Independent Institute
POLICY REPORT

CUSTOMIZED LEARNING FOR CALIFORNIA

Helping K–12 Students Thrive with Education Savings Accounts

By Vicki E. Alger

Executive Summary

The taxpayer-funded public education system in California is broken. It costs residents nearly $66 billion dollars annually, resulting in an average per student cost of more than $12,000. In fact, K–12 education represents the single largest share of the state's entire general fund budget, nearly 43 percent.

Yet student achievement places California among the bottom five states in the nation in reading and math. Currently, nearly one out of five high school students does not graduate, and just 43 percent of those who do graduate meet California's four-year college course requirements.

The proven policy-path for dramatic improvements in student achievement is parental choice: giving parents the ability to choose the methods and means of their children's education, including the freedom to use education savings accounts, or ESAs.

The concept behind ESAs is simple. In the typical ESA program, parents who do not prefer a public school for their child simply withdraw him or her, and the state deposits most or all of what it would have spent into that child's ESA. Parents then receive a type of dedicated-use debit card to pay for authorized expenses including private school tuition, online courses, testing fees, tutoring, and special education therapies. Any leftover funds remain in the child's ESA for future education expenses, including college under some programs.

Today ESAs are helping more than 11,000 students in states with operational programs: Arizona, Florida, Mississippi, and Tennessee. And so far in 2017 at least 17 bills enacting or expanding ESA programs have been introduced in 13 states.

ESAs are popular, easy to use, fiscally responsible, and constitutional. Best of all, they empower parents to choose how, not just where, their children are educated, which customizes learning in ways that no one-size-fits-all system could ever match—no matter how lavishly funded.

This Independent Institute Policy Report discusses K–12 education options in Calfornia, explains the basic mechanics of ESAs, corrects misconceptions about ESAs, and outlines the features of a California ESA program that is privately funded through tax-credit contributions, much like tax-credit scholarship programs operate in other states across the country. The Appendix offers an elaboration of the fiscal impacts of the California ESA proposals and provides a comparison of ESAs programs in five states.

California's public school system, which largely rations education based on where a child's parents can afford to live, is a relic of a bygone era. Such a system cannot provide the customized preparation students need to succeed in a rapidly changing, increasingly competitive world. In contrast, ESAs would empower parents and guardians to personalize their child's education, and would foster an educational landscape that can quickly adapt to meet the diverse needs of students and their families.

Introduction

More than 60 years ago the late Nobel Prize-winning economist Milton Friedman published a radical idea: just because we fund schools through government doesn't mean politicians know how to run schools or what education is best for other people's children.

To improve American education for all students, Friedman argued that parents should decide which schools are best for their children, schools and teachers should be free to innovate, and public funding should follow students to schools of their parents' choice.[1] "Education spending will be most effective," Friedman explained, "if it relies on parental choice and private initiative—the building blocks of success throughout our society."[2]

Similar to Adam Smith, Thomas Paine, and John Stuart Mill, Friedman advocated a system of publicly funded vouchers because it would free parents to choose the schools they thought were best for their children, and schools would face competition to attract students and their associated funding.

Today private school parental choice in education not only includes publicly funded voucher scholarship programs, but also privately funded tax-credit scholarship programs, as well as personal-use tax credits and deductions to help offset out-of-pocket costs of private schooling, homeschooling, special education, and related expenses. Altogether these programs are helping more than 1.4 million students and their families.[3] Another 2.3 million students are currently homeschooled, and their numbers are growing by as much as 8 percent annually.[4]

Education savings accounts (ESAs) are the latest advance in educational choice, fostering an unprecedented level of personalized learning opportunities for students, customized by those who know and love them best: their parents.

Fully 62 percent of American voters support ESAs, and they are up to 40 percent more likely to vote for pro-ESA political candidates.[5]

The concept behind ESAs is also simple. Parents who do not prefer a public school for their child simply withdraw him or her, and the state deposits most or all of the base formula funding it would have spent into that child's ESA. School districts keep federal and other non-formula state and local funding. Parents receive a type of dedicated-use debit card to pay for authorized expenses including private school tuition, online courses, testing fees, tutoring, and special education therapies. Any leftover funds remain in the child's ESA for future education expenses, including college under some programs.

Moreover, ESAs are fiscally responsible. ESA funds are disbursed on a regular basis, quarterly under most programs, but only after parents submit expense reports with receipts for verification. Regular audits also help prevent misspending. If parents misuse funds, they will forfeit their child's ESA and must repay misused funds or face legal prosecution.

Today ESAs are helping more than 11,000 students in states with operational ESA programs: Arizona, Florida, Mississippi, and Tennessee.[6] Moreover, so far

Figure 1. Private & Home School Parental Choice by the Numbers

170,000 students participate in 26 voucher scholarship programs in 13 states and the District of Columbia.

256,784 students are helped through 21 tax-credit scholarship programs in 17 states.

Nearly 1 million families offset out-of-pocket educational expenses through nine personal use tax credit and deduction programs in nine states.

2.3 million students are currently homeschooled, and their numbers are growing by as much as 8 percent annually.

Sources: The Friedman Foundation for Educational Choice, the National Home Education Research Institute, and the U.S. Department of Education as of April 17, 2017.

in 2017 at least 17 bills introducing or expanding ESA programs have been introduced in 13 states, including North Carolina, which became the sixth state to enact an ESA program.[7] More than one-quarter of a million students are also being helped by 22 tax-credit scholarship programs in 18 states.[8] In the first half of 2017 alone, legislation in nine states was introduced to enact or expand tax-credit scholarship programs,[9] and Illinois became the eighteenth state to enact a tax-credit scholarship program in August 2017.

California is not among those states, but it could be. The following sections review efforts to enact parental choice in California and outline just some of the ways in which the state already sanctions the use of vouchers, tax credits, and ESAs.

K–12 Voucher Experiments in California

California's experimentation with vouchers spans nearly 50 years and underscores the fact that parental choice is popular among parents and classroom teachers.[10]

In 1968, a commission appointed by the California legislature attributed what it called "the sorry state of education" in low-income schools to "the monopolistic hold that the public schools have [on] poor and minority children."[11] The commission introduced the Self-Determination in Education Act of 1968, which would have given vouchers to low-income parents. Even though the measure was supported by over 79 percent of parents in Watts, the California Assembly never considered the bill.[12]

The following year an experimental voucher program was began. The Alum Rock School District in San Jose became the only participating district.[13] The program, which lasted from 1972–1977, was popular with teachers and parents alike. Not only did a majority of Alum Rock classroom teachers vote to participate in the program,[14] after just two years teachers had it written into their union contracts that the voucher program could not be dismantled without their approval.[15] By the third year of the program, three out of five Alum Rock students were using vouchers to attend mini-schools of their parents' choice. Even the *New York Times* concluded that the program "rates an 'A' on several counts," including "less absenteeism and vandalism, more variety in educational offerings, and more enthusiasm for school on all sides..."[16]

In spite of additional federal funding for participating school districts, opposition by the National Education Association (NEA) and the American Federation of Teachers (AFT) at the national and local levels was fierce.[17] To pacify opponents, various compromises were made to the original program design. Numerous regulatory barriers, mandates concerning teachers, and a lack of support from the California legislature prevented local-area private schools from participating.[18] Waning federal commitment combined with intensifying pressure from teachers unions, along with continued administrative resistance at the district level to fully implement the program, ultimately led to the voucher experiment's demise in 1977.[19]

While education reform in California largely focused on finance issues throughout the 1980s, three public school choice laws were passed in 1993 to help address the lack of educational options in response to an unsuccessful statewide voucher initiative, Proposition 174.[20] For the remainder of the 1990s, more than one dozen private school parental choice bills died in the state legislature.[21] Similarly, throughout the 2000s, another statewide voucher initiative was defeated, Proposition 38,[22] and more than one dozen additional private school parental choice bills died in the legislature, including voucher, tax-credit scholarship, and tax-credit deduction programs.[23]

Meanwhile, however, two prominent yet dissimilar California political leaders publicly endorsed K–12 education vouchers. In 2004, Fresno's Republican mayor, Alan Autry, announced his support for vouchers for the first time during his annual State of the City address: "If I retreated from my commitment to educating our kids and standing for and fighting for a quality education of every child, I would be in violation of that oath and should be removed from office."[24] Autry's inspiration was the Washington, D.C., Opportunity Scholarship Program, which began operating in 2004. Voting for this program was Democratic senator Dianne Feinstein, who said, "Based on the substantial amount of money pumped into the schools and the resultant test scores, I do not believe that money alone is going to solve the problem. This is why I believe the [District of Columbia] should be allowed to try this pilot particularly for the sake of its low-income students."[25]

As the following section shows, there's a distinct double-standard in California with regard to K–12 education vouchers given their widespread use.

The Widespread Use of Vouchers in California

Using public dollars for private providers is not an earthshattering idea—even for California. In 1975 Governor Jerry Brown signed a driver-education bill into law that used vouchers.[26] The following year the California Supreme Court issued its second decision in the *Serrano v. Priest* student-equity-funding case, instructing the state legislature that "tuition vouchers" would be an acceptable remedy to inequitable funding.[27]

Today, California sanctions the use of publicly funded vouchers for a variety of services, including housing and food assistance.[28] The use of vouchers at all levels of education is also widespread, something the California Teachers Association fails to mention in its various "fact sheets" and "talking points" opposing vouchers.[29]

The state currently spends nearly $3.7 billion in child care and preschool subsidies for some 434,000 children from low-income, working families.[30] Approximately three-quarters of infants and toddlers (ages birth to three) and one-quarter of preschoolers (ages three through five) attend voucher-based providers.[31] In 2016 Governor Brown proposed requiring the California Department of Education to disburse all child care funding directly to parents in the form of vouchers because, as the Association of California Administrators explains, "The voucher system allows for more flexibility within the home and provides parents less rigid working hours during the day (i.e. child care during a night or swing-shift)."[32]

In addition to funding child care and preschool education through vouchers, California also offers two child care and preschool tax credits. Around 180,000 tax filers use the Child Care and Dependent Tax Credit worth $516 each to help offset out-of-pocket costs. Taxpayers working for employers offering payroll deduction programs for child care expenses can also exclude up to $5,000 of income annually from their taxes through the Employee Child and Dependent Care Benefit Exclusion, which amounts to between $80 and $85 million in tax exclusions annually.[33]

De facto vouchers also abound in California at the K–12 level. When public school districts cannot provide the services special education students need, those students are educated at public expense by other public or private providers. This has been standard practice since the 1970s.[34] The state now spends approximately $3.8 billion on special education, with the federal government contributing an additional $1.3 billion.[35] Nearly 25,000 special education students statewide are currently using those funds to attend private schools and facilities to receive necessary educational programs and services not provided by their local district schools.[36]

Also, through the Education Technology K–12 Voucher Program more than 8,000 California public schools and districts are eligible for their share of nearly $12 billion, which is the latest disbursement of the $1.1 billion settlement of the antitrust claims of California consumers against Microsoft Corporation.[37]

Of course, higher education vouchers are commonplace and enjoy strong bi-partisan support. Currently, nearly 9 million college students nationwide are using nearly $31 billion in Federal Pell Grants to attend the colleges and universities of their choice, public and private, nonsectarian and religious alike. In fact, close to 812,000 California undergraduate students are using more than $4.1 billion in Federal Pell Grants to attend postsecondary institutions, including over 276,000 students who are using $1.1 billion in public funds to attend private and proprietary postsecondary institutions.[38]

California's Chafee Education and Training Voucher (ETV) program also supports current and former foster-care youth with vouchers worth up to $5,000 annually for career and technical training or college courses at public, private, or independent postsecondary institutions in or out of state.[39] State spending for this program is now $9 million, a 50 percent increase above 2016 levels, plus an additional $5.6 million in federal funding. Altogether, this voucher program helps an estimated 4,500 students annually.[40]

It is therefore sadly ironic that although many current California undergraduate students in a few years will likely graduate and become parents themselves, they will largely be restricted from using public dollars to send their own children to the elementary, middle, and high school programs of their choice—until, of course, those children turn 18, when they too will be allowed to use public funds for their personal higher education choices.

