



# LEGISLATIVE BRIEF

## Understanding Public Chapter 506: Education Savings Accounts

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Public Chapter 506 (2019) creates the Tennessee Education Savings Account (ESA) program, which allows eligible students in Metro Nashville Public Schools and Shelby County Schools to use state and local BEP funds toward expenses, such as tutoring services, fees for early postsecondary opportunity courses and examinations, and tuition, fees, and textbooks at approved private schools. This legislative brief answers questions about eligibility, allowable expenses, funding, and accountability for the new program.

### Who is eligible to receive an Education Savings Account (ESA)?

An eligible K-12 student must be a resident of Tennessee who:

- was previously enrolled in and attended a Tennessee public school for one full school year immediately preceding the school year for which a student receives an ESA (Note: Students must be zoned to attend a school in Metro Nashville Public Schools, Shelby County Schools, or the Achievement School District in order to qualify for and retain their ESA),
- is eligible for the first time to enroll in a Tennessee school (e.g., a kindergarten student or a student who moved to Tennessee from out of state), or
- received an ESA the previous year.

Homeschool students are not eligible to receive ESA dollars.

### Income eligibility and verification

ESA-eligible students will come from households with an annual income that is no more than twice the annual income eligibility thresholds for the federal free lunch program. For the 2018-19 school year, the federal income thresholds are as follows:

Household Size	Federal Annual Income Eligibility	ESA Income Limit
1	\$15,782	\$31,564
2	\$21,398	\$42,796
3	\$27,014	\$54,028
4	\$32,630	\$65,260
5	\$38,246	\$76,492
6	\$43,862	\$87,724
7	\$49,478	\$98,956
8	\$55,094	\$110,188
For each additional family member, add	\$5,616	\$11,232

Source: U.S. Department of Agriculture, <https://www.govinfo.gov/content/pkg/FR-2018-05-08/pdf/2018-09679.pdf>.

Parents of students applying for an ESA and student applicants over the age of 18 must provide a federal income tax return from the previous year or proof that the parent of an eligible student is qualified to enroll in the state's temporary assistance for needy families (TANF) program. TANF eligibility stipulates that an applicant must:



- have a child living in the home of a parent or relative who is within a specified degree of relationship to the child, and the child must be under age 19 or complete high school before his/her 19th birthday. The child must be deprived of parental support due to absence, death, incapacity, or unemployment of one or both parents;
- reside in Tennessee and be a citizen or non-citizen lawfully admitted to the United States;
- be a pregnant woman in her third trimester;
- be willing to cooperate with child support; or
- meet the gross monthly income standard.

The law does not explicitly prohibit non-U.S. citizens from participating in the program.

### **Zoning and residence requirements**

Eligible students must be zoned to attend a school in a school district with 10 or more schools:

- identified as priority schools in 2015;<sup>1</sup>
- among the bottom 10 percent of schools in 2017; and
- identified as priority schools in 2018.

Students zoned to attend a school that is in the Achievement School District (ASD) as of the effective date of this law are also eligible to apply for an ESA.

The three school districts that meet the above criteria are the ASD, Metro Nashville Public Schools, and Shelby County Schools.

Students are required to maintain residency in their original school district (i.e., ASD, Metro Nashville Public Schools, or Shelby County Schools).

### **How many students are eligible to receive an ESA?**

Beginning in the 2021-22 school year, 5,000 students may use an ESA, increasing by 2,500 each subsequent year to a maximum cap of 15,000. Total annual participation caps are based on statewide totals, and there is not a minimum or maximum enrollment level for any eligible district.

School Year	ESA Enrollment
Year one	5,000 students
Year two	7,500 students
Year three	10,000 students
Year four	12,500 students
Year five and every year thereafter	15,000 students

It is not possible to determine exactly how many students in the ASD, Metro Nashville Public Schools, and Shelby County Schools are eligible for the ESA based on the income levels for free or reduced-price lunch status because districts no longer collect household income information related to free or reduced-price lunch programs due to changes in federal reporting requirements.

In 2017-18, there were a total of 107,419 students from the ASD, Metro Nashville Public Schools, and Shelby County Schools who were classified as *economically disadvantaged* or *direct-certified*, meaning the students were participating in a state or federal assistance program, such as the Supplemental Nutrition Assistance

<sup>1</sup> Schools are identified as priority for one of two reasons: (1) being in the bottom 5 percent in 2015-16 and 2016-17 and not meeting the TVAAS safe harbor, which allows schools to not be identified if they are showing high growth or (2) having a graduation rate of less than 67 percent in 2017-18.

