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# The Individuals with Disabilities Education Act and Education Savings Account Programs Working Together to Empower Children With Disabilities: An Arizona Case Study

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# Executive Summary

Congress rightly recognized in 1975 when it first enacted what became the Individuals with Disabilities Education Act (IDEA) that the education of children with disabilities is first and foremost a civil rights issue: “[I]t is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.” 20 U.S.C. § 1400(c)(6). Recognizing the growing cost of serving children with disabilities and the need for them to access appropriate educational services, states across the country have enacted specific scholarship programs, like education savings accounts (ESA). ESAs can work together with the IDEA to ensure all children with disabilities are identified, evaluated, and have access to appropriate educational services.

For example, Arizona’s universal Empowerment Scholarship Account program with its weighted scholarship model for students with disabilities has advanced IDEA’s Child Find objectives, provided educational opportunities to more students with disabilities, and has helped alleviate some of the pressure on public schools to serve this growing population. However, some critics of Arizona’s ESA program have recently suggested that the ESA program is bad public policy because it has burdened public schools with costs related to evaluating ESA students suspected of having a disability. In support of their claim, they have pointed to alleged costs incurred by Deer Valley Unified School District, one of the largest districts in the state.

Their claims are highly suspect for several reasons. First, the total number and percentage of children with disabilities across the country has increased dramatically in the past few years. Now over fifteen percent of all K-12 students have a disability, compared to around eight percent in the mid-1970s. To ensure the rapidly growing number of children with disabilities has the opportunity to thrive into adolescence and adulthood, federal and state policymakers should *continue* to prioritize the identification and evaluation of all children suspected of having a disability, regardless of their educational setting. However, for these critics—including some Arizona public educators—this important policy objective should not extend to ESA students.

Second, Arizona public schools have been legally required under the IDEA and Child Find and their corollary state laws to evaluate *all* students suspected of having a disability—not just public school students—for almost fifty years. Arizona school districts have been evaluating private school and homeschool students for decades. This practice has not been an issue of controversy. It was not until a growing number of ESA students began exercising their rights under the IDEA, that this practice allegedly became controversial and unfair to public schools.

Third, Arizona public schools receive specific state funds and federal IDEA Part B, Section 611 subgrants to fund special education efforts, including meeting their Child Find obligations. Arizona public schools receive over \$1 billion from Basic State Aid each year for special education, which is supplemented by over \$200 million of IDEA Part B, Section 611 subgrants. Both sources of funding include funds to evaluate all students suspected of having a disability, even non-public school students. To imply that school districts do not receive funds to evaluate ESA students is simply untrue.

Fourth, the claimed costs incurred by Deer Valley Unified School District are misleading. These costs are not actual expenses incurred by the district to evaluate the ESA students; rather, they represent the

estimated value of employees' time spent on the evaluations. Besides the fact that these costs were not actual expenses, their calculations also appear inflated. Forty percent of the alleged costs are related to the development of Individualized Education Program (IEP) for each of the ESA students they evaluated. However, IEPs are only required for students actually attending public school. Why would the district spend time developing IEPs for 92 ESA students who had no intention of enrolling in the district? The estimated costs also include higher "summer rates" for some of the employees, but this would only be appropriate if all 92 students evaluated in the 2023-2024 school year were evaluated sometime during the summer of 2023. Finally, the claimed costs include functional behavioral assessments—required only in very limited circumstances—without specifying how many of the ESA students actually had this assessment.

In sum, Education Savings Account programs—like Arizona's Empowerment Scholarship Account program—can work hand in hand with the IDEA to ensure all children with disabilities are not only located, identified, evaluated, but are also given the opportunity to access appropriate educational services so they can all thrive into the future.

# The Individuals with Disabilities Education Act and Education Savings Account Programs Working Together to Empower Children With Disabilities: An Arizona Case Study

*Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.*

20 U.S.C. § 1400(c)(1) (Individuals with Disabilities Education Act)

Since the passage of the Individuals with Disabilities Education (IDEA) in 1975, the total number of children with disabilities in the country has more than doubled, with the percentage of children with disabilities increasing most dramatically over the past ten years.<sup>1</sup> To ensure this growing number of children with disabilities has the opportunity to thrive into adolescence and adulthood, federal and state policymakers should continue to prioritize the identification and evaluation of *all* children suspected of having a disability, regardless of their educational setting. However, identification and evaluation are not enough. Every child with a disability should not only be identified and evaluated, but should also have access to appropriate educational services.

Recognizing the growing cost of serving children with disabilities and the need for them to access appropriate educational services, states across the country have enacted specific scholarship programs, like education savings accounts (ESA). ESAs can work together with the IDEA to ensure all children with disabilities are identified, evaluated, and have access to appropriate educational services. This collaboration of federal and state legislation has been the case in Arizona for over a decade. Since 2011, with the passage of Arizona's Empowerment Scholarship Account program, parents of children with disabilities have been able to withdraw their child from public school and receive 90 percent of state funding<sup>2</sup> allocated for their child to be used for various educational expenses, including tutors, therapies, and private school tuition.<sup>3</sup>

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<sup>1</sup> Nation Center for Education Statistics, *Digest of Education Statistics: 2022*, "Table 204.30.

Children 3 to 21 years old served under Individuals with Disabilities Education Act (IDEA), Part B, by type of disability: Selected school years, 1976-77 through 2022-23," [https://nces.ed.gov/programs/digest/d23/tables/dt23\\_204.30.asp?current=yes](https://nces.ed.gov/programs/digest/d23/tables/dt23_204.30.asp?current=yes).

<sup>2</sup> Arizona ESA scholarship funds do not include local or federal funds. See Arizona Revised Statutes (A.R.S.) § 15-2402(C).

<sup>3</sup> Arizona ESA scholarship funds can be used various expenses such as tuition, tutors, and therapists. See (A.R.S.) § 15-2402(4)

<sup>4</sup> An ESA scholarship amount is "ninety percent of the sum of the base support level and additional assistance prescribed in sections 15-185 and 15-943 for that particular student if that student were attending a charter school. A.R.S. § 15-2402(C)." A.R.S. § 15-2402(C). The "base support level" is a weighted amount, calculated by multiplying the basic per pupil amount by weighted multipliers (depending on a student's disability) used by public school funding established in statute. A.R.S. § 15-2402(b). Examples of multipliers include 0.292 for a student with speech-language impairment, 6.024 for student with autism, 4.771 for student with a hearing impairment. See A.R.S. § 15-943(2)(b).

Because of Arizona's ESA weighted funding model, students in disability categories with greater funding multipliers result in larger scholarships and greater savings for the state.<sup>4</sup> Arizona's ESA scholarship program has not only provided children with disabilities access to additional educational opportunities and services, but has done so at a savings to the state, while alleviating some of the pressure on public schools to serve the rapidly growing number of students with disabilities.

However, with the passage of Arizona's universal ESA in 2022,<sup>5</sup> ESA critics have raised concerns about its impact on Arizona's budget and alleged that it has burdened public schools with additional costs related to evaluating ESA students suspected of having a disability. The claim that the ESA program led to Arizona's budget shortfall in FY 2024<sup>6</sup> has been proven entirely false.<sup>7</sup> Therefore, this paper seeks to respond to this second claim by some ESA critics that ESAs are bad public policy because they overburden the public school system with additional costs related to evaluating ESA students suspected of having a disability.

This paper will argue that because of the growing number and percentage of students with disabilities, policymakers should continue to prioritize the identification and evaluation of *all* students with disabilities. All students suspected of having a disability—including ESA students—should be evaluated so that they can access the educational services they need. To be sure, the passage of Arizona's universal ESA has raised awareness of a parent's rights under the IDEA and its corresponding Arizona law. If this awareness has encouraged more parents to seek an evaluation for their child who they suspect has a disability, this is a positive development. Objecting to ESAs on the grounds that they increase the number of children public schools are having to evaluate for disabilities contradicts long-established public policy. Federal and state policymakers concluded almost fifty years ago that identifying and evaluating *all* children suspected of having a disability is good public policy.


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<sup>4</sup> An ESA scholarship amount is "ninety percent of the sum of the base support level and additional assistance prescribed in sections 15-185 and 15-943 for that particular student if that student were attending a charter school. A.R.S. § 15-2402(C)." A.R.S. § 15-2402(C). The "base support level" is a weighted amount, calculated by multiplying the basic per pupil amount by weighted multipliers (depending on a student's disability) used by public school funding established in statute. A.R.S. § 15-2402(b). Examples of multipliers include 0.292 for a student with speech-language impairment, 6.024 for student with autism, 4.771 for student with a hearing impairment. See A.R.S. § 15-943(2)(b).

<sup>5</sup> A.R.S. §§ 15-2401 to 15-2406; Arizona Empowerment Scholarship Accounts, 2022 Ariz. Legis. Serv. Ch. 388 (H.B. 2853), <https://azmemory.azlibrary.gov/nodes/view/277547?keywords=2022&highlights=WylyMDlyll0%3D&lsk=a900bef9ecf0d64572bd1335a33862e8>. As of September 3, 2024, there are 75,763 students in Arizona's ESA program. <https://www.azed.gov/esa>. Prior to the universal expansion, Arizona's ESA program had 12,127 students. See Arizona Department of Education, "Empowerment Scholarship Account (ESA): Quarterly Report to the Arizona State Board of Education Fiscal Year 2022, Quarter 4," 2, <https://www.azed.gov/sites/default/files/2022/09/FY2022%20Q4%20ESA%20Report.pdf>.

<sup>6</sup> Eli Hager, "School Vouchers Were Supposed to Save Taxpayer Money. Instead They Blew a Massive Hole in Arizona's Budget," July 6, 2024, ProPublica, <https://www.propublica.org/article/arizona-school-vouchers-budget-meltdown>; Grand Canyon Institute, "Cost of the Universal ESA Voucher Program," June 6, 2024, <https://grandcanyoninstitute.org/research/education/private-school-subsidies/cost-of-the-universal-esa-vouchers/>; Laurie Robert, "Numbers don't lie: Republican lawmakers are utterly wrong about school vouchers," Jan. 11, 2024, <https://www.azcentral.com/story/opinion/op-ed/laurieroberts/2024/01/11/esa-school-vouchers-not-save-arizona-money/72190132007/>.