There is no good reason for this state of affairs, particularly given the current condition of K–12 public education in California.

California's Education System Is Broken

California is an innovator in virtually every major public policy area except one: K–12 education. For decades the prevailing strategy has been to "reform" the government-run schooling infrastructure with a fixation on more: more money, more government control, and more regulation masquerading as accountability—but not more educational options for parents. Educational choice in California is largely limited to public district and charter schools. There are no nonpublic school choice programs, online learning options are constrained, and homeschooling is not expressly protected. The status quo is highly system-centric, with district public schools largely dictating public policy.

The result of this virtual monopoly over the K–12 system is that education in California is expensive and ineffective.

The taxpayer-funded public education system in California costs residents nearly $66 billion dollars annually, resulting in an average per student cost of more than $12,000.[41] In fact, K–12 education represents the single largest share of the state's entire general fund budget, nearly 43 percent.[42]

Yet student achievement places California among the bottom five states in the nation in reading and math.[43] Currently, nearly one out of five high school students do not graduate, and just 43 percent of those who do graduate meet California four-year college course requirements.[44] A closer look at student achievement in California reveals that:

- Fewer than half of all non-low-income eigth graders are proficient in math and reading, 45 percent and 43 percent.[45]
- Fewer than one in five low-income eigth graders are proficient in math and reading, 18 percent and 16 percent.[46]
- Nearly 20 percent of all high schoolers do not graduate, increasing to almost 25 percent for economically disadvantaged students.[47]
- Approximately three-fourths of all entering community college freshmen require remediation.[48]
- Fully 41 percent of first-year freshmen entering the California State University system needed remediation.[49]
- Remediation rates vary by University of California campus from 8 percent to 64 percent.[50]
- The total estimated cost to California students, schools, and society of inadequate education resulting in the need for remediation amounts to as much as $13.9 billion annually.[51]

Such poor results are unacceptable and unsustainable for the nation's most populous state.

In response, Governor Brown's 2015 budget included a one-time allocation of $60 billion to improve basic skills and another $30 billion on separate basic skills programs. An ongoing increase of $30 billion for basic skills higher education was also recommended for 2016.[52] These expenditures are in addition to the tens of billions of dollars already spent annually on elementary and secondary education in California.[53]

Giving parents choice regarding the methods and means of their child's education is a proven policy path for dramatic improvements in student achievement. Yet compared to the innovations being enacted throughout the rest of the country, California remains stuck in a bygone era of top-down, one-size-fits-all schooling.

California Education Options

Nationwide the number of students participating in private school parental choice programs has doubled in the past five years.[54] Today there are 61 private parental school choice programs in 30 states and the District of Columbia, helping more than 1.4 million students and families. Specifically, there are:

- 26 publicly funded voucher programs in 14 states
- 21 privately financed tax-credit scholarship programs in 17 states
- Nine individual tax credit and deduction programs in nine states
- Five education savings account, or ESA, programs in five states.[55]

In stark contrast, California is among the shrinking minority of states that do not extend K–12 education options to nonpublic schools.

Currently, about one out of every 11 California public school students attends a public charter school.[56] Moreover, California leads the nation for having the most public charter schools, 1,253; however, it also has a staggering student waiting list of 158,000 students.[57]

The Districts of Choice program allows students to transfer outside of their resident school districts to participating choice districts without their home districts' approval.[58] The program has been reauthorized five times since it was first enacted in 1993, and in June 2017 the program was extended for an additional five years. Of California's 1,025 school districts, just 47 have opted to be Districts of Choice, about 5 percent, and those districts enroll 10,000 students, 0.2 percent of state enrollment. The Legislative Analyst's Office estimates that between one-fourth to one-third of all choice districts are oversubscribed and therefore must hold lotteries for available openings.[59] Not only is the program popular, with a 90 percent satisfaction level from participating parents, it serves a diverse array of students, students' home districts have become more responsive and innovative, and student achievement in both home districts and districts of choice has improved.[60] For these and other reasons the Legislative Analyst's Office recommends expanding the program.[61]

Other efforts in recent years to expand public school parental choice have also been stymied, including plans that would allow students to transfer out of unsafe schools.[62] In 2010, however, the state enacted the landmark Parent Empowerment Act, also referred to as parent trigger.[63] Under the law, failing public schools must change their governance structure, including turning it over to a charter school operator, if a majority of parents petition for it. The measure was fiercely opposed by teacher's unions, including the California Teachers Association,[64] the state's largest union, as well as the California Federation of Teachers. In fact, CFT President Marty Hittelman called the parent trigger "the lynch mob provision" and remained unapologetic amidst the firestorm of controversy that ensued.[65] To date, however, the parent trigger law has been used successfully in only a handful of instances, leaving students trapped in schools that are not working for them.[66] Consequently, district public school options in California are still largely rationed based on where families can afford to live.[67]

This practice has a devastating impact on parents and students, like second-grader Vivian, who had been attending the Orinda Union School District in the neighborhood where her mother Maria works five days a week. This affluent East San Francisco Bay Area district hired a private investigator and determined that Vivian did not live in the district.[68] Although the district ultimately reversed its decision to expel Vivian, this is not an isolated event in California. School officials in Beverly Hills, for example, report that they contend with enrollment fraud cases monthly and voted to impose fines of up to $14,000 per year on parents who live outside the attendance zone but enroll their children.[69]

Rationing quality education by zip codes perpetuates a pernicious cycle of ever-increasing home prices, which further gentrifies California public schools and puts affordable housing in decent neighborhoods even further out of reach of many Californians.[70] Parental choice in general reverses this trend by freeing educational options from geographical constraints. Publicly funded vouchers and privately funded tax-credit scholarships empower parents to choose where their children go to school. ESAs go even further, by putting parents directly in charge of their children's education funding, which means they decide not only where their children are educated, but how their children are educated as well. This is because when parents can pay for services from a variety of education providers, they have more options to customize their children's education.

The following section describes the overall mechanics of how current ESA programs work.

Basic Mechanics of ESAs

Though all ESAs operate similarly, each state's program is unique. They may differ regarding student eligibility criteria, funding levels, and various operational features. (See Table 4 for a comparison of state ESA programs.) In general, parents who do not prefer a public school education for their (ESA-eligible) child simply inform their state education agency. They sign a contract promising not to enroll their child in a public school as long they are using an ESA, and the state deposits at least 90 percent of the base formula funding it would have spent into that child's ESA instead. Under ESA programs in Arizona, Tennessee, and Nevada regular deposits are made throughout the school year, and parents make education-related purchases with dedicated-use debit cards.

Florida parents of special education students apply to one of the two nonprofit scholarship-funding organizations authorized to oversee the state's ESA program and inform their local public school that their child will be participating in the ESA program instead. The nonprofit then deposits an amount worth up to 100 percent of the eligible value, which averages around $10,000, but amounts are prorated depending on the quarter a student receives an award during the school year, ranging from 100 percent in September to 25 percent in April.[71] The two Florida nonprofits overseeing the ESA program have similar procedures for participating families. One issues unique identification cards for parents to access their child's ESA account and submit quarterly preauthorized payments and expense claims.[72] The other authorizes debit transfers for pre-approved purchases.[73] Mississippi's ESA program also transfers reimbursements for authorized education purchases on a quarterly basis.[74] If parents prefer, quarterly payments can be made directly to service providers. With such approaches, it is important to have policies in place, as one Florida nonprofit does, to assist low- and moderate-income families who cannot afford upfront, out-of-pocket expenses.

All ESA programs specify allowable education expenses. In addition to private school tuition, ESA funds can be used for textbooks, online courses, supplemental curricula, tutoring, testing fees, and special education therapies. Such freedom enables parents to customize their children's learning to unprecedented levels. Unused funds roll over from one year to the next for future education expenses, including college, under ESA programs in Arizona, Florida, and Tennessee.

ESA programs also require regular expense reporting and verification monthly under Arizona's newly enacted universal program and quarterly under all other ESA programs. Regular audits by designated government agencies are also required. If fraud is detected, the ESA account is frozen while the matter is investigated. If fraud has occurred, parents must repay the funds, or face legal prosecution, and their children are barred from using ESAs.

The following sections address the leading myths against parental choice programs that apply to ESAs, which are largely perpetuated by the California Teachers Association and its parent organization the National Education Association.[75]

Five Myths About Parental Choice and ESAs

MYTH: Parental Choice Doesn't Improve Student Achievement

FACT: Parental Choice Works

Both the CTA and the NEA claim there's no connection between vouchers and gains in student achievement.[76]

In reality, empirical research spanning decades consistently shows that parental choice improves academic outcomes of participating students, most of whom are disadvantaged.[77] Of the 18 "gold standard" random assignment studies to date, 14 of them find that school choice programs led to better student outcomes for some or all participating students (including improved reading and math performance, higher high school graduation rates, higher college attendance rates, and higher college graduation rates than their peers who do not use scholarships). Two studies found no effect from school choice program participation. However, one of those studies was subsequently discredited for its unscientific methodology. Upon re-analysis using scientifically sound methodologies, researchers from Harvard University documented statistically significant improvements in student achievement. The only studies to date finding a negative impact on student achievement relate to Louisiana's Scholarship Program. Researchers believe that elements of this program's design are responsible for these idiosyncratic results.[78]

Parental choice programs also introduce competition for students and their associated funding putting powerful pressure on public schools to improve, thereby benefitting public school students as well.

In fact, 31 out of 33 empirical studies show positive impacts for public schools and students from competition, including improved reading and math achievement. One study found no effect, and the remaining study found a negative effect, although the authors admit they cannot explain why their results differ from all other studies finding positive results.[79] Researchers from Columbia University's Teachers College also reviewed more than 200 scientific analyses and concluded that competition benefits public schools "across all outcomes," including higher student achievement, graduation rates, efficiency, teacher salaries, and smaller class sizes.[80]

To put such results into perspective, simply letting parents pick their children's schools yields the same math improvement as increasing per-pupil funding by nearly $3,600 or raising median household income by almost $9,300.[81]

By expanding the realm of parents' education choices beyond this school or that, ESAs maximize the positive effects of existing voucher and tax-credit scholarship programs, because a greater number and variety of education providers can compete to meet children's unique educational needs.

