



Hot TOPIC

July 2023

Alert to Special Education Directors and Program Administrators: Individuals with Disabilities Education Act (IDEA) and Empowerment Scholarship Account (ESA) Evaluations

The Arizona Department of Education, Exceptional Student Services (ADE/ESS) has received numerous questions about Empowerment Scholarship Accounts (ESA) evaluations. The purpose of this *Hot Topic* is to help to highlight the differences between evaluations specified in federal and state special education regulations and ESA evaluations outlined in state regulations. To understand the differences between special education and ESA evaluations, it is necessary to review the legal requirements underpinning both types and the points at which evaluations could occur.

IDEA Evaluations

The Individuals with Disabilities Education Act (IDEA) requires public education agencies (PEAs) to locate, identify, and evaluate all children with disabilities, aged birth through 21, located within their boundaries of responsibility who are in need of early intervention or special education services ([IDEA C.F.R. 34 § 300.111\(a\)](#), [Arizona Administrative Code \(AAC\) R7-2-401\(C—E\)](#)). This "Child Find" activity includes children with disabilities who are attending private schools and those who are homeschooled ([AAC R7-2-401\(D\)\(1\)](#)). Evaluations obtained as part of Child Find and reevaluation activities may result in determinations of eligibility for special education under the IDEA.

ESA Evaluations

A child determined to be eligible under the IDEA and withdrawn from public school may enter into an ESA contract with the ADE as a "child with a disability." The determination of "child with a disability" for ESA purposes is dependent upon any of the following being provided to the ADE/ESA program: special education documentation obtained by a PEA for IDEA purposes (Multidisciplinary Evaluation Team report or Individualized Education Program (IEP)); Section 504 documentation obtained by a PEA for Office for Civil Rights (OCR) purposes; or an independent educational evaluation obtained for ESA purposes ([ARS § 15-2403](#)).

An ESA "Child with a Disability" and the IDEA

It is important to note that the term "child with a disability" used for ESA purposes is not necessarily equivalent to a child with a disability who is eligible for special education under the IDEA. As described above, a student can be deemed a "child with a disability" for ESA purposes through multiple paths, including non-IDEA processes. Additionally, when a parent enters into an ESA contract with ADE, they agree to release the PEA from most obligations to educate the

ESA student. A child with a disability who participates in the ESA program is not publicly enrolled and is viewed as a parentally privately placed or homeschooled child under the IDEA. Therefore, there is no individual right to receive some or all of the special education and related services the child would receive if enrolled in a public school ([34 C.F.R. § 300.137\(a\)](#)). However, under the IDEA, if the ESA recipient's parent or guardian submits a written request for evaluation, then the PEA still retains its responsibility to either evaluate a student for special education under Child Find or provide prior written notice refusing to conduct the evaluation ([AAC R7-2-401\(E\)\(4\)](#)).

Independent Educational Evaluations (IEEs)

The term "independent educational evaluations" is used in federal and state special education regulations and ESA state regulations. Although IDEA and ESA both use the terminology of IEE, this term has a different purpose, criteria, and requirements, depending on a child's enrollment and legal context. Please note that IDEA IEEs should not be conflated with IEEs used for ESA purposes. The differences between the two IEE types are described below.

IDEA IEEs

IEEs related to special education are outlined in the IDEA ([CFR 34 § 300.502](#)) and Arizona State Board Rules ([AAC R7-2-401\(B\)\(9\)](#) and [AAC R7-2-401\(E\)\(6\)](#)). Per federal and state regulations, parents of children evaluated for special education under the IDEA have a right to request an IEE if they disagree with the results of the PEA's evaluation. This IDEA IEE is at public expense and conducted by a qualified examiner not employed by the PEA responsible for the child's education. PEAs are required to maintain policies and procedures that, among other things, explain how a parent can obtain an IEE if the parent disagrees with an evaluation conducted by the PEA.

ESA IEEs

There are two times at which IEEs for ESA purposes may be sought for use in the ESA program. The first point is when a child exits the public school system and enters into an ESA contract with ADE. ESA state regulations articulate that an independent third party may determine that a child has a disability for ESA purposes ([AAC R7-2-1505\(B\)](#); [ARS § 15-2401\(7\)](#)). This qualification by an independent third party through an IEE for ESA purposes is one of the mechanisms by which a student can enter the ESA program as a "child with a disability." No ESA funding is available to a parent for this type of initial evaluation, and parents generally request evaluations through IDEA Child Find for this purpose. Costs related to evaluations conducted for the purpose of IDEA Child Find and/or reevaluation **are allowable expenses in the IDEA Consolidated grant**, whether or not the parent intends to enroll the child in a PEA.

