



PROPOSED EDUCATION SAVINGS ACCOUNT RULES

The following are the Texas State Teachers Association's comments delivered to the Texas Comptroller of Public Accounts on the proposed rules for the Education Savings Account Program.

Virtual Operators

Section 16.404(a) outlines the requirements for approval of education service providers or vendors of educational products by the Comptroller, detailing that providers must be registered to do business in the state, must have the ability to comply with Texas taxing requirements, and properly make transactions and receive audits to serve participants. These rules lack any requirement for physical presence or employment of personnel located in Texas, allowing for the approval of solely out-of-state virtual education providers.

Rules may also allow for the approval of out-of-state for-profit charter management operators to provide educational services. While charter operators are required to operate as non-profits within the state of Texas, the proposed rules may allow for for-profit charters to provide educational services to Texas students virtually. The approval of virtual service providers allows for large amounts of ESA program funds to be spent on out-of-state entities. Rules should specify any requirement for in-state presence for ESA program approval, allowing for clarification on the acceptance of out-of-state virtual providers and charter operators.

Non-Discrimination Protections

Section 16.408(b) states that agencies and officials may not take actions that impose requirements that are contrary to the religious or institutional values of education service providers or limit providers' ability to freely determine the methods or curriculum to educate students and determine admissions and enrollment practices. As a publicly funded and operated program, rules should be added to prohibit program providers and vendors from discriminating against children based on their race, ethnicity, socioeconomic status, religious beliefs, language, or special education needs or a disability. Education providers receiving ESA funds should be required to adhere to state and federal non-discrimination laws.

Certified Educational Assistance Organizations Costs

Section 16.402 relating to certified education assistance organizations does not specify details for determining the cost of providing services delivered by certified education assistance organizations, the rules only state that organizations must comply with the ESA program requirements under Education Code, Chapter 29, Subchapter J. The Education Code directs the Comptroller not to disburse more than five percent of the total amount of money appropriated to the ESA program, but neither the code nor the proposed rules provide guidance to the Comptroller for determining the cost of services provided by organizations. This may allow organizations to inflate costs in order to receive the full five percent of appropriated ESA funds. Rules allowing the comptroller to fairly oversee costs will allow for efficient use of public funds.

Promotion of ESA Program

Texas Education Code, Chapter 29, Subchapter J, Section 29.3535 allows the Comptroller to engage in marketing, advertising, and other activities to promote the ESA program. The proposed rules do not outline the marketing of the program or who may be selected to receive marketing contracts for promotion, and whether certified educational assistance organizations or other educational providers may receive marketing contracts.

The marketing of the program should not promote specific education providers over others and should be fully transparent as to program standards for waiving special education rights, provider autonomy for student admission, and the need for prior private school admission before acceptance into the ESA program.

Collection of Data

The proposed rules do not address the Annual Report of the Collection and Reporting of Demographic Information requirements that direct the Comptroller, Texas Education Agency, and selected certified educational assistance organizations to produce statewide data and evaluation of the ESA program. The rules do not provide guidance on how key aspects of the Annual Report will be calculated, including to evaluate “the effect of the program on public and private school capacity and availability” or “the amount of cost savings accruing to the state as a result of the program.”

The rules should specify how demographic information will be collected and include methodologies that will be used to ensure that collected and reported data is accurate, comprehensive, and trustworthy.