MYTH: Parental Choice Programs Aren't Accountable

FACT: ESAs Are Fiscally Responsible

Both the CTA and the NEA insist parental choice programs lack accountability for how public funds are used.[82]

In reality, ESAs offer greater accountability. As Friedman noted decades ago, we make better choices when we're spending our own hard-earned money. Thus, the more we avoid third-party payer schemes, the more sensitive we are to prices, costs, and most important, value. ESAs go a long way toward achieving that goal by putting parents directly in charge of their children's education funding and accounting for every expenditure—down to the last penny monthly (Arizona) or quarterly before additional funds are disbursed.

By design only certain state funds finance ESAs. Public schools retain the additional local, other state, and federal funds associated with ESA students they no longer enroll. Thus, even if parents spent all of their children's ESAs each year, the state would still realize a savings. For example, an official analysis of Arizona's phased-in universal ESA program estimated that the annual savings to the state general fund would more than double from $1.6 million in fiscal year 2018 to $3.4 million in fiscal year 2021.[83]

Additionally, ESA programs have built-in transparency and accountability requirements that most public school finance systems would struggle to meet, starting with providing not just current-year reporting, but also monthly or quarterly reporting that is actually comprehensible. Today, most states' public school finance systems make sense to almost no one except a relative handful of seasoned experts capable of navigating the complexities of prior-year budgeting and byzantine formulas. Thus, the simplicity and transparency of ESAs are significant advantages, especially because K–12 education spending typically represents the largest share of states' general fund budgets.[84]

There is growing recognition that a student-centered funding approach would serve children far better and streamline California's bureaucratic public school financing scheme.[85] Because ESAs are a student-centered finance approach instead of a system-centered one, reporting requirements are about as challenging as balancing the family checkbook. Participating parents must submit regular expense reports, with supporting documentation, to the agencies or organizations overseeing the programs. They are also required to abide by clearly defined parental responsibilities. Administering agencies are also required to conduct quarterly, annual, and/or random account audits themselves or by independent, licensed public accounting agencies.

Administering agencies must also ensure all prior ESA expenses are legitimate before disbursing subsequent funds. Parents who do not comply forfeit their child's ESA. Arizona's program, for example, has a zero-tolerance policy for misspending. ESA accounts are immediately frozen if there is any suspicion of misspending. If substantiated, parents are removed from the program, and they must repay misspent funds or face legal prosecution.[86] Programs in other states have similar sanctions for ESA misspending or fraud.

In addition to their structural program accountability, ESAs incentivize responsible stewardship and fiscal discipline. Unlike many government agency accounting schemes that encourage use-it-or-lose-it spending sprees near the end of each fiscal year, all existing ESA programs allow parents to roll over unused funds from one year to the next. This feature gives parents powerful motivation to find the best-quality programs at the best prices and conserve leftover funds. For example, more than $670,000 in total Arizona ESA funds were left over at the end of the program's first fiscal year alone.[87] This savings is even more significant considering that ESAs at the time were limited to students with disabilities, whose special needs required more costly therapies and services.

Programs in Arizona, Florida, and Tennessee maximize this value proposition by allowing parents in those states to save unused funds for even more distant education expenses, such as college tuition.

MYTH: Choice Programs Don't Give Parents Real Options
FACT: ESAs Offer Unlimited Choices

The CTA and the NEA would have us believe that private schools are highly selective and discriminatory in their admissions practices. Consequently, even if parents wanted to exercise school choice, they couldn't. In contrast, the CTA and the NEA argue that public schools must take all comers.[88]

This claim is patently absurd on its face.

Not only can California public schools turn away any student who doesn't live within their attendance boundaries, many districts prosecute the parents who try to cross them.

The reality is, selective private schools are the exception rather than the rule. Much of the research conducted on private schools focuses on Catholic schools, which represent about half of total private school enrollments nationwide, around two-thirds of all private elementary enrollments, nearly three-fourths of all high school enrollments, and less than one-tenth of enrollments in combined K–12 schools.[89]

Contrary to the claims of parental choice opponents, research conducted for the U.S. Department of Education shows that nationwide seven out of 10 Catholic schools accept 90 percent or more of student applicants, along with half of all other religiously affiliated private schools. Among nonsectarian private schools, however, around two in five accept most students. Moreover, U.S. Department of Education researchers found that private schools' "tuition rate is inversely related to [their] admissions rate, with 73 percent of low-tuition schools accepting 90 percent or more of applicants, compared with only six percent of high-tuition schools."[90] Research published by Harvard University finds that "the school does not operate as the principal selection mechanism; the real control rests with the students and their families through the decision to apply for admission."[91]

It is also worth noting that significant proportions of public school teachers choose private schools for their own children, including those in California.

Back in 1993 as the CTA was opposing Proposition 174, a statewide voucher initiative, a survey released by the measure's supporters found that the percentage of California public schools teachers who send their children to private schools was almost twice as high as the state average, 18 percent compared to 9.7 percent.[92] Meanwhile, then-NEA President Keith Geiger acknowledged during an interview on ABC's "This Week With David Brinkley" that around 40 percent of public school teachers in urban areas nationwide send their school aged children to private schools.[93]

A few years later the CTA opposed another statewide voucher initiative, Proposition 38, claiming that allowing private school choice would harm—even destroy—public schools.[94] California State Senator Ray. Haynes (R-Riverside) gave the CTA an opportunity to practice what it preaches by introducing legislation in early 2001 requiring public school teachers to send their own children to public schools.[95] Haynes' bill closely resembled a longstanding resolution by the CTA's parent organization, the NEA, which states, "The Association believes that its members should support public education by sending their children to public educational institutions."[96] Yet CTA spokesman Mike Myslinski expressed outrage, claiming the state can't "tell people where to send their children to school."[97] His response was likely fueled, at least in part, by a CTA poll documenting that one-third of its members with school-age children sent them to private schools.[98]

Another analysis used during the voucher debates at this time found that nearly 14 percent of California public school teachers sent their children to private schools on average.[99] The percentages of public school teachers enrolling their children in private schools more than doubled in Oakland (28.1 percent), Los Angeles (30 percent), and San Francisco (37 percent).[100] Such statistics suggest that private schools in California are both accessible and affordable.

Likewise, parents nationwide who are teachers are more likely than non-teacher parents to send their school age children to private schools, 20 percent compared to 13 percent.[101] Not only do about one in five teachers with school-age children use private schools, 28 percent of them have enrolled their children in schools other than district public schools, including private schools (19 percent) and home schools (7 percent).[102]

ESAs, however, give parents options well beyond another school. In fact, they turn the prevailing one-size-fits-all wisdom of the schooling establishment on its head by personalizing learning to unprecedented levels.[103] Not only are parents more satisfied having greater options, students are thriving academically and socially for less than what it costs in a typical public school setting. The rapid expansion of ESA programs also shows that there is tremendous demand for more customization in education—not less.

Since 2011, Arizona has annually expanded its ESA program to include more students.[104] The program is so popular that participation has increased from about 130 students in 2011 to nearly 3,700 today.[105] In April 2017, Arizona amended the program by making all students in the state eligible to participate.[106] The program is being phased in over the next four school years, so that as of the 2020–21 school year any Arizona child who attends or is eligible to attend a K–12 public school is eligible to receive an ESA. The program is being hailed as "the most expansive choice program in the country."[107] According to Arizona Governor Doug Ducey:

> The quality of a child's education should not be determined by what neighborhood their parents can afford to live in…. Through Empowerment Scholarship Accounts, thousands of Arizona students have benefited from an education that's customized to their unique needs and circumstances. Today, we lead the nation again with [an expansion] that's fiscally responsible, improves accountability and transparency, and prioritizes low-income students and families. When parents have options, kids win.[108]

The freedom to choose not simply where but how their children are educated results in high parental satisfaction with ESAs. Fully 100 percent of participating Arizona parents report being satisfied with the program, with 71 percent reporting they are "very satisfied." In contrast, just 43 percent of parents reported any level of satisfaction with their children's previous public schools.[109]

ESAs are also expanding to students well beyond the Grand Canyon State. In 2014, Florida became the second state to adopt ESAs for special-needs students in 2014, and 1,700 students participated.[110] The 2014–15 school year had barely finished when it was reported that close to 2,000 ESA applications had already been submitted for the upcoming school year.[111] Meanwhile, in June 2015 funding for the program was tripled from $18 million to $54 million, and student eligibility was expanded to include a greater number of diagnosed disabilities.[112] The Florida legislature increased funding to $76.3 million for the 2016–17 school year, including $5.2 million in unspent funds that were rolled over from the previous year.[113]

Today, nearly 7,500 students are using Florida ESAs,[114] and the program is changing children's lives for the better, especially for Florida special-needs children such as Stacey's son Liam. Stacey reports that the freedom to use her young son's education funding for the tailored services he needs has sparked dramatic improvements in his learning. "Liam…is reading on grade level, which is huge…. It's helping his speech… and his overall communication has improved…. This program is just such a game-changer for parents."[115]

Like Florida, Mississippi and Tennessee enacted ESA programs for students with special needs in 2015 and 2016, respectively, and close to 500 students combined are now participating in these programs.[116] Parents in these states are also reporting that their states' ESA programs have been lifesavers for their children.

In Mississippi, fewer than one in four special-needs students graduates from high school. Noel and Marianne Machost of Flowood weren't about to let their two nieces add to those sorry statistics. The Machosts had already raised their own children when they obtained custody of Sara and Laura. Sarah was developmentally delayed by several grade levels and is going deaf. Laura is coping with behavioral issues stemming from being abused physically and mentally as a small child. The girls weren't being challenged academically at their previous public school because it was believed that the girls "just can't do it." Having ESAs for Sara and Laura allowed the Machosts to enroll the girls in private school. "The difference between what I have seen in public school and what I'm seeing at St. Richard's is night and day," Machost said. "At St. Richard's, they are pushing the kids to work harder, and the girls are loving it because they feel like they are accomplishing something." At $6,500 each, the girls' ESAs not only cover tuition, there are funds left over to pay for additional tutoring and therapies. "The girls are now planning to go to college. They weren't going on the path we were on, but they are now," Machost said.[117]

Tennessee parents are reporting similar turn-arounds for their children. Seven-year-old Kendall Smith has Down's Syndrome. Her mom Whitney explains that in addition to her regular schooling, Kendall requires special therapies, which are very costly. Tennessee's ESA allows parents like Whitney "to take that money and use it towards what we know as parents would benefit our child, and to put her in an atmosphere that's really conducive to her growth. Having a choice is very empowering…and gives you motivation to get out there and find better things [for your child]."[118]

Nevada was the first state to enact a universal ESA in 2015.[119] The program was supposed to commence in January 2016, but a legal challenge delayed its implementation. In September 2016 the Nevada Supreme Court ruled that the program is constitutional, but the legislature must change its financing mechanism to be in compliance with the state constitution.[120] The state Senate has introduced the conforming legislation, and the Treasurer's Office continued accepting applications throughout the enrollment period, which ended April 30, 2017.[121] In spite of the uncertainty facing the program, more than 8,500 ESA applications were submitted by the deadline,[122] and approximately two-thirds of them are from families earning less than $50,000 per year.[123] The state legislature failed to enact an alternate funding mechanism for the ESA program, but it did authorize a $20 million increase for its tax-credit Opportunity Scholarship Program to expand education options for low- and middle-income families.[124]

North Carolina enacted the sixth ESA program in 2017, which helps parents of students with special needs pay for the therapies, transportation, and other specialized services their children need. Eligible students can receive ESAs worth up to $9,000 beginning in the 2018–19 school year.[125]

If private schools and other education providers serving ESA students were as selective and discriminatory as the CTA and other opponents claim, parental choice programs would not be proliferating the way they are from coast to coast.