<sup>7</sup> According to the nonpartisan Arizona Joint Legislative Budget Committee (JLBC), the state's budget for FY 2024 assumed 68,380 ESA students, 8,047 (11.77 percent) lower than the actual enrollment of 74,427. This higher ESA student count resulted in \$92.464 million above the forecasted levels. However, the decline in district and charter student count resulted in \$93.734 million below the forecasted levels. Therefore, the state's K-12 budget actually resulted in a modest net savings of \$352,200. JLBC, "FY 2025 Appropriations Report: Department of Education," 164-165, <https://www.azjlb.gov/25AR/ade.pdf#page=7>. For a detailed refutation of the claim that Arizona's ESA program led to a budgetary shortfall see Matt Beienburg, "Arizona's Universal ESA Program: A History of Surplus, Savings, & Media Misinformation," Goldwater Institute, August 12, 2024, <https://www.goldwaterinstitute.org/arizonas-universal-esa-program-a-history-of-surplus-savings-media-misinformation/>.



Second, this paper will show that under the IDEA and Arizona Special Education law, Arizona public schools have been required to evaluate non-public school students suspected of having a disability for almost fifty years. The IDEA and its Child Find provision<sup>8</sup> has been in place since 1975. Public schools have long received specific federal funding (i.e., IDEA Part B, Section 611 subgrants) to evaluate “[a]ll children with disabilities residing in the State.”<sup>9</sup> Arizona’s special education law incorporates the IDEA and its regulations and makes the Child Find requirement even more explicit. This requirement existed before ESAs, continued with Arizona’s original ESA program in 2011, and still is in effect after the enactment of Arizona’s universal ESA. The claim that Arizona’s universal ESA program has created an additional burden on public schools ignores the facts that public schools have been required to evaluate non-public students for decades and receive specific federal and state funds to do so.

Third, this paper will look at an Arizona case study and evaluate the alleged “burdens” of a large school district having to evaluate ESA students suspected of a disability during the 2023-2024 school year. The paper will show that the alleged “burden” of having to evaluate ESA students is highly suspect for various reasons. Further, the paper will show that these ESA critics ignore how the IDEA and ESA can work together to ensure the growing number of children with disabilities can be identified, evaluated, and have access to services, while at the same time alleviating the pressure on public schools to serve this rapidly growing population.

Congress rightly recognized when it first enacted the IDEA that the education of children with disabilities is first and foremost a civil rights issue. Congress’s first finding was that “[i]mproving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”<sup>10</sup> Further, Congress found that it is in “the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.”<sup>11</sup> The long-established IDEA and Child Find requirements in tandem with innovative ESA programs can assist states achieve these ever-important policy objectives.

## 1. Because of the Dramatic Increase of Children with Disabilities, Policymakers Should Continue to Prioritize Identification and Evaluation of All Children Suspected of Having a Disability.

With the dramatic increase of children with disabilities across the country, federal and state policymakers should continue to prioritize the identification and evaluation of all children suspected of having a disability, regardless of their educational setting. Whether a child with a suspected disability attends public school, private school, or is home educated should not matter. Children with disabilities, their families, and society as a whole benefit when all children with disabilities receive appropriate educational services.

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<sup>8</sup> 20 U.S.C. § 1412(a)(3)(A): “All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.”

<sup>9</sup> 20 U.S.C. § 1412(a)(3)(A).

<sup>10</sup> 20 U.S.C. § 1400(c)(1).

<sup>11</sup> 20 U.S.C. § 1400(c)(6).

According to the National Center for Education Statistics (NCES), the total number *and* percentage of children with disabilities has steadily increased each decade since the mid-1970s, but has seen a more rapid increase since 2015. NCES reports that the number of children with disabilities served under IDEA Part B—which governs special education for children with disabilities between the ages of 3 and 21—has increased from 6.5 million in 2014-2015 to over 7.5 million in 2022-2023.<sup>12</sup> This increase in the total number of students with a disability has occurred even though the total number of students in public school decreased by over 800,000 during the same period.<sup>13</sup> The number of children served under IDEA Part B as a percent of total enrollment increased from 8.3 percent in 1976-77 to 10.1 percent in 1980-81 to 11.4 percent in 1990-91. Between 2000-01 and 2015-16, the percentage fluctuated between 12.9 and 13.3 percent. However, the percentages have steadily increased each year since then: 13.4 percent (2016-17), 13.7 (2017-18), 14.1 (2018-19), 14.3 (2019-20), 14.5 (2020-21), 14.7 (2021-22), and 15.2 (2022-2023).<sup>14</sup>

As of the 2022-2023 school year, NCES reports that 32 percent of students with a disability have a “specific learning disability,” which is “a disorder in one or more of the basic processes involved in understanding or using spoken or written language that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.”<sup>15</sup> Nineteen percent of students with a disability have a “speech or language impairment,” which is defined as “a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment that adversely affects a child’s educational performance.”<sup>16</sup> The third most prevalent category of disability is “other health impairment” at 15 percent, which includes “having limited strength, vitality, or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.” The remaining disabilities include autism (13%), developmental delay (7%), intellectual disability (6%), emotional disturbance (4%), multiple disabilities (2%), and hearing impairment (1%).<sup>17</sup>

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<sup>12</sup> National Center for Education Statistics, Digest of Education Statistics: 2022, “Table 204.30. Children 3 to 21 years old served under Individuals with Disabilities Education Act (IDEA), Part B, by type of disability: Selected school years, 1976-77 through 2022-23,” [https://nces.ed.gov/programs/digest/d23/tables/dt23\\_204.30.asp?current=yes](https://nces.ed.gov/programs/digest/d23/tables/dt23_204.30.asp?current=yes).

<sup>13</sup> National Center for Education Statistics, Digest of Education Statistics: 2022, “Table 203.10. Enrollment in public elementary and secondary schools, by level and grade: Selected years, fall 1980 through fall 2031,” [https://nces.ed.gov/programs/digest/d23/tables/dt23\\_203.10.asp?current=yes](https://nces.ed.gov/programs/digest/d23/tables/dt23_203.10.asp?current=yes).

<sup>14</sup> National Center for Education Statistics, Digest of Education Statistics: 2022, “Table 204.30. “Children 3 to 21 years old served under Individuals with Disabilities Education Act (IDEA), Part B, by type of disability: Selected school years, 1976-77 through 2022-23,” [https://nces.ed.gov/programs/digest/d23/tables/dt23\\_204.30.asp?current=yes](https://nces.ed.gov/programs/digest/d23/tables/dt23_204.30.asp?current=yes).

<sup>15</sup> National Center for Education Statistics, Students with Disabilities, Figure 2. Among students ages 3–21 served under the Individuals with Disabilities Education Act (IDEA), percentage distribution of selected disability types: School year 2022–23, <https://nces.ed.gov/programs/coe/indicator/cgg>.

<sup>16</sup> National Center for Education Statistics, Students with Disabilities, Figure 2. Among students ages 3–21 served under the Individuals with Disabilities Education Act (IDEA), percentage distribution of selected disability types: School year 2022–23, <https://nces.ed.gov/programs/coe/indicator/cgg>.

<sup>17</sup> National Center for Education Statistics, Students with Disabilities, Figure 2. Among students ages 3–21 served under the Individuals with Disabilities Education Act (IDEA), percentage distribution of selected disability types: School year 2022–23, <https://nces.ed.gov/programs/coe/indicator/cgg>.

The more recent dramatic increase of children with disabilities served under IDEA Part B parallels medical data during this time period. One study looked at data from the 2009 to 2017 National Health Interview Survey– a nationally representative survey of the civilian noninstitutionalized population– and concluded that during this period there were overall significant increases in the prevalence of developmental disabilities in American children aged 3 to 17 years.<sup>18</sup> The prevalence of any development disability increased from 1997 to 2017: 12.84 percent (1997-99), 13.70 percent (2000-02), 13.88 percent (2003-05), 15.04 percent (2006-08), 16.22 percent (2009-11), 16.80 percent (2012-14), and 17.76 percent (2015-17). This means that 17.76 percent of parents reported in 2015-2017 that their child had been diagnosed with a developmental disability.

Similarly, the U.S. Centers for Disease Control and Prevention’s (CDC) Autism and Developmental Disabilities Monitoring (ADDM) Network has likewise reported a sharp increase in the number of children diagnosed with Autism Spectrum Disorder (ASD) over the past twenty years.<sup>19</sup> The rate of 8-year-olds being diagnosed with ASD has increased from 1 in 150 (0.67%) in 2000, to 1 in 68 (1.47%) in 2010, and finally to 1 in 36 (2.77%) in 2020. This data matches data reported by the Office of Special Education Services (OSEP) of the U.S. Department of Education that the percentage of students with disabilities identified with autism and served under IDEA Part B has increased from 4.97% in 2008 to 12.81% in 2022.<sup>20</sup>

These statistics demonstrate that the need to identify and evaluate students with disabilities is more critical now than ever before. It is a matter of debate whether the dramatic increase of children with disabilities over the past decade is due to an actual increase in the number of children having disabilities or is due to better identification. The fact remains that a growing number of children need to be identified, evaluated, and provided access to the educational services they need– including students participating in an ESA program.

The growing number of students being evaluated for a disability year after year is a 10-year national trend. Granted, the passage of Arizona’s universal ESA program has likely increased awareness of a parent’s rights under the IDEA and its corresponding Arizona law; however, the identification and evaluation of more children suspected of a disability is certainly a good policy outcome. The argument by ESA critics that ESAs are bad public policy because school districts are having to evaluate ESA students contradicts long-established public policy. Federal and state policymakers concluded almost fifty years ago that identifying and evaluating *all* children suspected of having a disability is good public policy.

## 2. Under the IDEA and Arizona Special Education Law, Arizona Public Schools Have Been Required to Evaluate Non-Public School Students Suspected of Having a Disability for Almost Fifty Years.

