

# School Choice Programs Need a Firewall for Homeschoolers

BY COLLEEN HRONCICH

When Florida's school choice expansion, House Bill 1, was introduced in January 2023, one of its goals was to allow more homeschoolers to participate in the education savings account (ESA) program.<sup>1</sup> But many homeschoolers and homeschool advocacy groups balked at the proposal.<sup>2</sup> Having worked hard to achieve independence, they were loath to be linked to government funding. Even if the program were optional, they feared that associated regulations would eventually extend to traditional homeschoolers—perhaps due to confusion about the difference between the two groups, perhaps to simplify things for regulators: “We want home education programs to be treated separately and not be confused with families that choose to take the education savings account,” said T. J. Schmidt, senior counsel for the Home School Legal Defense Association (HSLDA).<sup>3</sup> In the end, the bill passed with new language that satisfied traditional homeschoolers by creating a new option for parents to educate their children at home: the Personalized Education Program

(PEP). Families who educate their children at home without taxpayer funds will continue to register as home education students with their local district superintendent. Families who want to customize their children's education with the ESA will register in a PEP with a scholarship organization.

While it's good that the homeschool groups were able to work with lawmakers to find a solution, the conflict over House Bill 1 could have been avoided. Several states have already used this type of language for their ESA programs. As states continue to enact and expand education savings accounts, it's crucial that policymakers craft bills in a way that maximizes freedom and minimizes roadblocks.

## HISTORY OF HOMESCHOOLING

There has been tension for years between the homeschooling community and school choice advocates. In the 1960s and 1970s, parents waged intense legal and legislative fights to secure the right to homeschool their children. Homeschooling was still illegal in Iowa, Michigan, and



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North Dakota as recently as 1989. Not surprisingly, many early homeschoolers, who had been fighting so hard for freedom from government to educate their children, wanted little to do with government funding and had a legitimate fear of the strings that would come attached to such funds.

It's easy to understand homeschoolers' fears when you consider the stipulations that can accompany school choice programs. For example, the Milwaukee Parental Choice Program, a private school voucher for Milwaukee residents who meet income guidelines, was launched in 1990. Originally it could be used only at secular schools, but religious schools were made eligible in 1995. Schools must agree to several restrictions in order to participate, such as accepting any voucher student who meets income eligibility and residency requirements, administering state tests to voucher recipients in certain grades, allowing students to opt out of religious instruction, and not charging additional tuition beyond the voucher amount for grades K–8.

While the rules vary significantly, there are now 25 voucher programs in 14 states, the District of Columbia, and Puerto Rico offering private school access to tens of thousands of students. As homeschooling has expanded and those legal fights have decreased, there have been calls for homeschool families to have similar access to state education funding. In 2011, Arizona lawmakers pioneered education savings accounts that can be used for a wide variety of educational expenses beyond tuition. With ESAs, parents can use state education funds for things like tutoring, curricula, and services for children with special needs, as well as full- or part-time tuition.

Many traditional homeschoolers remain skeptical of government funding through ESAs. The response of school choice advocates has typically been “just don't take the money.” But some homeschoolers fear these programs will hit all homeschoolers with new regulations, not just the ones who take the money. HSLDA president James Mason told the *Washington Examiner* earlier this year:

The problem for us as home school leaders in watching the trends over the years is that in the minds of many, if you are at home with your kids, the distinction about whether you get state money or not is irrelevant. State money invites scrutiny and invites regulation. When that comes, we think it will sweep in those who don't choose the money in addition to those who take the

money. So the threat is that all home schoolers, [if they] take the money or not, [will be] subject to increased regulation, reimposing needless barriers that we fought so hard to remove over the years for no reason other than some are taking public money.<sup>4</sup>

In response to homeschoolers' concerns, a new approach has emerged. In Arizona, New Hampshire, Utah, and West Virginia, homeschooling is one way to satisfy the compulsory education law, and using an ESA is a separate way. While parents can use ESAs to educate their children at home, they are not legally classified as homeschoolers; they are ESA recipients. This approach has helped mollify traditional homeschoolers and their advocacy groups, such as the HSLDA.