MYTH: The Public Doesn't Support Parental Choice
FACT: ESAs Are a Popular Form of Parental Choice

The CTA and the NEA insist that the public disapproves of vouchers and by implication parental choice programs in general.[126] Though their assertions are bold, neither group references any recent scientific surveys or polls.[127]

On the contrary, it is clear that more money without more options for parents and their children is an increasingly unpopular "reform" strategy in California. Today, significant numbers of children with special needs and circumstances struggle academically, including students with disabilities, from military families, the foster care system, and those who are in or assigned to failing public schools.[128] Students in or assigned to schools plagued by violence and chaotic classrooms also suffer academically.[129] The general public also appears to be fed up with the status quo.

A statewide survey conducted by the Public Policy Institute of California in April 2017 concluded that just 37 percent of likely California voters approve of Governor Jerry Brown's handling of the public school system, and only 35 percent approve of the job the state legislature is doing.[130] A growing number of Californians also want greater educational options for students. According to the PPIC survey two-thirds of California public school parents support "providing parents with tax-funded vouchers to send their children to any public, private, or parochial school they choose."[131] In fact, support for vouchers is strong across various socioeconomic and geographical groups. They are even strongly favored by Californians who give their local public schools high marks, according to PPIC:

> With majorities in favor [of vouchers] across regions, support is highest in the Central Valley (66%) and the Inland Empire (64%) followed by the San Francisco Bay Area (59%), Los Angeles (58%), and Orange County/San Diego (56%). Majorities across racial/ethnic groups are also in favor, though African Americans (73%) and Latinos (69%) are more likely than Asian Americans (56%) and whites (51%) to support vouchers… Among those who rate the quality of their local public schools as D or F, majorities favor vouchers (65%); support is similar among those who give their local schools higher grades (58% A, 57% B, 61% C).[132]

PPIC President and CEO Mark Baldassare explained that Californians "love their schools and they have high expectations for their school…. But many believe that the state isn't spending enough money on K–12 education and should also spend what it has more wisely. In this context, many are willing to raise their local taxes and consider a voucher system."[133]

There's a growing body of polling research that shows parental choice is very popular, especially ESAs. By putting parents in charge of their children's education funding, ESAs are empowering parents to customize their children's learning regardless of where they can afford to live. Recent opinion polls also confirm that parents and voters overwhelmingly support ESAs, and the expanded options they make possible.

A national poll released by the Democratic Beck Research firm in 2015 found that close to seven out of 10 likely voters support greater parental choice in education and believe competition improves public schools.[134] Another nationally representative poll released in 2015 indicates that ESAs are the most popular form of parental choice among Americans. Fully 62 percent of respondents favored ESAs compared to favorable ratings of 61 percent for voucher scholarships, 60 percent for tax-credit scholarships, and 53 percent for charter schools.[135]

Support for ESAs is also strong across nearly all demographics, especially adults ages 18 to 34 (75 percent). Importantly, support for ESAs was strong across the political spectrum, at 60 percent or higher for both Democratic and Democratic-leaning respondents as well as Republican and Republican-leaning respondents, and nearly two-thirds (65 percent) of Independents.[136] In fact, respondents who favor ESAs indicate that they are far more likely to vote for pro-ESA political candidates, ranging from 25 percent more likely among middle-income voters up to 40 percent more likely among voters ages 18 to 34.[137]

Finally, contrary to prevailing political wisdom that holds parental choice programs should be limited to certain subgroups of students, two out of three respondents believe that all students should be eligible for ESAs, not just select populations.[138]

For a growing majority of Americans, ESAs expand the kind of personalized learning that has long been available for higher education students but not for school-age children—like Austin Fox, who has Asperger's syndrome.

Before 2011, when Arizona enacted the country's first ESA program, Austin was a sophomore on the verge of dropping out of his public high school. "He wasn't receiving an education," explained Austin's mother Crystal. "He was just being moved on." All that changed once Arizona enacted ESAs.[139]

When Crystal told Austin that he could choose any school he wanted thanks to his ESA, Austin says he was "overjoyed." After touring a number of schools, Austin and his mother found one that he describes as "the perfect fit." Austin's teachers report that he came "out of his shell" and began thriving socially and academically. In fact, within just two years Austin's grades soared from a C average to straight As, he earned high ACT and SAT scores, and upon graduation he had multiple college offers. Crystal credits the ESA program with "saving Austin's life."[140]

There is no good reason California schoolchildren should be denied the educational opportunities a growing number of students like Austin now have thanks to ESA programs, especially since an increasing number of courts have upheld their constitutionality.

MYTH: Parental Choice Programs Are Illegal
FACT: ESAs Pass Constitutional Muster

The NEA claims that since the vast majority of private schools are faith-based, vouchers circumvent the Constitution.[141]

Regardless of how effective or popular parental choice programs are, opponents have tried to litigate them to death for more than two decades, insisting they violate bedrock constitutional principles. ESAs are no exception. The ink was barely dry on the enabling legislation when lawsuits to kill newly enacted ESA programs in Arizona,[142] Florida,[143] and Nevada[144] were filed by opponents, including teachers, school boards, and public school employee union members, as well as state ACLU affiliates and public school interest groups. Courts in those states, however, have consistently ruled that ESAs pass constitutional muster for several reasons.

First, ESAs are neutral with regard to religion because they make a variety of educational options available to parents, and they—not government—do the choosing. Second, ESAs do not run afoul of constitutional religious aid bans or Blaine Amendments because funds are for the benefit of students, not schools, and no ESA funds are ever directed by government to any particular education provider. Third, state courts have made clear that ESA students do not forfeit their rights to a free public education because they can re-enroll in public schools if they leave an ESA program. Fourth, funds placed in ESAs belong to parents and are not public funds. Finally, the courts have rejected out of hand the notion that parental choice through ESAs harms public schools, students, and teachers by draining money. In fact, if that were the case no family would ever be allowed to move away from their current neighborhood, much less out of state, since local public schools would lose students' associated funding in a subsequent budget year.

These state court rulings regarding ESAs reflect recent U.S. Supreme Court decisions upholding publicly funded voucher scholarships (*Zelman v. Simmons-Harris*, 2002) and privately funded tax-credit scholarships (*Arizona Christian School Tuition Organization v. Winn, 2011*).[145]

These legal rulings also hold important lessons for California policymakers interested in enacting ESAs, especially when it comes to designing a program that conforms to the specifics of the State Constitution.

California is one of 37 states with Blaine Amendments, constitutional provisions originating in the nineteenth century to ban public funding of Catholic, immigrant schools.[146] To varying degrees, these provisions now prohibit the use of public funds for K–12 education that is not provided by the state public school system. Currently, all five ESA programs are funded through government appropriations. This is not a problem for Tennessee, which does not have a Blaine Amendment. Moreover, to date no legal challenge has been filed against Mississippi's ESA program. Programs in Arizona, Florida, and Nevada, however, have all successfully weathered legal challenges to their publicly funded ESA programs by carefully crafting their funding mechanisms.

Nevada is currently revising its funding mechanism such that ESAs are funded through an appropriation that is distinct from public school appropriations. Florida's ESA is also funded through a separate appropriation for ESA scholarship awards that are managed and distributed by 501 (c)(3) nonprofit organizations. Under Arizona's ESA program, appropriated funds that would otherwise go to students' public schools are deposited into their ESA accounts instead once their applications have been approved. In each of these ways, funding for students attending public schools is distinct from funding for ESA students.

In California, however, any of those funding mechanisms would likely be challenged because of its highly restrictive Blaine Amendment. This provision bans public entities at every level of government from appropriating public funding to any school that is not under the public school system's control. Moreover, it is uncertain whether publicly funded ESAs could be used to pay for goods or services from faith-based private education providers.[149]

Throughout the 2000s numerous tax-credit scholarship bills were introduced in the state legislature, including proposals for students in failing schools, with special needs, from low-income families, and homeschooled students. None of those plans made it out of committee, and the constitutionality of tax-credit scholarships was a consistent concern raised by committee analysts.

Privately funding ESAs through tax-credit donations, however, now rests on solid legal footing. In the 2011 Supreme Court ruling upholding the constitutionality of Arizona's (and the country's) first tax-credit scholarship program Justice Anthony Kennedy was unequivocal that tax-credit donations are not public funds. The claim "that Arizonans benefiting from the tax credit in effect are paying their state income tax to [nonprofit scholarship organization]…. assumes that all income is government property, even if it has not come into the tax collector's hands. That premise finds no basis in standing jurisprudence."[150] Thus, there would be no constitutional violation if California parents used privately financed ESAs to pay for the private educational providers of their choice.

Elements of a Model California ESA Program

The rest of this report proposes an ESA program for California based on tax credits. Under this proposal, ESAs would not be publicly funded through legislative appropriations. Instead, they would be privately financed through donations to nonprofit organizations, just as existing tax-credit scholarship programs are funded.[151] Under those programs nonprofits collect donations and distribute funds exclusively for private school tuition scholarships. Nonprofits under a tax-credit ESA program would fundraise for ESAs, which parents could use for an array of allowable education expenses, not just private school tuition. The following sections detail various program elements that could be readily incorporated into the state's existing policies affecting nonprofits, tax credits, and education savings plans.

Student Eligibility. Every student is unique and deserves education options customized by a student's parents. This need is particularly pressing in California, where public education is still rationed based on where students' parents can afford to live. This means that not only are the options of low-income and special needs students limited, but students from many middle- and upper-income families have limited options, too. According to data from the U.S. Department of Housing and Urban Development, in many California counties families of four with annual household incomes as high as $80,000 and even exceeding $100,000 are now considered "low-income" and eligible for housing vouchers.[152] This economic reality makes it practically impossible for most California families simply to move into different neighborhoods to find better education options for their children. Thus all California school-age children should be eligible for ESAs. The number of participating ESA students will depend on the amount of tax-credit donations that nonprofit organizations raise in a given year. To maximize participation, most nonprofits would likely scale ESAs based on family income and prioritize students with the greatest financial need. Many nonprofits would also likely focus on students with special circumstances whose unique needs require additional resources, including students with disabilities, students from the foster care system, and students who are English learners.