Contrary to what some ESA critiques might claim, Arizona’s universal ESA has not increased the obligations public schools have to evaluate children suspected of a disability. For almost fifty years, public schools have

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<sup>18</sup> Zablotsky B, Black LI, Maenner MJ, Schieve LA, Danielson ML, Bitsko RH, Blumberg SJ, Kogan MD, Boyle CA, Prevalence and Trends of Developmental Disabilities among Children in the United States: 2009-2017, *Pediatrics*. 2019 Oct;144(4):e20190811. doi: 10.1542/peds.2019-0811. PMID: 31558576; PMCID: PMC7076808. <https://pubmed.ncbi.nlm.nih.gov/31558576/>.

<sup>19</sup> U.S. Centers for Disease Control and Prevention, Data and Statistics on Autism Spectrum Disorder, May 16, 2024, <https://www.cdc.gov/autism/data-research/index.html>.

<sup>20</sup> U.S. Department of Education, OSEP Fast Facts: Children Identified With Autism (Updated March 2024), <https://sites.ed.gov/idea/osep-fast-facts-children-identified-with-autism-2024/>.



received federal funds under the IDEA and its Child Find provision to identify and evaluate “[a]ll children with disabilities residing in the State.”<sup>21</sup> Arizona’s corresponding IDEA and Child Find laws make this requirement even more explicit. The claim that Arizona’s universal ESA program has created an additional burden on public schools ignores the facts that public schools have been required to evaluate non-public students for decades and receive specific federal and state funds to do so.

#### a. The Individuals With Disabilities Education Act (IDEA)

Congress enacted the Education for All Handicapped Children Act (EHA) in 1975– later renamed the Individuals with Disabilities Education Act– to assist state and local educational agencies in providing education for all children with disabilities.<sup>22</sup> In essence, the federal government agreed to provide federal assistance in the form of grants to states if they demonstrate meeting certain requirements. Congress would later find that “[w]hile States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.”<sup>23</sup> The law was last reauthorized in the Individuals with Disabilities Education Improvement Act of 2004 and most recently amended in 2015 through the Every Student Succeeds Act.<sup>24</sup> The U.S. Department of Education has periodically issued and updated regulations to address implementation and interpretation of the IDEA.<sup>25</sup>

The stated purposes of the IDEA are “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities.”<sup>26</sup>

The second purpose is “to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families.”<sup>27</sup> A third purpose is “to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services.”<sup>28</sup> The fourth and final purpose of the IDEA is to “assess, and ensure the effectiveness of, efforts to educate children with disabilities.”<sup>29</sup>

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<sup>21</sup> 20 U.S.C. § 1412(a)(3)(A).

<sup>22</sup> Education for All Handicapped Children Act (EHA), Public Law 94-142, <https://www.govinfo.gov/content/pkg/STATUTE-89/pdf/STATUTE-89-Pg773.pdf>.

<sup>23</sup> 20 U.S.C. § 1400(c)(6).

<sup>24</sup> Every Student Succeeds Act, Public law 114-95, <https://www.congress.gov/114/plaws/publ95/PLAW-114publ95.pdf>.

<sup>25</sup> 34 C.F.R. §§ 300.1-300.818 (Assistance to States for the Education of Children with Disabilities), <https://sites.ed.gov/idea/regs/>.

<sup>26</sup> 20 U.S.C. § 1400(d)(1).

<sup>27</sup> 20 U.S.C. § 1400(d)(2).

<sup>28</sup> 20 U.S.C. § 1400(d)(3).

<sup>29</sup> 20 U.S.C. § 1400(d)(4).

Although the stated purposes of the IDEA are largely focused on the public school setting, they nonetheless encompass the rights of *all* children with disabilities residing in a state, even those not attending a public school. This becomes abundantly clear in IDEA Part B (Assistance for Education of All Children With Disabilities), which includes Child Find requirements.

#### b. Child Find under IDEA Part B

Under the IDEA, a state is eligible for IDEA Part B federal assistance if the state submits a plan that provides assurances that the state has in effect policies and procedures to ensure that the state meets various conditions. One of the conditions<sup>30</sup> is that *all* children with disabilities residing in the state are identified, located, and evaluated:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.<sup>31</sup>

This Child Find provision—originating in the 1975 law—ensures that all children with disabilities in a state are “identified, located, and evaluated” regardless of their educational setting. For instance, the law establishes that the Child Find requirement applies “to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.”<sup>32</sup> The state’s Child Find process must “ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.”<sup>33</sup> Moreover, in carrying out the Child Find requirements, the local educational agency (or the State educational agency where applicable) is required to “undertake activities similar to those activities undertaken for the agency’s public school children” and the process must be completed “in a time period comparable to that for other students attending public schools in the local educational agency.”<sup>34</sup>

IDEA’s Child Find requirements to identify, locate, and evaluate all children suspected of a disability in a state, not just those attending public school, align with the congressional finding that the education of children with disabilities is ultimately a civil rights issue: “Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”<sup>35</sup>

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<sup>30</sup> 20 U.S.C. § 1412(a).

<sup>31</sup> 20 U.S.C. § 1412(a)(3)(A).

<sup>32</sup> 20 U.S.C. § 1412(a)(10)(A)(ii)(I).

<sup>33</sup> 20 U.S.C. § 1412(a)(10)(A)(ii)(II).

<sup>34</sup> 20 U.S.C. § 1412(a)(10)(A)(ii)(III) and (V). For related regulations see 34 C.F.R. §§ 300.131 (Child find for parentally-placed private school children with disabilities).<sup>26</sup> 20 U.S.C. § 1400(d)(1).

<sup>35</sup> 20 U.S.C. § 1400(c)(1).

### c. IDEA Part B, Section 611 grants and subgrants

Under the IDEA, the federal government provides on an annual basis IDEA Part B grants to states and subgrants to local educational agencies.<sup>36</sup> Eligible states receive IDEA Part B grants under IDEA Section 611 and/or Section 619. Section 619 grants support special education and related services for children with disabilities ages 3-5. Section 611 grants support special education and related services for children with disabilities ages 3-21.

Each state educational agency (SEA) – typically the state’s department of education– that receives IDEA Part B grants for Section 611 and 619 may set aside a portion of the funds for administrative and other state-level activities.<sup>37</sup> These “set-aside” funds are to support the state in fulfilling its responsibility to supervise the use of Part B subgrants, ensuring that the requirements of Part B are met and that “each educational program for children with disabilities administered within the State,” meets the “educational standards” of the SEA and of IDEA Part B.<sup>38</sup> A portion of the “set-aside” funds must be used for “monitoring, enforcement, and complaint investigation” and may be used for additional enumerated state-level activities, including technical assistance, personnel preparation, professional development and training, and assisting LEAs in meeting personnel shortages.<sup>39</sup> After setting aside a portion of the IDEA Part B grant for administrative and other state-level activities, the SEA allocates the majority of the grant to local educational agencies in the state as subgrants.

SEAs allocate IDEA Part B, Section 611 subgrants to local educational agencies based on IDEA-established formulas.<sup>40</sup> Subgrants are composed of two parts: base payment (with adjustments) and remaining funds.<sup>41</sup> Of the remaining funds beyond base payments, 85 percent must be allocated based on total public and *private school enrollment* in the LEA’s jurisdiction and 15 percent based on the LEA’s relative numbers of children living in poverty as determined by the SEA.<sup>42</sup>

An LEA is eligible to receive IDEA Part B subgrants (including Section 611) if the LEA submits a plan to the SEA that provides assurances that it meets various conditions,<sup>43</sup> including that it has “in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 1412 of this title [State Eligibility].”<sup>44</sup>

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<sup>36</sup> See 34 CFR §300.700 (Grants to States) and 34 CFR § 300.705 (Subgrants to LEAs). For further information regarding state “set-aside” funds see Center for IDEA Fiscal Reporting, “Quick Reference Guide on IDEA Part B State Set-Aside Funds” June 2023, <https://ciffr.wested.org/wp-content/uploads/2023/07/CIFR-Quick-Reference-Guide-on-IDEA-Part-B-State-Set-Aside-Funds.pdf>.

<sup>37</sup> See 34 CFR §§300.704 and 300.312–314. For calculating Section 611 state set-aside maximums see 34 CFR §300.704(a) and (b). For calculating the maximum state set-asides for Section 619 see 34 CFR §§300.812–300.814.

<sup>38</sup> 34 CFR §300.149

<sup>39</sup> See 34 CFR §300.704(b).

<sup>40</sup> See 34 CFR § 300.705(b).

<sup>41</sup> Base payments for Section 611 subgrants are determined by “the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.” 34 CFR § 300.705(b)(1). Base payment adjustments for LEAs may occur under specified circumstances. See 34 CFR §300.705(b)(2) and §300.816(b) and 20 U.S.C. § 7221(e).

<sup>42</sup> 34 CFR §300.705(b)(3). For a further discussion of subgrants see Center for IDEA Fiscal Reporting, “At A Glance: IDEA Part B Grants to States and Subgrants to Local Educational Agencies,” Updated June 2023, <https://ciffr.wested.org/wp-content/uploads/2021/12/CIFR-Allocations-At-A-Glance.pdf> and Center for IDEA Fiscal Reporting, “Quick Reference Guide on the Allocation of IDEA Part B Subgrants to Local Educational Agencies” September 2017, <https://ciffr.wested.org/wp-content/uploads/2021/05/CIFR-QRG-LEA-Allocations.pdf>.

<sup>43</sup> 20 U.S.C. 1413(a); 34 CFR § 300.200 Condition of assistance.

<sup>44</sup> 20 U.S.C. 1413(a)(1); 34 CFR § 300.201 Consistency with State policies.

Further, it must attest that it will use subgrant funds in accordance with applicable provisions of Part B (including Child Find), to pay excess costs of providing special education and related services and to supplement (and not supplant) State, local, and other federal funds.<sup>45</sup> In other words, IDEA Part B subgrants are meant to assist States and LEAs in providing special education and related services, including Child Find obligations.

