



Arkansas Association of Defense Counsel

February 27, 2017

Proposed Education Savings Accounts Tax Credits for Supporting Private Education By Bonnie Johnson, Williams & Anderson PLC

Business and individual clients looking for state tax credits may be interested in a controversial new bill. House Bill 1222, The Arkansas Parental Empowerment for Education Choice Act of 2017, was introduced by Representative Jim Dotson and is currently in the House Education Committee. If enacted, the law would allow eligible nonprofit organizations to establish education savings accounts to pay for private school tuition and related expenses. Funds would not be available to public school students. The savings accounts would be funded by businesses and individuals who would receive a tax credit for 100% of each contribution as long as the credits did not exceed 50% of their total taxes due.

The Act states that nonprofit organizations managing the education savings accounts cannot discriminate on the basis of gender, national origin, race, ethnicity, religion, or disability. However, nothing in the Act requires private schools attended by students receiving the funds to educate all children or to provide special education services, as traditional and charter public schools are required to do. Private schools could maintain their existing enrollment requirements.

Similar laws in other states have been criticized as benefiting students from middle and high income families at the expense of disadvantaged students. Although the Act provides that the percentage of low-income students (measured by eligibility for free or reduced price meals) who receive the savings accounts should at least equal the percentage of low-income students in public schools, it is unclear how that would be accomplished.

Critics also claim that education savings accounts indirectly reduce funding for public schools without improving education outcomes. The programs are funded by private donations, but tax credits affect a state's budget and education savings account programs may decrease public school funding. In response, defenders point to tax credit limits. Under House Bill 1222, total tax credits would be capped at \$10,000,000 in the 2017 tax year. Proponents of the proposed law

also argue that it enables families to determine where a child attends school, regardless of cost, and that the bill allows the use of money for services and expenses beyond private school tuition.

Across the country, states are implementing a variety of school choice options in response to parental demand and low-performing traditional public schools. An open enrollment public charter school operates under a charter from the state and functions as an independent school district. Charter schools can request waivers from many of the regulations that apply to traditional public schools. In return, they are subject to special scrutiny from the state.

Arkansas law provides for two types of charter schools. A conversion charter school is a traditional public school that has been converted to operate under a charter and can only draw students from within the school district's geographic boundaries. For example, the North Little Rock School District has gained approval to open the Center of Excellence next fall. The Center will offer something not currently available in the district—hands-on training to prepare students for skilled labor in five areas: advanced manufacturing, transportation distribution and logistics, computer science, medical technology, and engineering.

In Arkansas, the following are eligible to apply for a charter to operate an open enrollment public charter school: a public institution of higher education, a private nonsectarian institution of higher education, a governmental entity, and a nonsectarian nonprofit organization that has applied for tax exempt status under Internal Revenue Code Section 501(c)(3). LISA Academy, Haas Hall Academy, and eSTEM are well known Arkansas open-enrollment charters. They are nonprofit public schools that receive per-pupil education funding from the state. As such, they are required to accept all students, including students with disabilities, and are held accountable for academic performance and fiscal management.

By contrast, vouchers and tax credit programs pay tuition and other expenses at private schools. The proposed Arkansas Parental Empowerment for Education Choice Act of 2017 can be viewed as a type

of voucher program, expanding publically funded school choice alternatives beyond public schools. Arkansas already offers a limited number of school vouchers to children with special educational needs; participating families can use state funding to pay for private education. The proposed education savings account program would expand that option to children who do not qualify for special education services.

The proposed Act has far-reaching implications for Arkansas students, school districts, and taxpayers. If Arkansas implements education savings accounts, we can expect that opportunities for taxpayer-funded private education will continue to increase.

The AADC thanks Bonnie Johnson of Williams & Anderson, PLC for writing this article.



We welcome your articles and thoughts for future editions.

We Are Better Together: Support the AADC.