Student Participation Caps. As with any tax-credit program, the number of participants will depend on the charitable contributions raised. However, limiting student participation in parental choice programs is a common strategy state lawmakers use to pacify opposition just enough to enact or advance programs. For example, Mississippi caps the number of ESAs at 500 for the first year, increasing by 500 each subsequent year. In exchange for expanding student eligibility, Arizona now caps annual ESA enrollment to 0.5 percent of traditional public and charter school enrollment, roughly 9,000 students for the 2017–18 school year.

Yet it is important to recognize—and counter—the illogic of calls for capping parental choice programs, including ESAs. If parents are indeed satisfied with existing education options under the status quo, as opponents of parental choice programs often insist, then it makes no sense to cap non-existent demand. It is probably more accurate to say that what opponents fear most is the unleashing of pent-up parent demand for more personalized education options—even in states, such as Arizona, that have had a variety of expansive parental choice programs for nearly two decades.

ESA Nonprofits. As of April 2017, there are nearly 190,000 recognized tax-exempt charities in California.[153] Initially, the IRS and the California Franchise Tax Board (FTB) decide whether a nonprofit qualifies for a federal and state exemption, and these agencies may audit nonprofits at any time to determine any tax liabilities, penalties, or the revocation of their tax-exempt status. The public beneficiaries of nonprofits are represented by the Attorney General's Office, which investigates nonprofits suspected of mismanagement, fraud, or misspending.[154] Once the IRS and the FTB determine that a nonprofit qualifies for tax-exempt status, the nonprofit submits various filings with the Secretary of State's Office, including articles of incorporation and federal tax-exemption documentation.[155] Nonprofits must also follow specified fiscal management procedures and provide annual reports to the Attorney General's Office. Organizations with gross revenue of $2 million or more must conduct annual independent financial audits and have an appointed auditing committee.[156] It is also standard practice in states with tax-credit scholarship programs to require nonprofits with lower gross revenue to conduct a less expensive independent financial review. Other aspects of nonprofit management in California are also regulated by the Attorney General's Office, including reasonable compensation for directors and officers, conflicts of interest, and liability issues.[157] In addition to federal laws governing charitable fundraising, California nonprofits must also comply with state, county, and city laws and ordinances, including the payment of fees, obtaining bonds, and filing annual financial reports, depending upon the type of fundraising activities.[158]

Additionally, the California Attorney General's Office maintains a registry of verified charities, including required annual financial reports.[159] The FTB also maintains a list of tax-exempt charities and nonprofits. Reporting oversight of nonprofits, however, was moved from the tax board to the Fair Political Practices Commission (FPPC) on January 1, 2017.[160] Thus California already has the regulatory and oversight infrastructure in place to accommodate 501(c)(3) nonprofit ESA charitable organizations. ESA nonprofits would simply file the required paperwork to become recognized tax-exempt charities and be verified annually. ESA nonprofits would coordinate with the State Treasurer's Office to certify donors' contributions and allowable credits to ensure that annual aggregate limits are not exceeded.

Private Administration, Public Accountability. Oversight and administration for most existing ESA programs are handled by state education agencies and/or treasury departments. Administrative fees for existing ESA programs range from 3 percent (Florida) to 6 percent (Mississippi). Those fees are needed to cover the labor and overhead costs associated with processing applications, regular expense reviews, ongoing ESA audits, and other tasks. Administration costs must be accounted for in any parental choice program to ensure program continuity and professional management. However, good government oversight does not require government administration. In fact, this structure is far from ideal because no matter how supportive government agencies may be of ESAs and parental choice at a given time, there is no guarantee that the political tides will not turn after the next election. Moreover, customer service is not exactly a hallmark of government bureaucracies—even ones that perform well by public-sector standards. For example, through the 2016–17 school year Arizona's ESA program was administered by the state education department, and it garnered a 100 percent parental satisfaction rate. Participating parents even ranked the department as the most helpful of several available information resources. Nevertheless, it rejected close to half of the 2,300 ESA applicants for the 2014–15 school year.[161] The department claimed that those applicants simply were not eligible, but it was criticized for failing to answer applicants' phone calls and for conducting informational workshops during regular working hours, when most parents are at their jobs.

Thus, even as supportive as Arizona's education department is to ESAs and other parental choice programs, commonsense practices that are standard for the private sector are still exceptional in government, including hiring personnel to staff 24-hour information hotlines and online web chats, conducting live interactive online workshops that can be recorded and archived for viewing later by parents who could not attend in person, providing web-based ESA applications, and having personnel available to help non-native English speakers with ESA application questions. In contrast, nonprofit scholarship organizations handle ESA administration in Florida, which helps overcome the innate inertia and inflexibility of government bureaucracy and minimizes the potential for program politicization.[162] Other private-sector administration models exist as well.

Private financial institutions already have the infrastructure in place for defined-use debit or credit cards and detailed expense reports, not to mention highly trained staff and streamlined processes to answer cardholders' questions and process paperwork. For example, the military contracts with private financial institutions for pre-programmed travel cards for authorized purchases, which can flag questionable purchases that may need to be refunded unless subsequently approved, or declined if a charge is obviously not travel-related. Moreover, travel cards can be automatically de-activated during non-travel periods to prevent fraudulent purchases. Contracting with private-sector financial institutions to prevent fraud is also commonplace in a variety of other programs, including the U.S. Department of Agriculture's food assistance programs. Such private management has reduced the rates of fraud from nearly 4 percent to 1 percent.[163] Online banking also provides real-time transparency, the tools to scan transaction receipts, and the ability to generate reliable expense reports. Additionally, categorized annual spending reports can be generated automatically like the ones most credit card companies already provide to customers. Allowing nonprofits to contract with existing private-sector providers would help provide necessary ESA program oversight at a fraction of the government-sector overhead and labor cost.

Charitable Donations. Existing tax-credit scholarship programs in other states allow individuals and/or businesses to make donations to approved 501(c)(3) nonprofit organizations, and donors receive credits against their state income taxes for their contributions. Allowing individuals and businesses to claim credits and deductions against their state income taxes is already standard practice in California. In fact, individual taxpayers claimed more than $41 million in tax credits and deductions in 2016–17 alone.[164] California businesses claimed an additional $6 billion.[165] A number of existing programs could serve as models for the proposed tax-credit-financed ESAs.

Under current state law individual and corporate taxpayers may claim Charitable Contribution Deductions capped at 50 percent and 10 percent, respectively, of taxable income.[166] As of the 2013 tax year (the latest year available) 7.5 million individuals and approximately 168,000 businesses claimed these deductions, amounting to nearly $2.4 billion for individuals and $130 million for businesses.[167]

The College Access Tax Credit (CATC) is another program that could serve as a model for the proposed tax-credit ESA.[168] This program provides tax credits to individuals and businesses for donations to Cal Grants, the state's largest college financial aid program. Under the program taxpayers currently receive a credit worth 50 percent of their donations.[169] The California Educational Facilities Authority (CEFA) certifies up to $500 million in tax credits annually, plus any unused credits from previous years. To ensure credits remain within annual limits, donors must complete an application and be certified by the state treasurer's office. Copies of those certifications are provided to the Franchise Tax Board.[170] Taxpayers may not claim both a credit against their state taxes and a charitable deduction against their federal taxes for the same contribution.[171] Since taxable year 2014 more than $17 million in tax credits have been awarded.[172]

Allowing tax-credit contributions to nonprofit ESA organizations simply builds on existing state policy. Yet because the proposed California ESA program blends elements of a tax-credit scholarship program and an education savings plan, its design will differ from existing options in certain ways.

To encourage the highest possible levels of participation, offering donors tax credits is preferable to tax deductions because credits are worth more than deductions even if the dollar value of contributions is the same.[173] Let's say two Californians earning the average per-capita income of around $38,000 each donate $100, and they have the option of taking a tax credit or a deduction. Donor A chooses the credit, and Donor B opts for the deduction. Donor A would save $100 off his or her next tax bill. Donor B would save only $6 because deductions lower taxable income by the same percentage as the marginal income tax rate, which is currently 6 percent for $38,000 in annual income ($100 x 0.06 = $6).[174] It could be argued that reducing taxable income would motivate wealthier donors in higher income brackets because some would benefit from reducing their income to lower tax brackets. While this may be true at the margins, cultivating broad-based support among donors across income levels builds program sustainability.[175] Evidence also suggests that charitable giving rates are higher among those who earn less.

According to the *Chronicle of Philanthropy*, the most generous zip code in the United States is 96015, which includes the town Canby, California. Its 645 residents filing itemized returns gave a combined $436,000, which represents 18 percent of their income—more than six times the state average and more than twice the average of top-ranked giver Utah. Research also suggests that even in economically difficult times lower- and middle-income Americans donate higher percentages of their incomes to charity than the well-to-do.[176] ESAs funded through tax-credit donations to nonprofits would therefore maximize Californians' generosity and expand education options for a greater number of students.

Contribution and Credit Amounts. Both individuals and businesses should be allowed to make donations and earn dollar-for-dollar credits off their state income taxes. Arizona and Florida have the longest-running tax-credit scholarship programs, 20 years and 16 years, respectively. Under those state programs donors receive a dollar-for-dollar credit against their state income taxes, which makes it possible for nonprofits to help tens of thousands of students annually. Consistent with existing policy in California, individuals and businesses should be allowed to make charitable contributions to 501(c)(3) ESA nonprofits and claim credits against their state taxes. A number of design features should be included, however, to avoid certain policy pitfalls. A leading drawback of many existing scholarship tax-credit programs is that lawmakers place arbitrary caps on individual or aggregate annual contributions. This practice constitutes bad politics and even worse policy. Politically, lawmakers attempt to mitigate opposition by capping contributions. Not only does opposition persist in spite of this compromise, so limiting contributions and aggregate credits means fewer students can participate in choice programs. Opponents can then use those artificially lowered participation rates to claim parents do not want and students do not need additional education options.

The proposed tax-credit-funded ESA program would allow individual and business donors to claim dollar-for-dollar non-refundable tax credits against their state taxes for contributions to ESA nonprofit organizations.[177] Similar to the College Access Tax Credit, ESA nonprofit donors would be certified by the state treasurer's office. Aggregate annual contribution credits would be capped at a specified level plus any unused credits from previous years. It is important to keep in mind that donor participation in tax-credit programs is often lower during the initial years and picks up as public awareness grows. Including automatic increases to annual aggregate credit caps, once certain donation thresholds are reached, is a critical program design feature that helps ensure ESA funds keep pace with demand.