Program (SNAP), Temporary Assistance for Needy Families (TANF), and Head Start. Direct certification generally results in a lower count of students who are economically disadvantaged than the counts previously seen when using free or reduced-price lunch status to determine the number of such students because not all low-income students apply for state and federal aid programs. Therefore, the economically disadvantaged figure is a low estimate of students eligible for the ESA program; more students may be eligible for the ESA program based on actual income rather than their status as economically disadvantaged.<sup>2</sup>

District	Economically Disadvantaged (#)	Economically Disadvantaged (%)
Metro Nashville	38,636	46.9%
Shelby County	60,521	56.9%
Achievement School District	8,262	75.3%

Source: Tennessee Department of Education, School District Profiles, 2017-18, columns I and J.

## How can families use the ESA funds toward their children’s educational expenses?

Funds for an ESA may be used for one or more of the following expenses:

- tuition, fees, and textbooks, and school uniforms at a participating Category I, II, or III private school;
- tutoring services provided by a tutor or tutoring facility;
- fees for transportation to and from a participating school or educational provider paid to a fee-for-service transportation provider;
- fees for early postsecondary opportunity courses and examinations required for college admission;
- computer hardware, technological devices, or other technology fees if the item is used for the student’s needs and is purchased through a participating school, private school, or provider;
- tuition and fees for summer education programs and specialized afterschool education programs, not including afterschool childcare;
- tuition, fees, and textbooks at an eligible postsecondary institution;<sup>3</sup>
- educational therapy services provided by therapists; or
- fees for the management of the ESA by a private or nonprofit financial management organization, as approved by the Tennessee Department of Education (TDOE). Fees cannot exceed 2 percent of the student’s annual ESA allocation each year.

Students participating in the ESA program must be enrolled in an approved private school (Category I, II, or III); however, some private schools may not participate in the ESA program. In cases where a participating student attends a non-participating school, the student cannot use ESA funds for tuition, fees, textbooks, or school uniforms at the non-participating school, but may use the funds for other eligible expenses, such as tutoring services.

## How much funding will students receive for an ESA?

Eligible students will receive an amount equal to the per-pupil state and local funds generated and required through the BEP for the school district in which the participating student resides. In Metro Nashville Public Schools and Shelby County Schools, this amount is approximately \$8,097 and \$7,747, respectively.<sup>4</sup> However, the total funding per student in both districts will be capped at the statewide average of the combined state and local per-pupil BEP funds – \$ 7,376 in fiscal year 2019. The local portion of the BEP per-pupil funding is based on the local required match amount as calculated in the BEP formula; any additional local funding beyond the required BEP local match will not be included in ESA funding calculations.

<sup>2</sup> For accountability, funding, and determining equity and disproportionality, a low-income or economically disadvantaged student is one who is directly certified as participating in state or federal assistance programs, such as Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Head Start. Students who are identified as homeless, migrant, and runaway are also included in the direct certification calculation (low income/economically disadvantaged). Tennessee Department of Education, Every Student Succeeds Act: Building on Success in Tennessee ESSA State Plan, updated Aug. 13, 2018, p. 240, [https://www.tn.gov/content/dam/tn/education/documents/TN\\_ESSA\\_State\\_Plan\\_Approved.pdf](https://www.tn.gov/content/dam/tn/education/documents/TN_ESSA_State_Plan_Approved.pdf).

<sup>3</sup> Eligible postsecondary institutions are those operated by the board of trustees of the University of Tennessee, the Tennessee Board of Regents, or a local governing board of trustees of a state university in this state, as well as approved private, postsecondary institutions.

<sup>4</sup> The ASD currently operates schools in both Metro Nashville Public Schools and Shelby County Schools; the ESA amount for eligible students in the ASD will be based on the school district in which the students reside.

District	State BEP Per-pupil Funding*	Local BEP Required Per-pupil Funding*	Total State & Local BEP	State Administration Fee (6%)	Total ESA Value
<b>State Average</b>	<b>\$4,845</b>	<b>\$2,531</b>	<b>\$7,376</b>	<b>(\$443)</b>	<b>\$6,933</b>
Metro Nashville	\$3,622	\$4,475	\$8,097	(\$487)	\$7,628
Shelby County	\$5,370	\$2,377	\$7,747	(\$465)	\$7,290

\*Figures based on FY 2019 BEP allocations. Actual contribution amounts will be higher if BEP allocations increase in future years due to increases in ADM or increases to the BEP formula.

TDOE may collect a 6 percent administration fee from the annual ESA amount to cover the costs of overseeing the funds and administering the program.