Since 2020, the U.S. Department of Education has allocated between \$12.764-15.517 billion a year for IDEA Part B, Section 611 grants. Over this time, Arizona has been allocated between \$225 and \$278 million a year in IDEA Part B, Section 611 grants,<sup>46</sup> which is divided between Arizona Department of Education “set-aside” funds for administrative and other state-level activities and subgrants to local educational agencies.<sup>47</sup>

#### d. Child Find requirements under Arizona law

Arizona Special Education law incorporates by reference the IDEA and its implementing regulations, makes Child Find requirements even more explicit, and clarifies that private school and homeschool students should be treated equally for IDEA purposes. Arizona’s Special Education statutes (A.R.S. §§ 15-761 to 774) require all school districts and charter schools to “develop policies and procedures for providing special education to all children with disabilities within the district or charter school.”<sup>48</sup> Within this same statute, the legislature clarifies that private and homeschool schools are to be treated in the same manner: “For the purposes of determining the services to pupils served by private schools under existing federal law, the state shall consider the term to include homeschooled pupils.”<sup>49</sup> Therefore, “[i]f federal monies are provided to a school district or a charter school for special education services to homeschooled or private schooled pupils, the school district or charter school shall provide the services to both the homeschooled pupils and the private schooled pupils in the same manner.”<sup>50</sup>

Arizona’s Special Education rules (Arizona Administrative Code [A.A.C.] R7-2-401 to R7-2-408 Special Education) promulgated by the Arizona State Board of Education incorporate by reference the IDEA and its implementing regulations.<sup>51</sup> The rules also require each public education agency [e.g., a school district or charter school]<sup>52</sup> to create “public awareness” of the availability of special education services: “Each public education agency shall inform the general public and all parents, within the public education agency’s boundaries of responsibility, of the availability of special education services for students aged 3 through 21 years and how to access those services. . . .”<sup>53</sup> Further, “[s]chool districts are responsible for public awareness in *private schools* located within their boundaries of responsibility.”<sup>54</sup> (emphasis added).

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<sup>45</sup> See 20 U.S.C. 1413(a)(2); 34 CFR § 300.202(a).

<sup>46</sup> U.S. Department of Education, Budget History Tables, “State Funding History Tables: FY 1980-FY 2024” (FY 2024), [listed under “Special Education–Grants to States”], <https://www2.ed.gov/about/overview/budget/history/index.html>.

<sup>47</sup> U.S. Department of Education, Budget History Tables, “State Funding History Tables: FY 1980-FY 2024” (FY 2024), [listed under “Special Education–Grants to States”], <https://www2.ed.gov/about/overview/budget/history/index.html>.

<sup>48</sup> A.R.S. § 15-763(A).

<sup>49</sup> A.R.S. § 15-763(C).

<sup>50</sup> A.R.S. § 15-763(D).

<sup>51</sup> “For the purposes of this Article, the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. 1400 et seq. and its implementing regulations, 34 CFR 300.1 et seq., are incorporated herein by reference.” A.A.C. R7-2-401(A).

<sup>52</sup> “Public education agency” or “PEA” means a school district, charter school, accommodation school, state supported institution, or other political subdivision of the state that is responsible for providing education to children with disabilities. A.A.C. R7-2-401(B)(16).

<sup>53</sup> A.A.C. R7-2-401(C)(1).

<sup>54</sup> A.A.C. R7-2-401(C)(2).

In addition, the rules require public education agencies to “establish, implement, and make available, either in writing or electronically, to its school-based personnel and *all* parents, within the public education agency boundaries of responsibility, written procedures for the identification and referral of *all* children with disabilities, aged birth through 21, including children with disabilities *attending private schools and home schools*, regardless of the severity of their disability.”<sup>55</sup> (emphasis added). These procedures for “child identification and referral” must meet “the requirements of the IDEA and regulations, A.R.S. Title 15, Chapter 7, Article 4 [Special Education statutes] and these rules.”<sup>56</sup> The public education agency responsible for identifying children suspected of having a disability who are not enrolled in public school is the school district in which the parent resides, but if the child is enrolled in non-profit private school, then the school district within whose boundaries the private school is located is responsible.<sup>57</sup>

Regarding evaluations and re-evaluation, each public education agency is required to establish, implement, and make available written procedures for the initial full and individual evaluation as well as for the re-evaluation of students previously identified.<sup>58</sup> These procedures must “meet the requirements of IDEA and its regulations, state statutes and State Board of Education rules.”<sup>59</sup>

In addition to being responsible for creating “public awareness” and implementing procedures for the identification and referral of *all* children with disabilities, public education agencies are responsible for establishing procedures especially for private school students: “Each education agency shall establish, implement, and make available to its personnel and parents written procedures regarding the access to special education services to students enrolled in private schools by their parents as identified by the IDEA and its regulations, state statutes and State Board of Education rules.”<sup>60</sup> Moreover, public education agencies must track and report the number of children with disabilities that have been identified, located, and/or receiving special education services, including private school and homeschool students: “Each public education agency shall, on an annual basis, determine the number of children within each disability category who have been identified, located, evaluated, and/or receiving special education services. This includes children residing within the boundaries of responsibility of the public education agency who have been placed by their parents in private schools or who are home schooled.”<sup>61</sup>

This brief overview of IDEA and Child Find requirements under Arizona law makes abundantly clear that Arizona policymakers have made it a priority that *all* children suspected of having a disability, including non-public school students, are identified, evaluated, and made aware of special education services available to them. Not only are school districts and charter schools required to develop and implement such policies, but they are responsible for creating public awareness of these policies within their boundaries, even in private schools located within their boundaries. And, their procedures for evaluating and re-evaluating non-public school students— like ESA students in private school or home educated— must meet the requirements of the IDEA and its regulations, state statutes, and State Board of Education rules. To carry out these responsibilities, school districts and charter schools receive state special education funding, as well as federal IDEA Part B, Section 611 subgrants, meant to supplement state funding.

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<sup>55</sup> A.A.C. R7-2-401(D)(1).

<sup>56</sup> A.A.C. R7-2-401(D)(3).

<sup>57</sup> A.A.C. R7-2-401(D)(4).

<sup>58</sup> See A.C.C. R7-2-401(E)(1).

<sup>59</sup> A.C.C. R7-2-401(E)(2).

<sup>60</sup> A.C.C. R7-2-401(L).

<sup>61</sup> A.C.C. R7-2-401(N)(4).

### 3. Arizona Public Schools Receive Specific State and Federal IDEA Part B, Section 611 Subgrants for Special Education, including for their Child Find Obligations.

The state of Arizona has prioritized the funding of K-12 education over the past decade. Arizona's FY 2024 state budget was \$17.883 billion, with the General Fund Revenue coming from state sales and use, individual income, corporate, insurance premium, and other taxes.<sup>62</sup> Out of the \$17.833 billion budget, \$7.761 billion or 43.4 percent of the General Fund budget was allocated for K-12 education.<sup>63</sup> This allocated amount does not include \$357 million allocated for the School Facilities Division that "oversees the capital needs of K-12 school districts and administers funding for building renewal."<sup>64</sup> With over 43 percent of General Fund appropriations, K-12 education is by far the largest budget unit; the second largest being an allocation of \$2.681 billion or 15 percent of the General Fund budget for Arizona Health Care Cost Containment System ("AHCCCS") and Arizona Department of Health Services.<sup>65</sup>

Moreover, Arizona's General Fund budget allocation for K-12 education has more than doubled in the past ten years, from \$3.661 billion in 2014 to \$7.761 billion in 2024.<sup>66</sup> This amounts to an increase of \$4.099 billion or 111.9 percent for K-12 education,<sup>67</sup> even though student enrollment has remained flat at around 1.1 million over the past ten years.<sup>68</sup> No other budget unit experienced such an increase over this same period: the next largest increase was \$1.030 billion for the combined budgets of Arizona Department of Economic Security and Arizona Department of Child Safety.<sup>69</sup> In addition, with the inclusion of all sources of funding—primarily federal funding— K-12 education spending for FY 2024 increases from \$7.761 billion to \$11.836 billion.<sup>70</sup>

Special Education in Arizona is funded by both state and federal funds. The majority of the funding comes from Basic State Aid—the primary funding source for public education agencies— and is supplemented by Arizona's Special Education Fund and the federal IDEA Part B grants.<sup>71</sup> Basic State Aid funding levels are calculated based on student count and various weights.<sup>72</sup> The student count or unweighted Average Daily Membership (ADM)<sup>73</sup> receive a "Group A" weight based on statutory factors, like school size, urban/rural location, and K-8/high school.<sup>74</sup> In addition, *all* students receive an automatic "Group A" special education weight depending on their grade: preschool (0.450), K-8 (0.158), and 9-12 (0.105).<sup>75</sup> Students with a disability

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<sup>62</sup> JLBC, "FY 2024 Appropriations Report, July 2023," BH-27, <https://www.azjlb.gov/24ar/fy2024appropriat.pdf>.

<sup>63</sup> JLBC, "FY 2024 Appropriations Report, July 2023," BH-27, <https://www.azjlb.gov/24ar/fy2024appropriat.pdf>.

<sup>64</sup> JLBC, "FY 2024 Appropriations Report, July 2023," BH-27, <https://www.azjlb.gov/24ar/fy2024appropriat.pdf>; For information on the Arizona Department of Administration – School Facilities Division, see <https://sfb.az.gov/>.

<sup>65</sup> JLBC, "FY 2024 Appropriations Report, July 2023," BH-27, <https://www.azjlb.gov/24ar/fy2024appropriat.pdf>.

<sup>66</sup> JLBC, "FY 2024 Appropriations Report, July 2023," BH-29, <https://www.azjlb.gov/24ar/fy2024appropriat.pdf>.

<sup>67</sup> JLBC, "FY 2024 Appropriations Report, July 2023," BH-29, <https://www.azjlb.gov/24ar/fy2024appropriat.pdf>.

<sup>68</sup> Arizona Department of Education, Accountability & Research Data, "Enrollment," <https://www.azed.gov/accountability-research/data/>

<sup>69</sup> JLBC, "FY 2024 Appropriations Report, July 2023," BH-29, <https://www.azjlb.gov/24ar/fy2024appropriat.pdf>.