Florida, which does not have an individual income tax, has the strongest program design in this regard. It does not limit contributions but instead caps the aggregate value of tax credits the state will award annually to businesses. To help ensure the supply of donations keeps pace with student scholarship demand, the cap is increased by 25 percent if 90 percent of the credit cap is reached in a given year. Most recently the 2016–17 cap of $559 million was raised to $699 million for the 2017–18 state fiscal year.[178] Thus Florida's program ensures adequate and fiscally responsible funding based on actual demand, not an arbitrary cap. New Hampshire's scholarship tax credit operates similarly. Once credits reach 80 percent of the aggregate annual limit, the cap is raised by 20 percent.[179] Likewise, both Arizona's corporate tax-credit scholarship and Nevada's scholarship tax credit allow unlimited donations and cap aggregate annual credits instead. Those limits automatically increase each year, 20 percent in Arizona and 10 percent in Nevada.[180]

A related program feature designed to maximize contributions and minimize potential unfunded liabilities for states is allowing donors to carry forward unused credits for a specified number of years. Florida and New Hampshire permit carryovers for one year, while Arizona and Nevada allow them for up to five years.[181] Allowing carryovers provides program funding consistency during economically volatile years when individuals or businesses may not have a tax liability against which to claim the credit, but establishes consistent parameters needed for state budget planning purposes. California law already allows individual and business taxpayers who make charitable donations above annual limits to carry forward excess balances for up to five years.[182] A carryover of up to five years is also permitted under the Film and Television Tax Credit.[183] In contrast, unclaimed credits under the state's largest program, the Research and Development (R&D) Credit, carry over indefinitely. This practice has resulted in an estimated $14 billion in unclaimed credits since the program's inception in 1987, which presents a tremendous potential unfunded liability for the state.[184]

In determining an annual aggregate cap for ESA tax credits, along with an appropriate escalator, it is worth considering how two of California's largest tax credits operate. As noted previously, allowable credits under the College Access Tax Credit are capped at

$500 million annually, plus any unclaimed credits from previous years. Through the Film and Television Tax Credit $110 million was claimed on 26 personal returns and 10 corporate returns in 2013.[185] Credits are issued through the state Film Commission's California Film and Television Tax Credit Program.[186] The total annual credit cap was recently increased from $100 million to $330 million, even though the number of industry-related jobs actually declined since the credit's inception in 2009.[187] In fact, just prior to the film credit's expansion, the Legislative Analyst's Office found that every $1 in credits under this program generated just $0.65 in state tax.[188] A subsequent LAO analysis conducted after the credit was increased concluded that at best it has improved economic output "no more than a few hundredths of a percentage point."[189]

Meanwhile, through the state's R&D Credit $1.5 billion in credits was claimed on 5,800 personal returns and 3,100 corporate returns in 2013.[190] Total credits are not capped, and it has been expanded numerous times since it was made permanent in 1993. Moreover, the state does not evaluate this credit, and there is no evidence that it is effective at encouraging R&D activity that would not otherwise occur in California absent the credit.[191]

The proposed California ESA program would replicate existing state programs, but it would avoid their shortcomings through better program design.

ESA Funding Amounts. Advancing parental choice programs is politically challenging enough for state lawmakers. That is why so many programs are designed to achieve positive fiscal notes. Though understandable, it's worth recalling that taxpayer funding for education is supposed to be for the benefit of students, not a single provider. Arizona, Tennessee, and Nevada fully fund ESAs for special needs and low-income students; however, this practice should be the rule for all students as a matter of fundamental fairness. Furthermore, even at 90 percent funding, as is the case with the remaining ESA programs and regular education students under Nevada's program, it will be interesting to see just how much education funding remains at the end of each school year with parents in charge of purchasing decisions. For instance, altogether Arizona parents currently have hundreds of thousands of dollars left over at the end of each year for future education expenses. This reality is even more striking given that participating students are disadvantaged and likely require more expensive educational services than general education students. State policymakers should keep this lesson in mind because ESA results to date certainly appear to show that it is indeed possible to do more with less once we stop subsidizing costly overhead and administration along with various bells and whistles that have little to do with actual student learning. The proposed program for California would work differently since ESAs would be privately financed through tax-credit donations. ESA funding levels would more closely reflect the actual costs of providing specific services to individual students. Participating providers would have powerful incentives to offer the best programs at the best prices because at any point parents could choose other providers. And research suggests that the more education options parents have, the more they seek out information about the quality of those options.[192]

ESAs and Allowable Spending. California has allowed education savings accounts for 20 years. In 1997 the state authorized college savings accounts through its Golden State Scholarshare Trust, or ScholarShare, program. It allows parents, relatives, and others to establish investment accounts for beneficiaries they designate, including themselves, that accrue until the beneficiary reaches college age. Beneficiaries do not have to be California residents, and funds can be used for tuition at any accredited American college, public or private, including some colleges abroad. There are no income limits placed on contributions, but the maximum account balance is currently $475,000. The program is administered by the State Treasurer's ScholarShare Investment Board, which contracts with the nonprofit Teachers Insurance and Annuity Association and investment manager College Retirement Equities Fund (TIAA-CREF). The State Treasurer defines qualified expenses as tuition, room and board, computers and related technology (including Internet fees), as well as additional costs associated with having disabilities.[193] As of 2016 there were more than 280,000 separate ScholarShare accounts, and net contributions from account holders totaled $226.3 million.[194]

The Kindergarten to College (K2C) Program is another ESA run by the City and County of San Francisco (CCSF) in partnership with the San Francisco Unified School District (SFUSD). Based on research indicating students are seven times more likely to attend college if they have a savings account in their name, the CCSF launched the K2C pilot during the 2010–11 school year with a small number of SFUSD kindergarteners, and it was expanded to all entering kindergarteners during the 2012–13 school year. Currently more than 27,000 students have accounts, and families have saved $2.25 million of their own funds, including the 50 percent of families who are low income.[195] The K2C accounts are Children's Savings Accounts managed by Citibank that are automatically opened for SFUSD students entering kindergarten with an initial deposit of $50 from the CCSF. Low-income students qualify for an additional $50. While family and student contributions represent the majority of the K2C savings, the CCSF provides a $100 match for the first $100 saved, and an additional $100 match when students and their families save at least $10 monthly for six months. There are no charges, fees, or minimum balance requirements. K2C funds may be accessed after students graduate high school (or the equivalent), and they may be used for college tuition, fees, other training programs, as well as related expenses such as supplies and books.[196] Eligible postsecondary institutions include both public and private colleges anywhere in the country.[197] If K2C beneficiaries do not pursue postsecondary education or training, the funds they contributed become theirs when they turn 25 or as late as 30 for students participating in a national service program, including the military or the Peace Corps.[198] Total lifetime contributions are capped at $32,500, and students, families, other individuals or organizations are allowed to make contributions.[199]

Expanding higher education options for more California students has also prompted a number of savings proposals in recent years. One such state plan would create accounts for all newborns (approximately 500,000), initially funded with state contributions. Private contributions by family members or others would be tax-deductible.[200]

Other recent proposals recommend distributing federal funding associated with military members and their families through individual student ESAs rather than lump-sum appropriations.[201] The lack of parental choice reduces military readiness because military families' decision to remain in the service is heavily influenced by the availability of quality education options for their children. In fact, as The Heritage Foundation recently reported, up to 35 percent of military members say dissatisfaction with their children's education is a "significant factor" in deciding whether to stay in the military.[202]

Distributing federal aid through individual ESAs rather than through lump-sum appropriations could help. Federal Impact Aid provides financial assistance to school districts that lose local tax revenue because they are located near tax-exempt federal property or to school districts that have higher expenditures from federally connected students who enroll, including military dependents.[203] The precise number of military-connected students by school is unknown.[204] Nevertheless, California has the highest concentration of Active Duty military personnel in the country, 150,563 members or 13.3 percent of all Active Duty members nationwide.[205] Available data suggest that there are approximately 57,000 school-age Active Duty dependents in California.[206]

California currently receives over $47 million in federal Impact Aid, which could fund ESAs worth $832 per student.[207] Nearly 1.1 million military members nationwide also receive more than $12.3 billion annually in education benefits for their service, approximately $11,521 per capita.[208] Currently, there are nearly 104,000 military beneficiaries in California receiving education benefits for their service.[209] Allowing those members and their children to use their associated federal education benefits and Impact Aid would mean ESAs worth approximately $12,353 annually to pay for education providers and services of their choice, including costly special education services and therapies, without drawing upon state and local funding.

Those federally funded ESAs could readily be implemented alongside the proposed California tax-credit ESA, which would operate similarly to existing state programs. Nonprofit ESA organizations verified by the Attorney General's Office would administer the proposed program. Nonprofits would raise donations to fund students' ESAs and would contract with private-sector financial institutions that would manage students' accounts. Parents would be issued dedicated-use debit cards that they could use to pay for approved educational expenses. These expenses should include:

- Tuition, fees, and costs at registered nonpublic education providers eligible to operate in California[210]
- Tuition, fees, and costs at certified nonpublic special education providers located in- and out-of-state[211]
- Costs and fees associated with tutoring[212]
- Costs and fees associated with special education therapies, aids, and equipment, including assistive technologies

- Tuition or fees for nonpublic online learning programs, including curricula and related materials
- Testing fees, including placement, diagnostic, achievement, advanced placement, and related college admissions exams
- Public school services, including specialized classes and extracurricular programs
- Education Related consumables, including paper, pencils, and related school supplies
- Education-related electronics, including computers, tablets, and Internet fees
- Needs-based transportation fees
- ESA managements fees

Unused funds would roll over and could be used for future education expenses, including contributions to college savings accounts.

While various government agencies would help provide oversight, government should not be in the business of cherry-picking allowable educational service providers. If providers are legally operating in the state, they should be eligible to participate in the ESA program. Parents know and love their children best, so they should be in charge of choosing the providers, products, and services that best meet their children's educational needs. If parents are not satisfied with a given provider, ESAs make it easy for them to choose better providers. Such freedom introduces immediate rewards for success and consequences for failure. This approach better ensures program accountability and efficiency than top-down mandates, which are expensive and can take years to enforce. Similarly, government is simply not well situated to pick winners and losers, particularly given the breakneck speed of technological and other advances that can benefit students. To maximize personalized learning opportunities for students, the proposed tax-credit ESA program should foster diversity and competition among all education providers both existing and emerging.[213]

Reporting Requirements for ESA Nonprofits. As noted previously, California already has the infrastructure in place regulating nonprofits as well as nonpublic education providers. To ensure responsible tax-credit ESA program management and public transparency there are some straightforward, commonsense reporting requirements that ESA nonprofits should follow. Such requirements are an important public-policy consideration to ensure the program is working as intended and to identify ways to improve. Currently, the state agencies and departments responsible for public accountability and oversight provide scant information about the effectiveness of existing tax credits. Moreover, according to published reports millions of dollars in charitable donations and tax credits under these agencies' watch are going unused.[214] These failures can be largely avoided if ESA nonprofits comply with existing management- and financial-reporting requirements, as well as minimal additional requirements unique to nonprofit ESAs, much of which should be part and parcel for proper nonprofit management. Two of the country's largest and longest-running scholarship tax-credit and ESA programs, in Arizona and Florida, require standardized annual reporting that could serve as a model for California.[215] To maintain their verification status, each ESA nonprofit should annually provide in its report to the Attorney General's Office the information below. Additional information would also be included in ESA nonprofits' annual reports to help tax and finance agencies provide oversight, including the Franchise Tax Board, the Employment Development Department, and the State Treasurer's Office. This would include the following information:

