



School Choice Finally Sticks in Texas: 5 Key Takeaways for Private School Leaders

Insights

5.29.25

At long last, school choice has come to Texas. A new state law will allow participating families in the state to utilize publicly funded education savings accounts to pay for private school tuition and other approved education-related expenses starting with the 2026-2027 school year. As private schools across the state begin assessing whether to participate in the program, we wanted to provide an overview of the program and important considerations for schools.

Overview of the School Choice Program Coming to Texas

Governor Greg Abbott signed a bill ([SB 2](#)) into law on May 3 that establishes an education savings account (ESA) program designed to provide families in the state with additional educational options to support the needs of their children by funding approved education-related expenses.

The new law, which takes effect September 1, permits the state to spend up to \$1 billion to fund the ESA program for the 2026-2027 school year. Once the \$1B cap expires in September 2027, lawmakers will determine a new budget and could potentially significantly increase spending for the program for future years.

Key Points on How the Program Works

The ESA program will be administered by the Texas Comptroller of Public Accounts and is expected to serve about 80,000 children statewide. Here a few key points on how the program works:

- **ESA Amounts.** Generally, each participant will receive roughly **\$10,000** for a school year. However, any child who is eligible to participate in a school district's special education program may receive a higher amount (**up to \$30,000**), and any child who is home-schooled may receive no more than \$2,000.
- **Education-Related Expenses.** ESA funds may be used only for approved education-related expenses incurred by a participating child at a preapproved education services provider or vendor of educational products. The new law approves a wide range of expenses, including, for example, private school tuition and fees, the purchase of required textbooks or uniforms, transportation costs, private tutorial services, or the cost of breakfast or lunch provided to a child during the school day by a private school.

- **Eligibility.** To participate in the ESA program, the child must be eligible to attend a Texas public school district or open-enrollment charter school (or be eligible to enroll in a public school's prekindergarten program), and the child's parents must prove that the child is a US citizen or national or was lawfully admitted into the country. No other initial eligibility conditions apply – even children who are already attending private schools or who come from families with high net worths will be eligible if they meet the criteria. However, if demand for the ESA program exceeds the program's funding capacity, applicants will be chosen through a lottery system and prioritized as explained in the section below.

Participant Prioritization

First, the new school choice law requires the total amount of money spent on ESA participants from high-income households to be capped at 20% of the total amount appropriated for the program for the school year. The cap aims to help ensure that students switching from non-private to private education will have priority over students who are already enrolled at private schools.

Further, if the number of ESA applicants exceeds the available positions in the program due to insufficient funding, positions will be filled by lottery of applicants, who will be approved in the order shown in the table below:

| ESA Program Participant Prioritization | | | |
|---|--|--|--|
| Priority Level | Exclusively for Children with Disabilities? | Household Total Annual Income Limits | |
| | | <i>Federal Poverty Level (FPL) Percentage</i> | <i>Total Annual Income (based on the 2025 FPL for a family of four)</i> |
| 1 | Yes | 500% | \$160,750 |
| 2 | No | 200% | \$64,300 |
| 3 | No | 201% to 499% | \$64,301 to \$160,749 |
| 4 | No | No Limit | No Limit |

5 Key Considerations for Heads of Schools and Boards of Trustees

Many private schools have been eagerly awaiting this day for some time while others are approaching the program more cautiously. At this stage, Heads of Schools and Boards of Trustees should begin considering whether to participate in Texas's new School Choice Program but definitive decisions are premature until rulemaking is complete, and a fully informed decision can be made. Your Fisher Phillips Education lawyer can assist with this process.

Here are five preliminary considerations for Heads of Schools and Boards of Trustees:

1. Accepting ESA students is voluntary.

Whether a private school takes part in the program is entirely voluntary – no school is required to accept ESA funds.

2. Participating in the program comes with conditions.

If your school wishes to participate in the ESA program, it will need to agree to certain requirements. You first would need to apply (and get approval from the state comptroller) to become an education service provider that may participate in the program, and then you would need to follow specific rules and procedures to continue participating in the program. For example, you would be required to abide by the program's quarterly disbursement schedule and administer norm-referenced test for students in grades 3-12.

In addition, the state will contract with private companies to, at least yearly, conduct audits of program accounts and participant eligibility data. Audits will include reviews of internal controls over program-related transactions and compliance with program requirements.

3. The full extent of those participation conditions is TBD.

The bill is currently in expedited rulemaking. In that process, the state comptroller will set additional rules and procedures for administering the program. In short, this is where the details and logistics of the program will be clarified – which may change your school's obligations under the program. Before you dive in, you will need to thoughtfully consider the program's rules and regulations, as well as the effect the program may have on your school community.

4. You will have protections for school autonomy – at least for now.

The new law states that receiving money from the ESA program does not make a school a recipient of federal financial assistance or a state actor. However, there is always the potential for updates to the program that add additional participation requirements on schools or future legislative action that impacts participating schools.

As of now, the law prohibits a state agency or state official from adopting a rule or taking other governmental action related to the ESA program that impedes school autonomy, such as limits or requirements contrary to a school's religious or institutional values; limiting a school from freely determining the methods or curriculum to educate students; or limiting a school from determining the admissions and enrollment practices, policies, and standards.

5. Participation might help – but not necessarily solve – enrollment challenges.

If your school participates in the ESA program, you may see an increase in the number of families applying who have never applied to or attended a private school before. You should therefore keep in mind that:

- These families may need additional support throughout the application process and as they adjust to private schools more generally.
- It will be important to assess student preparedness as they make the transition from public, charter, or homeschool to private school.
- You should not rely on your participation in the ESA program to solve enrollment challenges. It is anticipated that across the state, only 80,000 of Texas's approximately 5.5 million school-age children will be served by the program.

Conclusion

By understanding the ESA program's structure, prioritization, and participation requirements, private school administrators can decide whether to engage with the program and support participating families. Once rulemaking is complete, Fisher Phillips will host a webinar for private schools.

Please consult your Fisher Phillips attorney, the authors of this Insight, any attorney on our [Education Team](#), or any attorney in our [Texas offices](#) to obtain practical advice and guidance on how to navigate the ESA program. Please also make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

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