<sup>70</sup> JLBC, "FY 2024 Appropriations Report, July 2023," BH-28, <https://www.azjlb.gov/24ar/fy2024appropriat.pdf>.

<sup>71</sup> Arizona Department of Education, ESS Program Management, "Special Education Funding: How, When, and What Order to Spend," April 11, 2023, <https://www.azed.gov/sites/default/files/2023/04/SPEDFundingApril2023.pdf>; Arizona Department of Education, Exceptional Student Services, "Special Education Funding," <https://azjlb.gov/19adespecialledagypres.pdf>; JLBC, "Special Education Funding Overview," January 15, 2019, <https://www.azjlb.gov/units/specialeducationfundingoverview.pdf>.

<sup>72</sup> JLBC, "Special Education Funding Overview," January 15, 2019, 4-7, <https://www.azjlb.gov/units/specialeducationfundingoverview.pdf>.

<sup>73</sup> "Average daily membership" means the total enrollment of fractional students and full-time students, minus withdrawals, of each school day through the first one hundred days or two hundred days in session, as applicable, for the current year. A.R.S. 15-901(A)

<sup>74</sup> See A.R.S. 15-943(1); JLBC, "K-12 Formula Funding Overview" January 11, 2023, 3, <https://www.azjlb.gov/units/k-12formulafunding.pdf>.

<sup>75</sup> A.R.S. 15-943(2)(a); Arizona Department of Education, ESS Program Management, "Special Education Funding: How, When, and What Order to Spend," April 11, 2023, 7 <https://www.azed.gov/sites/default/files/2023/04/SPEDFundingApril2023.pdf>; JLBC, "Special Education Funding Overview," January 15, 2019, 7, <https://www.azjlb.gov/units/specialeducationfundingoverview.pdf>.

receive an additional “Group B” weight depending on their disability.<sup>76</sup> The weights range from 0.292 for students with a speech impairment up to 6.024 for students with autism and 7.947 for students with multiple disabilities with severe sensory impairment.<sup>77</sup> Arizona Joint Legislative Budget Committee (JLBC) provides the following example of the Base Level Support calculations for a hearing impaired student in a large school district:<sup>78</sup>

1.00 “base” ADM  
+ 0.158 Group A weight for Special Education (SPED)  
+ 4.771 Group B weight for Hearing Impairment (HI)  
5.929 weighted ADM  
x \$3,960 per pupil base level (FY 2019)  
\$23,479 Base Support Level (BSL)

Under this example, the school district would receive \$23,479 Base Support Level for that student, in addition to funding for transportation and “additional assistance.”<sup>79</sup> Under this same scenario, the BSL for a 4th grade student with a speech impairment would be \$5,742, while the BSL for a student with autism would be \$28,441. In effect, these weights increase the weighted count of students. For example, in FY 2023, these weights increased the unweighted ADM of 1.1 million to a total weighted count of 1.55 million, a 40.9 percent increase in student count.<sup>80</sup>

School districts and charter schools receive the majority of their special education funding from the Basic State Aid with the Base Support Level discussed above. In FY 2019 the Basic State Aid was \$4.066 billion<sup>81</sup> and the JLBC calculated that about \$1 billion of that amount was for special education.<sup>82</sup> Of that \$1 billion for special education, \$600 million resulted from Group A special education weights for every student and over \$400 million for Group B special education weights for specific students with disabilities.<sup>83</sup> The Basic State Aid for FY 2025 is \$7.289 billion.<sup>84</sup>

The second source of funding for special education in Arizona is the Special Education Fund. This source of funding— \$36 million for FY 2024—is relatively small compared to the special education portion of the Basic State Aid.<sup>85</sup> The Fund is for “the education of a child who has been placed in a residential facility by a state placing agency or who requires a residential special education placement”<sup>86</sup> and for the Arizona State School for the Deaf and the Blind.<sup>87</sup> Any unexpended monies “may be distributed to school districts by the

<sup>76</sup> A.R.S. 15-943(2)(b); JLBC, “Special Education Funding Overview,” January 15, 2019, 7-14, <https://www.azjlb.gov/units/specialeducationfundingoverview.pdf>; Arizona Department of Education, ESS Program Management, “Special Education Funding: How, When, and What Order to Spend,” April 11, 2023, 8-9, <https://www.azed.gov/sites/default/files/2023/04/SPEDFundingApril2023.pdf>.

<sup>77</sup> For a complete list of special education weights see A.R.S. 15-943(2)(b). For weight code definitions see A.R.S. 15-901.

<sup>78</sup> JLBC, “Special Education Funding Overview,” January 15, 2019, 14, <https://www.azjlb.gov/units/specialeducationfundingoverview.pdf>.

<sup>79</sup> JLBC, “Special Education Funding Overview,” January 15, 2019, 14, <https://www.azjlb.gov/units/specialeducationfundingoverview.pdf>.

<sup>80</sup> JLBC, “K-12 Formula Funding Overview” January 11, 2023, 3, <https://www.azjlb.gov/units/k-12formulafunding.pdf>.

<sup>81</sup> JLBC, “K-12 Funding (M&O, Capital and Other): FY 2015 through FY 2024 est,” August, 9, 2023, 2, <https://www.azjlb.gov/units/allfunding.pdf>.

<sup>82</sup> JLBC, “Special Education Funding Overview,” January 15, 2019, 3, 6, <https://www.azjlb.gov/units/specialeducationfundingoverview.pdf>.

<sup>83</sup> JLBC, “Special Education Funding Overview,” January 15, 2019, 6, <https://www.azjlb.gov/units/specialeducationfundingoverview.pdf>.

<sup>84</sup> JLBC, “FY 2025 Appropriations Report: Department of Education,” 158, <https://www.azjlb.gov/25AR/ade.pdf#page=7>.

<sup>85</sup> JLBC, “FY 2024 Appropriations Report, July 2023,” 151, <https://www.azjlb.gov/24ar/fy2024apprprpt.pdf>.

<sup>86</sup> A.R.S 15-1182 (D).

<sup>87</sup> Arizona Department of Education, Exceptional Student Services, “Special Education Funding,” 5, <https://azjlb.gov/19adespecialdagypres.pdf>.

department of education for the following purposes: 1. To provide educational counseling, training and support services to a child with a disability in order to maintain the child’s educational placement in the least restrictive environment; 2. To provide educational transition assistance to children who return to their home after placement in a residential facility; 3. To train personnel for and develop and implement model programs for use by school districts to serve children with emotional disabilities.”<sup>88</sup>

As discussed above, the third source of funding for special education in Arizona is the federal IDEA Part B grants. IDEA Part B subgrants for public educational agencies must be used in accordance with applicable provisions of Part B (including Child Find), to pay excess costs of providing special education and related services and to supplement (and not supplant) State, local, and other federal funds.<sup>89</sup> Since 2020, the U.S. Department of Education has allocated between \$225 and \$278 million a year in IDEA Part B, Section 611 grants for Arizona: \$225,997,627 (2020), \$278,357,322 (2021), \$236,823,175 (2022), \$250,391,123 (2023) and an estimated \$250,457,071 (2024).<sup>90</sup>

After removing the state set-aside funds by the Arizona Department of Education for administrative and other state-level activities, the Department has allocated the following IDEA Part B, Section 611 subgrants to public education agencies (e.g., school districts and charter schools) in the following amounts: \$195,357,588 (FY 2020), \$204,616,840 (FY 2021), \$256,937,268 (FY 2022; includes \$45,671,677 from American Rescue Plan Act of 2021), \$213,596,027 (FY 2023), and \$222,101,535 (FY 2024).<sup>91</sup>

#### 4. Arizona Case Study: The “Burden” of Evaluating ESA Students Suspected of Having a Disability

Opponents of Arizona’s Empowerment Scholarship Account program have recently started to decry the “burden” of school districts having to evaluate ESA students suspected of having a disability. On April 18, 2024, a local Arizona news station ran a story titled, “‘They’ve been coached’: Parents of private school kids are using public school resources to get special needs assessments for their children”<sup>92</sup> The name of the article seems to suggest that private school parents are somehow being directed to unfairly take advantage of “public school resources.” This title ignores the basic facts– as discussed in length above– that public schools have been required to evaluate non-public school students for almost fifty years and receive federal IDEA Part B, Section 611 subgrants and state funds to meet their Child Find obligations.

According to the article, Arizona public educators are “shouldering an unexpected burden” because of the ESA program. According to “superintendents and lawmakers,” with the passage of Arizona’s universal ESA program there has been a “surge” of families seeking evaluations from school districts. In the story, Dr. Curtis Finch– Superintendent of Deer Valley Unified School District (DVUSD), the fourth largest in the state– reports that his district has evaluated at least 94 ESA students this year. He is quoted as saying, “Obviously

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<sup>88</sup> A.R.S 15-1182 (G). Also see A.R.S. 15-1202 Special education fund account; administration; expenditure limitation.

<sup>89</sup> See 20 U.S.C. 1413(a)(2)(A); 34 CFR § 300.202(a).

<sup>90</sup> U.S. Department of Education, Budget History Tables, “State Funding History Tables: FY 1980-FY 2024” (FY 2024), [listed under “Arizona: Special Education–Grants to States”], <https://www2.ed.gov/about/overview/budget/history/index.html>; U.S Department of Education, Fiscal Years 2023-2025 State Tables for the U.S. Department of Education, “State tables by State.” [listed under “Arizona: Special Education–Grants to States”], <https://www2.ed.gov/about/overview/budget/statetables/index.html>.

<sup>91</sup> Arizona Department of Education, Program Management: IDEA Entitlement Grant, <https://www.azed.gov/specialeducation/operations>.

<sup>92</sup> Joe Dana, “‘They’ve been coached’: Parents of private school kids are using public school resources to get special needs assessments for their children,” 12News, April 18, 2024, <https://www.12news.com/article/news/education/az-public-school-districts-are-picking-up-the-tab-for-esa-special-needs-evaluations/75-7972b101-1962-412a-9a82-9ba1cbd3cdae>.



the impact on our system is time. All these people, my specialists, have now spent a bunch of time doing all these evaluations. And they have less time for my students who are actually in my system.” Although he admits the impact to his district is employee time, he nonetheless states, “The legislature needs to find money to pay these *bills* since they aren’t my kids.” (emphasis added).