## A WIN-WIN

In 2011, Arizona launched the Empowerment Scholarship Account program, the first ESA in the nation. The next year the program was amended to ensure homeschoolers were distinct from ESA recipients who educate their children at home.<sup>5</sup> The amendment defined participation in the ESA program as a way to satisfy the state's compulsory education requirements. It also clarified that ESA recipients were not allowed to file affidavits to homeschool, even though they were allowed to educate their children at home. This approach offered an additional layer of protection for homeschoolers, ensuring that they wouldn't be caught up in any regulations aimed at ESA recipients.

ESA programs were adopted in Florida in 2014 and Tennessee in 2015, but neither state followed the Arizona model of creating a separation between ESA recipients and homeschoolers. The programs were very limited in scope, with a primary focus of serving children with special needs. Perhaps this narrowness prevented significant battles with homeschoolers.

Eventually Mike Donnelly, formerly senior counsel at the HSLDA and now vice president at the yes. every kid. foundation, learned about this approach to ESAs from Nevada homeschoolers and Robert Enlow, CEO of the school choice advocacy group EdChoice. The idea seemed to meet the homeschool community's need to be protected from regulatory threat while at the same time allowing other

advocates to move legislation that created more education opportunity for families. Donnelly says he “grabbed the idea and ran with it,” working to get language to that effect in ESA programs enacted in New Hampshire and West Virginia in 2021.<sup>6</sup>

Since each state’s compulsory education and homeschool laws are different, there isn’t a cut-and-paste solution that can be inserted into ESA legislation to create separate categories for homeschoolers and ESA recipients. But policymakers can examine the compulsory education requirements and homeschool provisions in their states to craft language that will work. The key is to specify that students who participate in the ESA cannot also be legally classified as homeschoolers, however the state defines them. Looking at how current ESA laws treat homeschoolers and ESA recipients who educate their children at home can be helpful as policymakers draft legislation.

In New Hampshire, the Education Freedom Account (EFA) law enacted in 2021 states that EFA students are not required to enroll full- or part-time in a school, which makes it clear that students can be educated at home. But the next sentence says, “A home education program pursuant to RSA 193-A:5 is terminated upon the commencement of a student’s participation in an EFA program.”<sup>7</sup> This sets up the distinction between home-educated students and EFA students.

West Virginia’s compulsory education statute already has a long list of exemptions, so lawmakers were able to add participation in the 2021 Hope Scholarship Program (the state’s ESA) as exemption (m). Families can use Hope Scholarships at participating private schools or to educate children at home using an “Individual Instructional Program.” This is a distinct category from traditional homeschoolers—those who are not using the Hope Scholarship—who fall under exemption (c) of the compulsory education law.<sup>8</sup>

The first six months of 2023 saw five new ESA programs and three ESA expansions passed throughout the country; Iowa was first out of the gate with the Students First ESA.<sup>9</sup> The state avoided the issue of homeschoolers altogether by limiting the ESA to students in private schools, but this approach means Iowans will miss out on the flexibility typically associated with ESAs.

In February, Utah enacted an \$8,000 universal ESA whose reach is limited only by a budget cap. The “Utah Fits All” scholarship language explains that “home-based

scholarship students” are distinct from homeschool students, who do not receive scholarships under the program.<sup>10</sup>

In the run-up to making Florida’s ESA universal, homeschoolers spoke out against language that didn’t ensure separation between them and ESA recipients.<sup>11</sup> Their concerns were heard, and the final bill created a new category for satisfying compulsory education requirements: “personalized education program.”<sup>12</sup> This new category is nearly identical to “home education program” in Florida law but is intended for students using the ESA.

There was a similar battle when Georgia lawmakers were debating an ESA in early 2023. Homeschoolers would have been eligible for the ESAs without a separate category to differentiate them. The Georgia Home Education Association urged homeschoolers to contact their lawmakers to remove homeschoolers from the program.<sup>13</sup> The bill ultimately failed, so it was a moot point, but having that upfront fight with homeschoolers probably didn’t help the bill’s chances.

Figuring out the best language is a bit more difficult in states that don’t recognize homeschoolers in statute, and advocates are still working through those issues.