<u>Certification and Related Materials:</u>

- Copies of the 501(c)(3) tax exempt status documentation from the IRS and the California Franchise Tax Board
- Name, address and contact person of the ESA nonprofit
- A copy of the latest IRS Form 990, which contains the salaries paid to the three highest-paid employees
- The audit or financial review costs paid
- The name of the financial institutions an ESA nonprofit hires to manage accounts and validate expense claims
- Copies of nonprofits' ESA applications detailing their awards criteria
- Certification that parents have submitted the required ESA contracts stipulating that they and their children are California residents, have withdrawn their children from public schools for the upcoming school year, and that they will not enroll their children in public schools while their children are participating in the ESA program
- Certification that parents are not accepting ESAs from multiple nonprofits
- Certification of the percentage of annual contributions revenue allocated to student ESAs. Most nonprofits accepting tax-credit contributions for scholarships allocate at least 90 percent for

scholarships. Pennsylvania nonprofits allocate at least 80 percent, while South Carolina nonprofits allocate at least 95 percent. Funds not distributed for scholarships pay for administration, including salaries, outreach, and required reporting

- Certification that the nonprofit does not limit the availability of ESAs to students of one education provider
- Certification that the nonprofit does not designate or reserve ESAs solely on the basis of donor recommendations
- Certification that donors are aware that they are prohibited from claiming both a state tax credit and a federal tax deduction for their charitable contributions to ESA nonprofits, commonly referred to as "double dipping"
- Certification that the nonprofit does not allow donors to designate student beneficiaries as a condition of any contribution, or facilitate, encourage, or knowingly permit the exchange of beneficiary student designations, also known as "swapping"
- Certification that the nonprofit and/or its contracted third-party provider has complied with ESA expense verification and disbursement requirements
- Certification that it has copies of donors' contributions receipts, which would be available to the Franchise Tax Board upon request.
- Certification that donor's contributions have been certified by the state treasurer's office

Total Donations, Tax Credits, and ESAs:

- The total number and dollar amounts of contributions received and credits awarded during the year
- The total number and dollar amounts of ESAs funded during the year
- The average ESA funding for general education students and special education students
- The total number of ESAs and net dollar amounts with leftover funds (that will roll over to the next year)

Student Participation and Demographics:

- Total number of students awarded ESAs
- Number and percentage of ESA students who would be considered by their assigned school districts as low-income (based on free and reduced-priced meal eligibility), English learner, special needs, and/or foster youth
- Number and percentage of ESA students by their ethnic/racial background according to the eight groups designated by the California Department of Education's California Basic Educational Data System (CBEDS)[216]
- Type of prior school of ESA students
- Name of the school districts to which ESA students would otherwise be assigned based on their families' resident addresses
- Number and percentage of students who were new and renewal ESA students
- The number of students who applied for, but did not receive, ESAs and who are on waiting lists

Participating Education Providers:

- The name and address of each education provider paid with ESA funds
- The net ESA dollar amounts going to each education provider
- The net number of ESAs and dollar amounts, with corresponding percentages, for students designated low-income, English learners, special needs, and foster youth

Parent Feedback: ESA nonprofits should take steps to document their effectiveness. Not only would parents be required to comply with all expense reporting and verification procedures as a condition of receiving an ESA, nonprofits should also consider requiring parents to participate in an end-of-year satisfaction survey. This survey would cover parents' satisfaction with various aspects of program management, the education services and supplies their children received from their chosen providers, in addition to how well parents think their children are doing. This approach is preferable to the increasing trend of imposing numerous testing, curricular, and other onerous mandates on education providers, which often results in high-quality providers declining to participate. Parents who are dissatisfied with any education provider for any reason are free to use ESA funds to enroll their children elsewhere. This freedom provides immediate accountability to parents, students, and taxpayers.

Reporting Requirements for State Agencies. The Attorney General's Office, the Franchise Tax Board, the Employment Development Department, and the State Treasurer's Office would work together to compile and publish ESA handbooks detailing program procedures and allowable expenses, as well as providing general guidance for donors and ESA recipients. As described previously the State Treasurer's Office would certify

ESA donors as it does with the College Access Tax Credit to ensure the annual aggregate credit cap is not exceeded. State agencies would also be responsible for collecting and compiling ESA nonprofits' annual reports into a statewide annual report that is publicly available. The statewide annual report would also document any cases of detected fraud or misspending, the dollar amounts involved, and actions taken to recover those funds. It is also likely that lawmakers will want to know the fiscal impact of the program. With the information collected it will be possible for the LAO to conduct a fiscal analysis of the program; however, it should be a requirement that both sides of the ledger are considered. Any credible fiscal analysis will weigh the upfront forgone revenue loss from tax-credits awarded against the net savings to the state and school districts from not having to educate students at public expense.

Program Design and Fiscal Impact. The precise fiscal impact on the state general-fund budget and local school districts will depend on several factors, including how many students participate, their grade levels, and whether they have special educational needs. Ideally, all students should be eligible for ESAs, including students who are currently enrolled in private or home schools. Lawmakers in some states opt to exclude private and homeschool students from parental choice programs to generate positive fiscal notes. This is bad policy and bad math. Giving nonpublic school families the option of participating in the proposed tax-credit ESA program is first and foremost a matter of fundamental fairness. In fact, several states with tax-credit scholarship programs and/or ESA programs do not restrict eligibility to public school students.[217] Yet California policymakers and legislative analysts often assume that private school students come from wealthy families. On the contrary, among families in the U.S. Census Bureau income bracket of $75,000 or higher, 87 percent send their children to public schools, while just 11 percent send them to private schools.[218] No one ever seems to question the fairness of subsidizing wealthy public school families while many low- and moderate-income California families are sacrificing to pay out-of-pocket tuition in addition to the variety of taxes used to support public schools.

Excluding nonpublic school students from parental choice programs is also based on bad math, because having students in nonpublic schools saves taxpayers billions of dollars annually. Right now in California more than 500,000 students are enrolled in private schools.[219] This figure likely includes homeschooled students because parents who homeschool must file private school affidavits according to state policy.[220] Proposition 98 funding alone will amount to $10,910 per student during the 2017–18 school year, so private school students will save state taxpayers at least $5.5 billion next year. Funds from other local, state, and federal sources amount to $4,306 per student, for an additional savings of nearly $2.2 billion.[221] The longer-term savings from lower public school construction and debt costs also likely amounts to more than $100 million.[222]

Of course, how many private school parents would want to participate in the proposed tax-credit ESA program is highly uncertain. Many families opt not to send their children to public schools because they object to various government intrusions into their children's classrooms, including mandated curricula and testing requirements with which they disagree. So while some nonpublic school families might welcome the assistance a tax-credit ESA would provide, many would likely not participate out of a concern that their participation could subject their children to government interference.[223] Nevertheless, an honest fiscal note of the proposed tax-credit ESA program would therefore acknowledge upfront just how much any participating nonpublic school student has already saved taxpayers and the state—rather than count them as a costly burden.

The number of participating special education students, and in particular the kinds of special needs they have, will also affect the fiscal impact of the proposed tax-credit ESA program. There are nearly 700,000 California K–12 students with disabilities,[224] and only 60 percent of them will likely graduate high school.[225] Special education funding in California is now $12 billion from federal, local, and state sources, including $3.2 billion from the state general fund.[226] On average the cost of educating special-needs students in regular California public schools, $22,300, is about twice the cost of regular education students, although special-needs education costs vary significantly depending on the severity of students' disabilities.[227] Per-student funding at State Special Schools averages $85,000 annually.[228] California does not fund special education as part of its primary funding formula, as most states do, nor does the state weight per-pupil funding based on the severity of students' disabilities.[229]

Unlike California, Arizona and Florida fund special education as part of their primary finance formulas, which are each weighted for several factors including disability category, grade level, and regional cost of living.[230] Arizona ESAs for special needs students averaged just under $19,000 overall during the previous school year, with elementary student ESAs averaging just over $19,000 and high school student ESAs averaging nearly $22,400.[231] Those amounts reflect 90 percent of state and local public school funding. ESAs for special needs students during the previous school year averaged $10,000 in Florida, varying from $9,400 to just over $11,000 depending on students' grade levels and counties of residence.[232]

(For illustrative purposes, Tables 1–3 in the Appendix show the general fiscal impact of the proposed tax-credit ESA program under various scenarios for general education public school students, special education public school students, and finally private school students.)

A more detailed analysis of the fiscal impact to particular school districts is beyond the scope of this analysis. It should be borne in mind, however, that just because a student leaves a school district doesn't mean that the district loses every dollar in revenue. Some state, local, and federal funding is based on student enrollment, but other funding stays with public schools regardless of how many students are enrolled, including bond funding for capital construction.[233] It is also worth remembering that like most states California has various provisions built into the state's funding formula that protects school districts from rapid enrollment changes. Thus, if school districts were to lose students they would have at least one year to adjust.

In effect, such provisions pay school districts for students they do not enroll, sometimes referred to as "phantom" or "ghost" students. Researchers have found that the cost of protecting declining enrollment districts in California costs hundreds of millions of dollars annually. Marguerite Roza of Georgetown University and Jon Fullerton of Harvard University conclude that this practice hurts public schools' efficiency and productivity. They explain, "Taken together, the 89,234 phantom students funded last year by California's declining-enrollment provision would have been California's third-largest district, larger than Long Beach, Fresno, or San Francisco."[234]

It is worth keeping in mind that under all the possible scenarios presented above except one, fewer students make the proposed tax-credit ESA program cost neutral.

Conclusions and Recommendations: The Time for ESAs in California Is Now

Californians know that a schooling system that largely rations education based on where children's parents can afford to live is a relic of a by-gone era that cannot provide the customized preparation students need to succeed in a rapidly changing, increasingly competitive world. ESAs are popular, easy to use, fiscally responsible, and constitutional. Best of all, they empower parents to choose how, not just where, their children are educated, which customizes learning to degrees no one-size-fits-all system could ever match—no matter how lavishly funded.

Every student, regardless of his or her circumstances, should have the opportunity for personalized learning. Parents empowered over their children's education funding in a growing number of states are now free to seek a variety of education service providers. And, because education providers are not constrained to work within a rigid, bureaucratic public school system, more providers can enter the education marketplace where they have the freedom to innovate and tailor their services to the needs of individual students. This situation increases competition for students and introduces powerful pressure on all providers to offer effective, high-quality programs at reasonable prices, or lose students to other providers. ESAs are a student-centered reform that can personalize learning for all students by putting their parents in charge of their education funding.

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Appendix

Tables 1–3 below show the general fiscal impact of the proposed tax-credit ESA program under various scenarios for general education public school students, special education public school students, and finally private school students.