The second point is when a student is already participating in the ESA program as a "child with a disability," but a parent wishes to obtain an evaluation for ESA purposes to update a child's disability category. This type of reclassification can allow children with certain categories of eligibility in the ESA program to utilize ESA program monies for different educational therapies and services. ESA statutes ([ARS § 15-2043\(J\)](#)) describe a parent's right to an independent third-party review to determine if a qualified ESA student is eligible to receive educational therapies and services as outlined in [ARS § 15-2402](#). A qualified examiner must conduct IEEs for ESA purposes. [ARS § 15-2403\(J\)\(2\)](#) describes which licensed physicians, psychiatrists, or

psychologists are appropriate providers. Parents whose children participate in the ESA program can request a reevaluation from a PEA to update their child's ESA disability category, or they can seek a private IEE for ESA purposes. The ADE/ESA program is currently seeking vendors to provide these private IEEs for ESA purposes. Parents may seek and pay for IEEs for ESA purposes independent of a PEA when a vendor list is developed. Costs associated with evaluations conducted solely to update a child's disability category in the ESA program (when the existing evaluation is based on IDEA regulations and is still current) or to provide documentation that articulates additional educational therapies and services a student may utilize in the ESA program **may not be allowable expenses** in the IDEA Consolidated grant.

Below is a chart identifying the main differences between IDEA and ESA evaluations.

	IDEA	ESA
Evaluation Purpose	<ul style="list-style-type: none"> Determination of eligibility for special education under the IDEA 	<ul style="list-style-type: none"> Determine if an ESA student is a "child with a disability" as outlined in ARS § 15-2401 Determine if a qualified ESA student outlined in ARS § 15-2402 is eligible to receive educational therapies and services
Legal Citations	<ul style="list-style-type: none"> IDEA C.F.R. 34 § 300.111(a) AAC R7-2-401(C—E) 	<ul style="list-style-type: none"> ARS § 15-2401, ARS § 15-2402, & ARS § 15-2403 AAC R7-2-1501—1511
IEE	<ul style="list-style-type: none"> Right to a psychoeducational evaluation afforded to a parent who disagrees with the PEA's special education evaluation of their child, provided at public expense 	<ul style="list-style-type: none"> Evaluation sought by a parent for ESA purposes to either determine eligibility as a "child with a disability" in the ESA program or to reclassify a child's ESA disability category to gain access to certain educational therapies and services
Questions to Consider When Talking to Families	<ul style="list-style-type: none"> Has your PEA conducted a special education evaluation with which the parent disagrees? Is the parent requesting an IEE because they disagree with the outcome of the evaluation conducted by the PEA? Is your PEA conducting an evaluation that will provide a report consistent with agency protocols (e.g., a Multidisciplinary Evaluation Team report with all required components)? 	<ul style="list-style-type: none"> Is the child attending your PEA, or are they participating in the ESA program and living within your district boundaries? Is the child applying for/participating in the ESA program? Is the purpose of the parent's evaluation request to determine the type of educational therapies and services the child can access through the ESA program?

	IDEA	ESA
Funding	<ul style="list-style-type: none"> Child Find, reevaluations, and IEEs conducted for IDEA purposes are allowable expenses in the IDEA Consolidated grant, whether or not the parent intends to enroll the child in a PEA 	<ul style="list-style-type: none"> Child Find evaluations conducted by a PEA that can also be used to determine eligibility as a "child with a disability" for ESA purposes are allowable expenses in the IDEA Consolidated grant, whether or not the parent intends to enroll the child in a PEA Evaluations conducted for the sole purpose of updating a child's disability category in the ESA program to access certain educational therapies and services may not be allowable expenses in the IDEA Consolidated grant
IEE Evaluator Criteria	<ul style="list-style-type: none"> Arizona Qualified Professionals List 	<ul style="list-style-type: none"> Independent third party; must be a qualified examiner as defined by ARS § 15-2403: licensed physician, psychiatrist, or psychologist
Oversight and Contact Information	<ul style="list-style-type: none"> ADE/ESS Program Support and Monitoring (PSM) Specialist for assigned PEA 	<ul style="list-style-type: none"> ADE/ESA Staff: 602-364-1969 Arizona State Board of Education