## **MORE CHOICE WILL BENEFIT HOMESCHOOLERS**

The growth of homeschooling from a somewhat fringe movement during the 1970s and 1980s to a more widespread and socially accepted approach in recent decades has provided a strong foundation of flexible learning models. Co-ops, where parents educate one another’s children for low or no cost, have long been commonplace among homeschoolers. Similarly, for decades families have used tutoring centers, microschools (although not always with that name attached), and hybrid options.

The spread of ESAs—more states are adopting them, and programs are becoming more universal—isn’t just resulting in increased demand for more educational options. It’s also helped bring about a growth in supply through the efforts of education entrepreneurs.

Microschools, which typically educate children in small, multiage groups, are becoming more common. Some are independent entities, such as Colossal Academy in Florida.<sup>14</sup> Others are part of a larger network, such as Acton Academy, which now has more than 280 locations around the world.<sup>15</sup>

Hybrid schools, where students alternate days learning in person and at home, are also proliferating. Both micro-schools and hybrid schools are typically located in churches, community spaces, or commercial buildings. Whether or not they participate in ESA programs, homeschoolers will benefit from the growth of these more flexible learning options.

Jon England, education policy analyst at Utah’s Libertas Institute, says he’s seen an enormous uptick in inquiries from people interested in starting microschools or other educational entities since Utah passed its new ESA program.<sup>16</sup> Considering that the program doesn’t go into effect until fall 2024, this is encouraging news.

On the flip side, West Virginia homeschool mom Jamie Buckland notes that “policies introducing ESAs to a state create a tremendous amount of work on traditional home-school organizations, which are normally completely run by volunteers.”<sup>17</sup> Buckland founded WV Families United for Education (WVFUE) to help families understand their options in the wake of the Hope Scholarship. But funding an organization like this is complicated. When Florida’s ESA was made universal earlier this year, “choice navigators” were added as an eligible expense. The statutory definition of the choice navigator may currently be too narrow to include a group like WVFUE, but that concept could work with the right language.

## **CONTINUED VIGILANCE NEEDED**

The concerns of traditional homeschoolers are not unfounded. Buckland says it’s important to recognize the legitimacy of fears that ESA legislation for educating at home could lead to interference with traditional homeschoolers.<sup>18</sup> “We saw it right before our very eyes in WV this past session,” she points out, referring to legislation that would have removed the distinction between traditional homeschoolers and families using the ESA to educate their children at home.<sup>19</sup> While homeschoolers mobilized and were able to stop the changes from being implemented, the West Virginia experience points to the need for vigilance.

But realistically, homeschoolers—and private schoolers—need to be vigilant with or without school choice policies. The HSLDA ranks Massachusetts, New York, Pennsylvania, Rhode Island, and Vermont as high regulation states despite not having any school choice programs that homeschoolers can use.<sup>20</sup> Meanwhile, states such as Florida and Arizona, which allow ESAs to be used for education at home, are considered low regulation states.

As matters currently stand, there does not appear to be a connection between homeschool regulations and allowing families to use school choice funding for home education. New lawmakers and governors may change things in the future, of course, which is why homeschoolers need to remain engaged with or without school choice access.

## **MOVING FORWARD**

While ESAs have emerged as the most transformative school choice option in recent years, states continue to experiment with various approaches. For example, in May 2023 Oklahoma enacted a new universal Parental Choice Tax Credit program. Beginning in tax year 2024, parents and guardians will be able to receive tax credits for private school tuition or eligible homeschool expenses. The private school credits range from \$5,000 to \$7,500 per child, with lower income families receiving higher amounts. For homeschoolers, the tax credit cap is \$1,000 per child. The credits are refundable, which means families will receive them even if their income tax liability is less than the credit.

School choice is here to stay, so it’s important for homeschoolers to be engaged—and for policymakers to consider the impact programs will have on homeschoolers. Early and frequent conversations with homeschoolers as legislation is being drafted and amended will help. When well designed and executed, the spread of school choice programs can be quite beneficial to traditional homeschoolers and can help new families begin their home education journey.

## NOTES

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