the program. Clear protocols for daily account management and payments are essential to prevent frustration among parents and ensure high-quality providers are willing to participate in the program.

Arizona's rules require that the Department establish and maintain a database of approved and disallowed expenses and make the database available to parents online. This makes it easy for families to determine in advance how they can spend their dollars and prevents funding from being inadvertently misspent, requiring reimbursements.

Program Monitoring and Compliance

Rules must clearly outline the requirements for financial, performance, and compliance audits and reviews. This includes specifying applicable reporting obligations for providers receiving funds from the program, external vendors administering the program, and the administering agency. These rules should detail the type of information required, the frequency of those reports, and the designated recipients. Basic reporting should consist of data such as the number of participants, their eligibility criteria, total funds expended by family and provider, types of service utilized, and statistics on applications submitted, approved, and denied by both families and providers.

Furthermore, the rules should establish protocols for conducting audits – both routine and risk-based – and specify how issues are addressed, and parties are held accountable. This includes defining steps to be taken when there are suspicions of noncompliance by any involved party, including the program administrator, financial services provider, educational services providers, or families. The program should also be regularly assessed against the legislative intent and the values established in the law, with the evaluation methods based on reported data. Key assessment areas include program volume, enrollment trends, fiscal impact, processing timelines, parent satisfaction, and provider quality.

New Hampshire rules require the scholarship organization administering the program to contract with a third-party auditor to conduct risk-based audits of ESA accounts at least annually. This requirement can reduce fraud and waste by parents or providers and ensure funding is efficiently used to support the program's goals.



Stakeholder Engagement

A state agency must typically inform the public about its plans to adopt or amend a rule. In many states, the agency must send a written notice to individuals who have requested notification.

The notice usually includes:

- A copy of the proposed rule
- A summary of the proposed rule
- The law under which the rule is proposed
- The date and time of any public hearing on the rule
- The procedure for submitting comments on the proposed rule

Providing notice to the public ensures that stakeholders are aware of the proposed rule and can provide feedback. This process allows the agency to receive comments, reactions, and additional information before finalizing a rule, especially from those affected by it.

After providing public notice, typically, an agency must take written comments. Many also hold a public hearing to take oral comments before adopting a rule. This public comment period allows stakeholders to provide feedback and insight into the process. Stakeholders often offer practical experience on how the rules will shape program implementation and development. This insight will be helpful to ensure that the regulations fulfill the legislative intent of the program. The practical and technical feedback during the rulemaking process can inform agency staff if they need to consider adjusting the draft rules if unintended consequences exist.

Stakeholder Tip: Although an agency may request comments on a specific part of a rule in some instances, stakeholders are typically allowed to comment on any aspect of a rule. Stakeholders can support positive aspects, critique all or part of a rule, provide valuable information on the subject area of a rule, or highlight potential adverse outcomes or effects. Practical examples and recommended language adjustments provide the most helpful guidance to agency teams.

Agency Tip: Seek feedback during the drafting process to inform the rulemaking process prior to the official comment period. Using language that is easy for non-specialists to understand can promote high-quality public participation in administrative rulemaking.

Amendment and Revision of the Rules

Administrative rules may need to be amended for various reasons, including:

- Change in administration
- New statutory language affecting the rule
- Identified gaps in existing
- Consolidation and streamlining of rules to ensure consistency
- New technology or program innovations requiring rule adjustments
- Petition from the public

When making rule changes that affect an ESA Program, it is essential to consider the timeline and the impact on the current school year. Changes affecting participant eligibility or payments should be implemented without disrupting existing participants or payments.

Additionally, agency staff should explore options for implementing the changes consistent with impacts for the subsequent school year.

- *For example: For the 2025-26 school year and subsequent school year, the requirements are adjusted as follows...*

Conclusion

Administrative rules play a vital role in bridging the gap between legislative intent and practical application, ensuring clarity and consistency in the execution of programs. By providing specific guidelines and procedures, administrative rules contribute to the smooth and effective operation of ESAs. State agencies must ensure that the rulemaking process aligns with the law, involves stakeholder input, and maintains transparency. A well-crafted administrative rulemaking process is essential for successfully functioning state programs and achieving their intended goals.

yes. every kid. foundation. is fully equipped to provide support throughout the process. Our comprehensive expertise can efficiently supplement staffing resources and assist you in navigating your state's unique rulemaking processes.

Administrative Rules Resource

State	Program Name	Launch	Link to Rules (as of Oct 2024)
Alabama	CHOOSE Act	2025	Pending Rulemaking Process
Arizona	Empowerment Scholarship Accounts	2011	7 A.A.C. 2, Article 15: Empowerment Scholarship Accounts (Pages 172-182)
Florida	Family Empowerment Scholarship for Educational Options	2019	Rule: 6A-6.0952: Family Empowerment Scholarship Program Rule: 6A-6.03315: Private School Scholarship Compliance
Georgia	Promise Scholarship	2025	Pending Rulemaking Process
Indiana	Education Scholarship Account Program	2022	Section 511 IAC 7-50-1: Applicability Section 511 IAC 7-50-2: Definitions Section 511 IAC 7-50-3: Service Plan; Parent Election Section 511 IAC 7-50-4: Reevaluation, case conference committee meetings; participants Section 511 IAC 7-50-5: Enrollment in public school; termination of education scholarship account
Iowa	Students First Education Savings Account Program	2022	281-20.1: Students First Act-Education Savings Accounts
Louisiana	GATOR Program	2025	Pending Rulemaking Process

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Montana	Empowerment Scholarship Accounts	2023	10.16.4001 Education Savings Accounts
New Hampshire	Education Freedom Account Program	2019	Part Ed 801 : Purpose and Scope Part Ed 802 : Definitions Part Ed 803 : Program Administration Part Ed 804 : EFA Funds and Disbursement Part Ed 805 : Application and Enrollment Part Ed 806 : Termination of Education Freedom Accounts Part Ed 807 : Legislative Oversight Committee
North Carolina	ESA+	2019	Rules Governing the North Carolina Personal Education Student Accounts for Children with Disabilities Program
Tennessee	Individualized Education Account Program	2017	Chapter 0520-01-11 : Individualized Education Accounts
Tennessee	Education Savings Account Program	2021	Chapter 0520-01-15 : Education Savings Accounts
Utah	Utah Fits All Scholarship Program	2024	Rule R277-126 : Utah Fits All Scholarship Program
West Virginia	Hope Scholarship Program	2022	Rule 112-18-1 et seq. : Hope Scholarship
Wyoming	Education Savings Account Program	2024	Pending Rulemaking Process