## What funding mechanisms are in place for districts with students participating in the ESA?

For the first three years students are enrolled in the program, districts with students participating in the ESA program will receive an annual grant to be used for school improvement in an amount equal to the ESA amount for participating students, subject to appropriations by the General Assembly. In other words, students in the ESA program will continue to count toward the district’s ADM and generate state and local BEP funding, which will be used for the ESA. The district will receive a reimbursement grant from a separate state allocation for students participating in the ESA program. Any balance of unused state funds allocated to the program at the end of each of the first three years will be disbursed in an annual school improvement grant to school districts that have priority schools but that do not meet the eligibility criteria for the ESA program. As of 2018, these districts are Campbell County, Fayette County, Hamilton County, Madison County, and Maury County. The State Board of Education (SBE) and the Department of Education will be responsible for establishing the rules and administration of the school improvement grant program, including how the funding will make its way from the state to the local level. Beginning in year four, the funds will be distributed to all districts with priority schools in a manner determined by TDOE.

Students in the ESA program will continue to be counted in the enrollment figures for the school district in which the student resides. For example, if 200 students participate in the ESA program, those 200 students will count toward the district’s total ADM figure used for calculating state and local BEP funding amounts. Any additional local funding beyond the required BEP local match will not be included in ESA funding calculations, but districts must continue to budget sufficient funds to meet maintenance of effort requirements set by the state.

In year four and every year thereafter, the total state and local BEP per-pupil funding amount for every student participating in the ESA program will be withheld from the total state BEP allocation for the district. The state will no longer reimburse the district for the state and local share of the per-pupil allocation for students receiving ESAs.

## Which private schools are eligible to participate in the ESA program?

Category I, II, or III private schools may apply to TDOE to become a participating school in the ESA program. There were 133 such schools across the two school districts eligible for the ESA program (Metro Nashville Public Schools and Shelby County Schools) for the 2018-19 school year.<sup>5</sup>

- **Category I:** schools approved by TDOE
- **Category II:** schools approved by a private school accrediting agency which has been approved by SBE. Currently, the following agencies have been approved:
  - ◊ Association of Classical and Christian Schools, Inc.
  - ◊ Association of Christian Schools International (ACSI)

<sup>5</sup> There were 389 Category I, II, or III schools statewide for the 2018-19 school year.

- ◇ Christian Schools International Accreditation Services
- ◇ Diocese of Nashville Catholic Schools Office
- ◇ Mississippi Association of Independent Schools
- ◇ National Lutheran School Accreditation
- ◇ Southern Union Conference of Seventh-day Adventists
- ◇ Tennessee Association of Christian Schools (TACS)
- ◇ Tennessee Association of Non-Public Academic Schools (TANAS)
- **Category III:** schools that are regionally accredited (by, for example, the Southern Association of Colleges and Schools)

### **What happens if a student exits the ESA program?**

Students may return to their zoned school district at any time after enrolling in the program. Any remaining funds in a student’s ESA must be returned to the State Treasurer to be placed in the BEP trust fund.

### **Do students participating in the ESA have to take TN Ready?**

Schools that accept ESA students must administer the Tennessee Comprehensive Assessment Program (TCAP), also known as TN Ready tests, for math and English language arts in grades 3-11 each year. If a student is not enrolled full time in a participating school, the parent (or eligible student over 18) is responsible for ensuring the student is administered the tests.

Data from the TCAP tests will be used to determine student achievement growth through the Tennessee Value-Added Assessment System (TVAAS) for private schools participating in the ESA program.

### **What accountability measures are in place to prevent fraud and measure student success?**

TDOE is required to maintain separate ESAs for each participating student and verify that the uses of the funds are permitted by Public Chapter 506. TDOE must also institute fraud protection measures, and some purchases, such as tuition and fees, computer hardware or other technological devices, and tutoring services, must be preapproved by TDOE. Participating schools, providers, and eligible postsecondary institutions must provide parents with receipts for all expenses paid using ESA funds. TDOE may suspend or terminate the participation of a student, school, or provider for failure to comply with any of the measures outlined in the law. Any person that knowingly uses ESA funds with the intent to defraud the program may be subject to criminal prosecution.

The ESA program is subject to annual audit by the Comptroller of the Treasury. The audit may include a sample of ESAs to evaluate the eligibility of the participating students, the funds deposited in the ESAs, and whether ESA funds are being used for authorized expenditures. The audit may also include an analysis of TDOE’s ESA monitoring process and the sufficiency of the department’s fraud protection measures.

The Comptroller’s Office of Research and Education Accountability (OREA) is required to evaluate the success of the ESA program after the third year in which the program enrolls participating students and every year thereafter.



**Office of Research and Education Accountability**

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