Dr. Finch claims his district has “dedicated roughly half a million dollars in professional hours” to evaluate the ESA students during the 2023-2024 school year..

A few days after the story ran, Dr. Paul Tighe—the executive director of Arizona School Administrators (“ASA”)—submitted a letter dated April 26, 2024, to a Special Education Evaluation Ad Hoc Subcommittee of the State Board of Education for their May 2, 2024, meeting.<sup>93</sup> Although the agenda item was to discuss and possibly approve the committee’s recommendations for the State Board regarding prior written notice for evaluation, consent for evaluation, and evaluation timelines, Dr. Tighe used his letter to present data collected “from one of the largest school districts.” The letter includes a table of costs for the district, stating that the district has “already evaluated 92 students, for a total of \$552,000.” The table does not include actual costs incurred by the district but rather the costs per hour of the employees’ time. Dr. Tighe writes that ASA “is aware of the “coaching” that is being had with the parents/guardians seeking evaluations in order to qualify for additional ESA funds.” ASA concludes the letter by asking the ad hoc committee to “spend time discussing solutions to this evaluation cost issue, one that takes away funding from the masses and utilizes resources for the few.”

The content of ASA’s letter makes clear that the data presented was from DVUSD. The district has almost 33,000 K-12 students in 42 schools.<sup>94</sup> The district has over 4,000 special education students.<sup>95</sup> Its 2023-2024 budget of \$281,428,629 includes \$214,472,574 in Base Support Level and an estimated budget balance from 2022-2023 of \$13.950 million.<sup>96</sup> After accounting for its maintenance and operation fund expenses, the district’s expected budget balance for 2023-2024 is \$4.194 million. The Arizona Department of Education has allocated the following IDEA Part B, Section 611 subgrants to the district in recent years: \$5,954,398 (2020), \$6,128,342 (2021), \$7,360,103 (2022; includes \$1,236,244 from American Rescue Plan Act of 2021), \$6,413,807 (2023), and \$6,451,602 (2024).<sup>97</sup> Out of these subgrant funds, DVUSD’s Proportionate Share obligations—funds that must be spent to provide equitable services for parentally placed private school students (including homeschool students under Arizona law) were the following: \$412,146 (2020), \$404,081 (2021), \$347,882 (2022), \$155,733 (2023), and \$92,557 (2024).<sup>98</sup>

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<sup>93</sup> Special Education Evaluations Ad Hoc Subcommittee (SEE), May 2, 2024 meeting, <https://azsbe.az.gov/public-meetings/calendar/special-education-evaluations-ad-hoc-subcommittee-see/thursday-may-2-0>

<sup>94</sup> Deer Valley Unified School District, Fast Facts (2023-2024 school year), <https://www.dvUSD.org/domain/4633>.

<sup>95</sup> Arizona Department of Education, October 1 Special Education Child Counts, “2017-2021 Special Education Child Counts by PEA” <https://www.azed.gov/specialeducation/october-1-special-education-child-counts>.

<sup>96</sup> Deer Valley Unified School District, “2023-2024 Adopted Budget, July 11, 2023,” 1, <https://www.dvUSD.org/cms/lib/AZ01901092/Centricity/Domain/1303/BUD24-adopted.pdf>.

<sup>97</sup> Arizona Department of Education, Program Management: IDEA Entitlement Grant, <https://www.azed.gov/specialeducation/operations>.

<sup>98</sup> Arizona Department of Education, Program Management: IDEA Entitlement Grant, <https://www.azed.gov/specialeducation/operations>. Under IDEA 20 U.S.C. 1412(a)(10), local education agencies have Child Find responsibilities for Parentally-Placed Private School Children with Disabilities, including providing equitable special education and related services. For an overview of Proportionate Share and Equitable Services obligations for school districts see, Arizona Department of Education: Exceptional Student Services, “School District Considerations for Parentally-Placed Private School Children with Disabilities,” Nov. 2019, <https://www.azed.gov/sites/default/files/2019/11/Parentally%20Placed%20Private%20School%20Guidance%2011-19.pdf?id=5ddd3d8c03e2b30288260a0b>.

By the end of Quarter 4, 2022—the last quarter before universal ESA went into effect—there were 436 students on the ESA program associated with DVUSD.<sup>99</sup> As of Quarter 3, 2024, that number grew to 4,026 ESA students residing within DVUSD’s district boundaries.<sup>100</sup> As of Quarter 4, 2024, the Arizona Department of Education reports that 709 ESA students who entered the program from fiscal year 2017 through the end of fiscal year 2024 attended DVUSD the year immediately prior.<sup>101</sup>

To be sure, the passage of Arizona’s universal ESA in 2022 has raised awareness among parents regarding their rights to have their child evaluated under the IDEA and corollary state laws. The availability of scholarship funds for special education therapies and services, Arizona’s ESA weighted model providing higher scholarship amounts for certain disability categories, 2023-2024 being the first full year of universal ESA, and the sharp increase of students with disabilities across the country (especially autism) have all contributed to Arizona public schools evaluating more non-public school students in 2023-2024 than in years prior to universal. However, the alleged “burden” on public schools is highly suspect for various reasons that will be discussed below. These critics also ignore how the IDEA and ESA can work together to ensure the growing number of children with disabilities can be identified, evaluated, and have access to services, while at the same time alleviating some of the pressure on public schools to serve this rapidly growing population.

#### a. The alleged “burden” of having to evaluate ESA students is highly suspect.

First, some critics of Arizona’s ESA program—including many public educators—appear to ignore the fact that federal and state policymakers established almost fifty years ago that it is good public policy for *all* students with a disability, regardless of their educational setting, to be identified, located, and evaluated. According to congress, the IDEA is ultimately a civil rights issue for “disability . . . in no way diminishes the right of individuals to participate in or contribute to society.”<sup>102</sup> Therefore, Congress found that it is in “the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.”<sup>103</sup>

Identifying and evaluating all students with a disability has been a federal and state priority since the inception of the IDEA, but it appears that for some Arizona public educators this priority should not extend to ESA students. Describing the requirement to evaluate ESA students suspected of having a disability primarily as a “burden” on public schools overlooks the policy objective of the IDEA and Child Find which is “ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”<sup>104</sup>

Second, some critics of the ESA program appear to ignore the fact that Arizona public schools have been

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<sup>99</sup> Arizona Department of Education, “Empowerment Scholarship Account (ESA): Quarterly Report to the Arizona State Board of EducationL Fiscal Year 2022, Quarter 4,” 15, <https://www.azed.gov/sites/default/files/2022/09/FY2022%20Q4%20ESA%20Report.pdf>.

<sup>100</sup> Arizona Department of Education, “Arizona Empowerment Scholarship Account (ESA) Program: Fiscal Year 2024 Quarter 4 Report: Pursuant to Arizona Revised Statutes §15-2406,” 2, <https://www.azed.gov/sites/default/files/2024/08/ESA%20FY24%20Q4%20Executive%20Legislative%20Report.pdf>.

<sup>101</sup> The Department excluded data from fiscal years 2011-2016 “because of the risks of relying on student data from 8 fiscal years earlier that were migrated from another SIS [student information system].” Arizona Department of Education, “Arizona Empowerment Scholarship Account (ESA) Program: Fiscal Year 2024 Quarter 4 Report: Pursuant to Arizona Revised Statutes §15-2406,” 3, 7, <https://www.azed.gov/sites/default/files/2024/08/ESA%20FY24%20Q4%20Executive%20Legislative%20Report.pdf>.

<sup>102</sup> 20 U.S.C. § 1400(c)(1).

<sup>103</sup> 20 U.S.C. § 1400(c)(6).

<sup>104</sup> 20 U.S.C. § 1400(c)(1).

legally required under the IDEA and Child Find and their corollary state laws to evaluate *all* students suspected of having a disability—not just public school students—for almost fifty years. Arizona school districts have been evaluating private school and homeschool students for decades. This practice has not been an issue of controversy. It was not until a growing number of ESA students began exercising their rights under the IDEA, that this practice became somehow controversial and unfair to public schools. The news story's title "'They've been coached': Parents of private school kids are using public school resources to get special needs assessments for their children"<sup>105</sup> is hardly "news" because Arizona public schools have been evaluating private school students suspected of having a disability since the mid-1970s.

Third, some critics of the ESA program appear to ignore the fact that Arizona public schools receive specific state funds and federal IDEA Part B, Section 611 subgrants to fund special education efforts, including meeting their Child Find obligations. As noted above, Arizona public schools receive over \$1 billion from Basic State Aid each year for special education and over \$200 million of IDEA Part B, Section 611 subgrants. Both sources of funding include funds to evaluate all students suspected of having a disability, even non-public school students. To imply that school districts do not receive funds to evaluate ESA students is simply untrue.

Fourth, some of the critics decrying school districts having to evaluate ESA students also unfairly malign the motivation of ESA parents seeking evaluations. Both the news story and the letter from ASA accuse the parents of being "coached." It's unclear what they mean by parents being "coached," but it is clearly presented as something that should cause alarm. Dr. Tighe states that "ASA is aware of the 'coaching' that is being had with the parents/guardians seeking evaluations in order to qualify for additional ESA funds." The implication seems to be that ESA parents are somehow "gaming the system" and are disingenuously requesting an evaluation for their child for the sole purpose of qualifying for additional scholarship funds. Perhaps, parents are requesting an evaluation because they suspect their child has a disability, and if their child does have a disability, they want to ensure they can access appropriate therapies and educational services. This is one of the purposes of Child Find after all.

Regardless of a parent's suspicion, it is for the school district's multidisciplinary education team (MET)<sup>106</sup> to decide whether the child has a disability impacting his or her education. The school district may choose to "screen" the child and end the process if no concern about the student is identified, provided the parent agrees.<sup>107</sup> After a screening or through review of records, the school district may determine that "a full and individual evaluation is not warranted."<sup>108</sup> If a school district identifies a possible disability and moves forward with a full and individual evaluation, the MET team—often composed of at least a general education teacher, a special education teacher, a school psychologist or other professional and a district representative—may determine that the child is not eligible for special education.<sup>109</sup> If DVUSD evaluated over 90 ESA students in the 2023-2024 school year, it must have been because the identification process indicated a possible disability,<sup>110</sup> and if the students were determined to be eligible for special education, it was because they actually had a disability impacting their education.

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<sup>105</sup> Joe Dana, "'They've been coached': Parents of private school kids are using public school resources to get special needs assessments for their children," 12News, April 18, 2024, <https://www.12news.com/article/news/education/az-public-school-districts-are-picking-up-the-tab-for-esa-special-needs-evaluations/75-7972b101-1962-412a-9a82-9ba1cbd3cdae>.

<sup>106</sup> A.R.S. § 15-761(16). Also see A.R.S. § 15-761(12) and 20 U.S.C. § 1414(d)(1)(B).

<sup>107</sup> See A.C.C. R7-2-401(D)(6) through (11) (discussing screening prior to evaluation). For more information on Arizona's special education evaluation process see Arizona Department of Education, "Special Education Process," <https://www.azed.gov/sites/default/files/2015/10/special-education-process-flow-chart.pdf?id=5618024caadebf0dd82f3ea3>.

<sup>108</sup> A.C.C. R7-2-401(D)(11).

<sup>109</sup> A.C.C. R7-2-401(E)(3).

<sup>110</sup> "If the identification process indicates a possible disability, the name of the student shall be submitted to the administrator for consideration of the need for a referral for a full and individual evaluation or other services." A.C.C. R7-2-401(D)(10).

Finally, the claimed costs incurred by DVUSD to evaluate ESA students during the 2023-2024 school year are misleading. First, the costs reported by DVUSD are not additional expenses the district actually incurred to evaluate the students. As Dr. Finch stated in the news story, the impact to his district is “[o]bviously. . . time.” DVUSD did not spend \$500,000 to evaluate these students. They did not pay third-party contractors to perform the evaluations nor did they pay stipends to their salaried employees for their participation in the evaluations, presumably because their participation is part of their regular duties. Salaried employees may have spent more of their time on evaluations in 2023-2024 than in prior years (assuming the number of evaluations for enrolled students in DVUSD did not decrease), but the bottomline is that the evaluations did not cost the district an additional \$500,000. The claimed costs are estimates based on the “hourly wage” for various categories of salaried employees and the time they worked on the evaluations. However, no documentation was provided to support the “hourly wage” nor the hours worked, so these must be taken at face value.

In ASA’s letter, Dr. Tighe includes a table intended to show that these evaluations cost the district \$6,000 per ESA student, for a total of \$552,000 for the 92 students:

**2023-2024 School Year**

	<b>Evaluation Cost</b>	Totals:
Protocols	Assuming all are involved, \$50	\$50.00
Hourly wage for psychologist	Roughly \$65 an hour	\$975.00
Hourly wage for SLP	\$59.22 (from summer rates)	\$888.30
Hourly wage for motor staff	\$59.22 (from summer rates)	\$888.30
Hourly wage for special education teacher	\$25 per hour	\$375.00
Hourly wage for general education teacher	\$25 per hour	\$375.00
Total amount of time to do an evaluation	Assuming all are involved, 10-15 hours	\$3,551.60/w-out FBA
Number of hours for an FBA	5-10 hours (\$65 hour)	\$650.00
		\$4,201.60 w/FBA

	<b>IEP Costs</b>	Total
Hourly wage for psychologist (if needed)	\$64.44 (from summer rates)	\$322.20
Hourly wage for SLP	\$59.22 (from summer rates)	\$296.10
Hourly wage for motor staff	\$59.22 (from summer rates)	\$296.10
Hourly wage for special education teacher	If input needed (\$25 per hour) if writing an IEP then \$125 per IEP created. Summer rates say \$45/hour	\$125.00- \$750.00 \$625.00- \$225.00- \$850.00
Hourly wage for general education teacher	If input needed (\$25 per hour) if dual certified and able to write IEP then \$125 per IEP. Summer rates say \$45/hour	\$125.00- \$750.00 \$625.00- \$225.00- \$850.00
Total amount of time to do an IEP	5 hours (\$25 hour)	\$125.00
		\$2,539.40 - \$2,739.40

Besides the fact that these costs were not actual expenses but rather the estimated value of employees' time, these calculations also appear inflated. First, it is highly unlikely the district developed an Individualized Education Program (IEP) for each of the 92 ESA students. Under A.R.S. 15-761(11), "Individualized education program" means a written statement, as defined in 20 United States Code sections 1401 and 1412, for providing special education and related services to a child with a disability." In other words, IEPs are written statements developed by the IEP Team<sup>111</sup> describing in part the special education and services that the student will be provided in the public school setting. Why would the district spend time developing IEPs for 92 ESA students who had no intention of enrolling in the district? In any case, because the students were not going to enroll, the district was not required to develop IEPs.<sup>112</sup> Eliminating the questionable and unnecessary "IEP costs" would reduce the claimed costs by over 40 percent.

Second, the tables include "summer rates" for various of the staff categories. Assuming "summer rates" for some of the employee categories is actually appropriate, it is still highly questionable that all 92 of the evaluations took place during the summer of 2023. These evaluations supposedly occurred during the entirety of the 2023-2024 school year up through the end of April, 2024. Did no ESA student approach the district for an evaluation after the summer of 2023, once classes began in the fall semester? It would seem improper to apply "summer rates" for the evaluation of all 92 students unless they were actually evaluated at least in some part during the summer of 2023, which is highly unlikely.

Moreover, under A.C.C. R7-2-401(E)(4), if a parent requests an evaluation, the school district must "within a reasonable amount of time not to exceed 15 school days from the date it receives a parent's written request for an evaluation, either begin the evaluation by reviewing existing data, or provide written notice refusing to conduct the requested evaluation." (emphasis added). Because of this rule, school districts have been known to refrain from taking any action on an evaluation request received during the last three weeks of the school year because they have "15 school days" to respond. Parents often have to wait over the entire summer before the district takes action on their request. That being the case, if all of the 92 students were evaluated during some part of the summer of 2023, then they must have requested the evaluation at least a month before the end of the 2022-2023 school. Otherwise, DVUSD could have waited until the fall of 2023 until responding to the requests. Ultimately, the application of "summer rates" to all 92 of the students seems wholly inappropriate.

Third, the table includes costs for "an FBA," which probably refers to a functional behavioral assessment. According to Arizona's Department of Education, the IDEA does not require an FBA except in two specific disciplinary situations when a child is already receiving special education (See 34 C.F.R. §§ 300.530(d)(1)(ii) and (f)(1)(i)); however, ADE notes that in developing an IEP, the IEP team must "in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior" (34 C.F.R. §§ 300.324(a)(2)).<sup>113</sup> This consideration would likely include an FBA. In practice, FBAs are often done for students with autism. All this being the case, including FBA costs in the table without actually specifying how many of the 92 ESA students actually received an FBA is misleading.

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<sup>111</sup> Under A.R.S. 15-761(12), "Individualized education program team" means a team whose task is to develop an appropriate educational program for the child and has the same meaning prescribed in 20 United States Code section 1414.

<sup>112</sup> To qualify as a student with disabilities for ESA purposes does not require an IEP, a MET Evaluation Report suffices. Arizona Department of Education, Empowerment Scholarship Account Program: Eligibility Requirements & Application, <https://www.azed.gov/esa/eligibility-requirements>. A MET Evaluation Report includes the determination after the evaluation process "whether the student has a disability, as defined in §300.8 and A.R.S. §15-761." Arizona Department of Education, "Arizona Technical Assistance System (AZ-TAS): Evaluation Process, August 2017," 9, 19-38, <https://www.azed.gov/sites/default/files/2017/09/AZ%20TAS%20eval%202017%20final.pdf?id=59ca7af93217e10ce4a418aa>.

<sup>113</sup> Arizona Department of Education, "FAQs: Functional Behavioral Assessment and Behavioral Intervention Plans," <https://www.azed.gov/specialeducation/fba>.

This consideration would likely include an FBA. In practice, FBAs are often done for students with autism. All this being the case, including FBA costs in the table without actually specifying how many of the 92 ESA students actually received an FBA is misleading.

b. ESA critics decrying the “burden” of evaluating ESA students ignore how the IDEA and ESA can work together to ensure the growing number of children with disabilities can be identified, evaluated, and have access to services, while at the same time alleviating some of the pressure on public schools to serve this rapidly growing population.

Arizona’s universal ESA with its weighted scholarships for students with disabilities works hand in hand with the IDEA and Child Find to ensure *all* children with a disability residing in Arizona are identified, evaluated, and have access to services. By improving the educational opportunities for children with disabilities these programs in tandem advance the policy objective of “ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”<sup>114</sup> Through the IDEA Part B, Section 611 grants, the federal government provides funding for local educational agencies to locate, identify, and evaluate all students suspected of a disability, even non-public school students. On the one hand, if the student is found in fact to have a disability, the student is eligible for special education and related services in the public school system. On the other hand, through an ESA scholarship the student can access the needed therapies and services outside of the public school system. This access is possible because of Arizona’s weighted model. A flat scholarship amount for all students would not provide enough scholarship funds for students with disabilities, making the program less useful to them.

Since the passage of the universal ESA, the number of K-12 ESA students with disabilities has increased from 6,870 to 12,328, an increase of 5,480 or 79 percent.<sup>115</sup> This growth demonstrates that the universal ESA program has helped advance Child Find’s objective of locating, identifying and evaluating all students suspected of a disability. Assuming the 5,458 new ESA students with disabilities were not all “switchers,” the passage of the universal ESA has clearly resulted in the location, identification, and evaluation of more students with disabilities in the state.

In addition to advancing the goals of the IDEA and Child Find, Arizona’s ESA program also helps alleviate some of the pressure on public schools to serve the rapidly growing population of students with disabilities. As discussed above, the number and percentage of children with disabilities has been growing steadily since the mid-1970s, with the greatest growth occurring during the past 10 years.<sup>116</sup> Autism rates alone have quadrupled from 2000 to 2020.<sup>117</sup> These trends are likewise happening in Arizona, where the percentage of students with disabilities in public school has increased year after year from 11.93% in 2018 to 12.31% in

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<sup>114</sup> 20 U.S.C. § 1400(c)(1).

<sup>115</sup> 7,291 students with disabilities on ESA included 421 preschool students. See Arizona Department of Education, “Empowerment Scholarship Account (ESA): Quarterly Report to the Arizona State Board of Education Fiscal Year 2022, Quarter 4,” 2, <https://www.azed.gov/sites/default/files/2022/09/FY2022%20Q4%20ESA%20Report.pdf>; Arizona Department of Education, “Arizona Empowerment Scholarship Account (ESA) Program: Fiscal Year 2024 Quarter 4 Report: Pursuant to Arizona Revised Statutes §15-2406,” 2, <https://www.azed.gov/sites/default/files/2024/08/ESA%20FY24%20Q4%20Executive%20Legislative%20Report.pdf>.

<sup>116</sup> National Center for Education Statistics, Digest of Education Statistics: 2022, “Table 204.30. Children 3 to 21 years old served under Individuals with Disabilities Education Act (IDEA), Part B, by type of disability: Selected school years, 1976-77 through 2022-23,” [https://nces.ed.gov/programs/digest/d23/tables/dt23\\_204.30.asp?current=yes](https://nces.ed.gov/programs/digest/d23/tables/dt23_204.30.asp?current=yes)

<sup>117</sup> U.S. Centers for Disease Control and Prevention, Data and Statistics on Autism Spectrum Disorder, May 16, 2024, <https://www.cdc.gov/autism/data-research/index.html>.

2022.<sup>118</sup> Following the national trend, the percentage of students with disabilities in public school identified with autism in Arizona has also increased year after year from 9.9% in 2018 to 11.7% in 2022.<sup>119</sup>

The rapidly growing number of students with disabilities in the state puts additional pressure on Arizona's public schools because serving students with disabilities requires more time and resources. Before universal, 6,870 K-12 students with disabilities in the ESA program had "switched" from public school, and as of Quarter 4 of FY 2024 there were 12,328 students with disabilities in the ESA program.<sup>120</sup> The exact number of "switchers" among the 5,458 new ESA students with disabilities is unknown. However, among those eligible for the ESA program under universal (excluding existing eligibility categories like students with disabilities), the percentage of "switchers" among new ESA students was 21 percent in FY 2023 and 47.6 percent in FY 2024.<sup>121</sup> If these percentages are generally representative of students with disabilities as well, a sizable percentage of the new ESA students with disabilities were "switchers." In any case, the 12,328 students with disabilities on the ESA program is not insignificant compared to the over 137,000 students with a disability in Arizona public schools.<sup>122</sup> These ESA numbers certainly provide some relief to the public school system.

In addition, Arizona's ESA program has not only reduced the number of special education students public schools have to serve, but has also tended to serve students requiring more resources. The three most prevalent disability categories in Arizona public schools in 2022 were Specific Learning Disability (SLD: 54,562 students; 39.6%), Speech Language Impairment (SLI: 21,113 students; 15.3%) and Other Health Impairments (OHI: 16,511 students; 12.0%).<sup>123</sup> These three categories comprise 67 percent of all students with disabilities, yet all three require the least resources as they have the lowest multiplier (0.292) among all disability categories.<sup>124</sup> Autism, which has much higher multipliers (5.988 and 6.024),<sup>125</sup> is the fourth largest disability category with 16,085 students or 11.7%.<sup>126</sup>

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<sup>118</sup> Arizona Department of Education, Exceptional Student Exceptional Student Services (ESS) and Special Education Advisory Panel (SEAP), "K-12 and Preschool Special Education Trend Data 2018–2022, November 2022," 5, <https://www.azed.gov/sites/default/files/2022/11/SEAP%20Trends%20%26%20Data%20Presentation.pdf>.

<sup>119</sup> Arizona Department of Education, Exceptional Student Exceptional Student Services (ESS) and Special Education Advisory Panel (SEAP), "K-12 and Preschool Special Education Trend Data 2018–2022, November 2022," 10, <https://www.azed.gov/sites/default/files/2022/11/SEAP%20Trends%20%26%20Data%20Presentation.pdf>.

<sup>120</sup> The 7,291 students with disabilities on ESA in 2022 included 421 preschool students. See Arizona Department of Education, "Empowerment Scholarship Account (ESA): Quarterly Report to the Arizona State Board of EducationL Fiscal Year 2022, Quarter 4," 2, <https://www.azed.gov/sites/default/files/2022/09/FY2022%20Q4%20ESA%20Report.pdf>; Arizona Department of Education, "Arizona Empowerment Scholarship Account (ESA) Program: Fiscal Year 2024 Quarter 4 Report: Pursuant to Arizona Revised Statutes §15-2406," 2, <https://www.azed.gov/sites/default/files/2024/08/ESA%20FY24%20Q4%20Executive%20Legislative%20Report.pdf>.

<sup>121</sup> Arizona Department of Education, "Arizona Empowerment Scholarship Account (ESA) Program: Fiscal Year 2024 Quarter 4 Report: Pursuant to Arizona Revised Statutes §15-2406," 2, <https://www.azed.gov/sites/default/files/2024/08/ESA%20FY24%20Q4%20Executive%20Legislative%20Report.pdf>.

<sup>122</sup> Arizona Department of Education, Exceptional Student Exceptional Student Services (ESS) and Special Education Advisory Panel (SEAP), "K-12 and Preschool Special Education Trend Data 2018–2022, November 2022," 5, <https://www.azed.gov/sites/default/files/2022/11/SEAP%20Trends%20%26%20Data%20Presentation.pdf>.

<sup>123</sup> Arizona Department of Education, Exceptional Student Exceptional Student Services (ESS) and Special Education Advisory Panel (SEAP), "K-12 and Preschool Special Education Trend Data 2018–2022, November 2022," 6-9, <https://www.azed.gov/sites/default/files/2022/11/SEAP%20Trends%20%26%20Data%20Presentation.pdf>.

<sup>124</sup> See A.R.S. 15-943(2)(b).

<sup>125</sup> See A.R.S. 15-943(2)(b).

<sup>126</sup> Arizona Department of Education, Exceptional Student Exceptional Student Services (ESS) and Special Education Advisory Panel (SEAP), "K-12 and Preschool Special Education Trend Data 2018–2022, November 2022," 6, 10, <https://www.azed.gov/sites/default/files/2022/11/SEAP%20Trends%20%26%20Data%20Presentation.pdf>.

In contrast, there are 7,074 students with autism in the ESA program, which accounts for 57.4% of all K-12 ESA students with disabilities.<sup>127</sup> The three largest disability categories in public schools of SLD, SLI, and OHI only make up 26 percent of ESA students with disabilities.<sup>128</sup> This comparison demonstrates that the ESA program tends to serve students with disabilities which require more resources. Thus, the ESA program provides relief for public schools not only by reducing the total number of students with disabilities they have to serve, but also by tending to serve students requiring more resources.

## Conclusion

Congress rightly recognized when it first enacted what became the IDEA that the education of children with disabilities is first and foremost a civil rights issue: “[I]t is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.”<sup>129</sup> To ensure the rapidly growing number of children with disabilities has the opportunity to thrive into adolescence and adulthood, federal and state policymakers should continue to prioritize the identification and evaluation of all children suspected of having a disability, regardless of their educational setting. Child Find efforts are more critical now than ever before.

Arizona’s universal ESA program with its weighted model for students with disabilities has advanced Child Find objectives, provided educational opportunities to more students with disabilities, and has helped alleviate some of the pressure on public schools to serve this growing population. The suggestion by critics that the ESA program is bad public policy because it has burdened public schools with costs related to evaluating ESA students suspected of a disability is highly suspect. They seem to ignore the fact that under Child Find and corollary state laws Arizona public schools have been required to evaluate non-public school students for almost fifty years. Moreover, public schools receive specific state and federal IDEA Part B, Section 611 subgrants to fund their special education efforts, including their Child Find obligations. Their implication that evaluating ESA students is somehow a new unfunded mandate burdening public schools is entirely false.

Education Savings Account programs—like Arizona’s Empowerment Scholarship Account program— can work hand in hand with the Individuals with Disabilities Education Act to ensure all children with disabilities are located, identified, evaluated, and given the opportunity to access appropriate educational services so they can all thrive into the future.

Jenny Clark

W. Michael Clark, Ph.D., J.D.

SEPTEMBER 5, 2024

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<sup>127</sup> Arizona Department of Education, “Arizona Empowerment Scholarship Account (ESA) Program: Fiscal Year 2024 Quarter 4 Report: Pursuant to Arizona Revised Statutes §15-2406,” 18, <https://www.azed.gov/sites/default/files/2024/08/ESA%20FY24%20Q4%20Executive%20Legislative%20Report.pdf>.

<sup>128</sup> Arizona Department of Education, “Arizona Empowerment Scholarship Account (ESA) Program: Fiscal Year 2024 Quarter 4 Report: Pursuant to Arizona Revised Statutes §15-2406,” 18-19, <https://www.azed.gov/sites/default/files/2024/08/ESA%20FY24%20Q4%20Executive%20Legislative%20Report.pdf>.

<sup>129</sup> 20 U.S.C. § 1400(c)(6).



# About the Authors



## W. MICHAEL CLARK PHD, J.D.

W. Michael Clark PhD, J.D. is an ESA parent of five and is a Policy Advisor at the Arizona Corporation Commission and former Vice President of Policy and General Counsel at Center for Arizona Policy. His areas of interest are utility law and education freedom.



## JENNY CLARK

Jenny Clark is an ESA parent of five and is the Founder and CEO of Love Your School, an education freedom non-profit that supports families navigating school options in Arizona, West Virginia, and Alabama. She is an appointed member of the Arizona State Board of Education and is a former 50CAN Fellow and Club for Growth Foundation Fellow. She is a member of the AEI Conservative Education Reform Network and is a recipient of the State Policy Network Ed Prize 2024.

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