Table 1 focuses on general education public school students based on the 2017-18 Proposition 98 average per-pupil funding of $10,910, the proposed 2017-18 general fund budget of $122.5 billion, and public school student enrollment of 6,226,737.[235] Even if allowable ESA tax-credits matched those claimed under the state's R&D Tax Credit, $1.5 billion, those credits would amount to just slightly more than 1 percent of the general fund budget. Likewise, very small percentages of public school students would need to use ESAs to generate the requisite savings to offset up-front revenue losses to the state general fund, from just fractions of 1 percent of total public school enrollment to slightly more than 2 percent if $1.5 billion in ESA tax credits were allowed as they are under the state's R&D tax credit. Any additional ESA students beyond those break-even points would generate net savings to the state and local school districts by not having to be educated at public expense.

Table 1. General Education Public School Students

Tax-Credit Models	Annual Aggregate Credits	% of General Fund Budget	Proposition 98 Funding Per Student	# ESA Students Needed to Be Cost Neutral	% Public K–12 Enrollment
CA Original Film Credit Cap	$100,000,000	0.08%	$10,910	9,166	0.15%
PA Educational Improvement Tax Credit Cap	$125,000,000	0.10%	$10,910	11,457	0.18%
CA Expanded Film Credit Cap	$330,000,000	0.27%	$10,910	30,247	0.49%
CA College Access Tax Credit Cap	$500,000,000	0.41%	$10,910	45,830	0.74%
FL Tax Credit Cap	$699,000,000	0.57%	$10,910	64,070	1.03%
CA R&D Tax Credits Claimed	$1,500,000,000	1.22%	$10,910	137,489	2.21%

Sources: Author's table based on 2017–18 General Fund budget data, including the Proposition 98 per-pupil funding average, and 2015–16 public school enrollment data from the California Department of Education and EdData.

Notes:
1. Projections assume one ESA per student.
2. The $1.5 billion in credits claimed under California's R&D Tax Credit was for 2013, the latest year data were available.

Table 2 focuses on special education students, using the average per-pupil spending figure of $22,300. Even if allowable ESA tax-credits matched those claimed under the state's R&D Tax Credit, $1.5 billion, those credits would amount to slightly more than 1 percent of the entire general fund budget. Likewise, very small percentages of public school students would need to use ESAs to generate the requisite savings to offset up-front revenue losses to the state general fund, from just less than one-half of 1 percent or less of total public school enrollment to just over 1 percent if $1.5 billion in ESA tax credits were allowed as they are under the state's R&D tax credit. Any additional special ESA students beyond those break-even points would generate net savings to the state and local school districts by not having to be educated at public expense.

Table 2. Special Education Public School Students

Tax-Credit Models	Annual Aggregate Credit Cap	% of General Fund Budget	Average Per-Pupil Spending	# ESA Students Needed to Be Cost Neutral	% Public K–12 Enrollment
CA Original Film Credit Cap	$100,000,000	0.08%	$22,300	4,484	0.07%
PA Educational Improvement Tax Credit Cap	$125,000,000	0.10%	$22,300	5,605	0.09%
CA Expanded Film Credit Cap	$330,000,000	0.27%	$22,300	14,798	0.24%
CA College Access Tax Credit Cap	$500,000,000	0.41%	$22,300	22,422	0.36%
FL Tax Credit Cap	$699,000,000	0.57%	$22,300	31,345	0.50%
CA R&D Tax Credits Claimed	$1,500,000,000	1.22%	$22,300	67,265	1.08%

Sources: Author's table based on 2017–18 General Fund budget data, and the LAO special education per-pupil district and charter school spending average for 2013.

Notes:
1. Projections assume one ESA per student.
2. The $1.5 billion in credits claimed under California's R&D Tax Credit was for 2013, the latest year data were available.

Table 3 focuses on private school students. As explained previously, any fiscal analysis should credit the savings private school students have previously generated from not being educated at public expense. Table 3 accounts for the Proposition 98 savings private school students have already generated prior to participating in the proposed tax-credit ESA program, $10,910 for every year a student was enrolled in private school instead of being educated at public expense. Thus, a private school first-grader entering the program would be credited with a $10,910 savings from the previous year and another $10,910 for the current year, for a total savings of $21,820. A private school twelth grader who had been enrolled in private schools for the previous 12 years (K–11) would be credited with a previous savings of $130,920 plus another $10,910 for the current year, for a total savings of $141,830. Those savings are conservative because they exclude additional associated expenses, including those associated with construction, debt, and class-size reduction.

So calculated and based on students' grade levels, it would take between 700 and 69,000 private school students using ESAs for the program to be cost neutral depending on the allowable annual tax credits awarded. Any additional ESA students beyond those break-even points would generate net savings to the state and local school districts by not having to be educated at public expense.

Table 3. Private School Students

Tax-Credit Models	Annual Aggregate Credit Cap	% of General Fund Budget	Grade 1 Cumulative Prop 98 Savings Per Student	# ESA Students Needed to Be Cost Neutral	Grade 12 Cumulative Prop 98 Savings Per Student	# ESA Students Needed to Be Cost Neutral
CA Original Film Credit Cap	$100,000,000	0.08%	$21,820	4,583	$141,830	705
PA Educational Improvement Tax Credit Cap	$125,000,000	0.10%	$21,820	5,729	$141,830	881
CA Expanded Film Credit Cap	$330,000,000	0.27%	$21,820	15,124	$141,830	2,327
CA College Access Tax Credit Cap	$500,000,000	0.41%	$21,820	22,915	$141,830	3,525
FL Tax Credit Cap	$699,000,000	0.57%	$21,820	32,035	$141,830	4,928
CA R&D Tax Credits Claimed	$1,500,000,000	1.22%	$21,820	68,744	$141,830	10,576

Sources: Author's table based on 2017–18 General Fund budget data, including the Proposition 98 per-pupil funding average, and 2015–16 public school enrollment data from the California Department of Education and EdData.

Notes:

1. Projections assume one ESA per student.
2. The $1.5 billion in credits claimed under California's R&D Tax Credit was for 2013, the latest year data were available.
3. Grade 1 cumulative savings represents current year plus one additional years of savings ($10,910 x 2 = $21,820).
4. Grade 12 cumulative savings represents current year plus 12 additional years of savings, kindergarten through grade 11 ($10,910 x 13 = $141,830).

Table 4. Existing ESA Programs (as of September 2017)						
PROGRAM OVERVIEW						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
Official ESA program name	Empowerment Scholarship Accounts (ESAs)*	Gardiner Scholarship Program	Equal Opportunity for Students with Special Needs Program, 5-Year Pilot	Tennessee Individualized Education Account Program (IEA)	Education Savings Accounts*	Personal Education Savings Account (PESA)
Year Enacted	2011	2014	2015	2015	2015	2017
Year Operational	2011	2014	2015	2016	2016	2018
Students participating: 2016–17	3,547	7,463	425	113	Over 10,000 applications as of June 1, 2017.	n/a
Student Funding	• 90% of district or charter school base funding under current program	Program funding through annual appropriations: $107.4M; funding pro-rated based on the quarter ESA is awarded, ranging from 100% in Sept. to 25% in April	$6,637 in 2016–17	100% state and local public school funding disbursed in 10 monthly payments.	• 100% public school funding, special needs & low-income students • 90% all other students	ESA maximum is $9,000. Funding through a distinct appropriation to the Education Assistance Authority: $450K in 2017; $3M in 2018
Current Amount	• $5,600 average general ed. • $3,500 – $26,000 average special ed.	$10,000 average	$6,637 in 2016–17	$6,721 average	• $5,710 average at 100% • $5,139 average at 90%	ESA maximum is $9,000

PROGRAM OVERVIEW *(continued)*						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
Student Eligibility	State resident and at least one of the following: • Identified with a disability; or • In/would otherwise attend a failing public school; or • Parent/guardian is Active Duty military stationed in AZ or killed in the line of duty; or • adopted or in the process of being adopted from the foster care system; or • Sibling of a current/former ESA recipient; or • Pre-K or K student eligible to attend a public school; or • Received a tax-credit scholarship as a student with disabilities or from the foster care system • Child residing within an Indian Reservation • In 2017–18: all students in grades K, 1, 6, and 9 • In 2018–19: add all students in grades 2, 7, and 10 • In 2019–20: add all students in grades 3, 8, and 11 • In 2020–21: all K–12 students	State resident ages 3 through grade 12: • With an IEP; or • Diagnosed disability (categories expanded in 2017); or • Children ages 3–5 deemed "high risk" for developmental delays	State resident identified with an IEP in the past 5 years.	Eligible to enroll in K-12 public schools, identified with an IEP, diagnosed with a disability, and one of the following: • Enrolled in a state public school during the previous two semesters; or • Will be attending a public school for the first time; or • Received an IEP in the previous school year	• All students who attended a state public school at least 100 days prior to ESA application. • Students are immediately eligible if they are: children of Active Duty members; or under 7 years old	All students identified with a disability and: • have attended a public school in the previous semester • will be entering kindergarten or first grade • will be in foster care • have been officially adopted in the previous year • will be a dependent of an Active Duty military member or • are enrolled part-time in a public school and part-time in a private school exclusively serving special needs students

PROGRAM MECHANICS						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
ESA Fund Disbursement	Prepaid, dedicated-use debit card through private bank account. State agency makes quarterly deposits upon submission and approval of quarterly expense reports. Leftover funds roll over.	Direct deposit reimbursement of approved expenses (pre-authorization recommended for items not on pre-approved expense list); or direct payment can be sent to approved providers. One non-profit has policies for parents who cannot afford out-of-pocket expenses.	State Education Department reimburses parents quarterly after review of reimbursement form and documentation. Funds can also be paid to education provider directly if parent approves.	Prepaid, dedicated-use debit card through private bank account. State agency makes quarterly deposits.	Private financial management firms approved by the State Treasurer. State agency makes quarterly deposits.	
Unused Funds Rollover	Yes	Yes	Yes	Yes	Yes	Yes
Eligible for College Savings	Yes	Yes	Yes	Yes	No. Return to state upon completion of high school.	No. Funds cannot be used for college tuition or fees.

RULES & REGULATIONS						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
Family Income Limit	No	No	No	No	No	No
Prior Year Public School Requirement	Conditional-attended at least 100 days except incoming kindergarteners, active military dependents, or students of legal guardians killed in the line of duty (military). Under suspended expansion, new students required to attend for 100 days of the prior fiscal year.	No	Conditional—but preference is given to public school students	Conditional—with exceptions	Yes	Yes— with exceptions
Geographic Limit	No—Statewide	No—Statewide	No—Statewide	No—Statewide	No—Statewide	No—Statewide
Enrollment Cap	Yes—0.5 percent of total traditional public and public charter school students through 2019: ~5,400 students annually. Under suspended expansion, cap becomes permanent.	No	Yes—500 in 2015–16; increasing 500 students each year thereafter.	No	No	No
Account Cap	90% of charter school per-student base funding amount	90% state and local public school funding	$6,637 in 2016–17; tied to proportional annual base cost changes	100% of state and local formula funds and categorical grants for students with special needs	100% public school base formula funding.	$9,000
Testing Mandates	No—current students. Yes—new students under suspended expansion: state test, nationally norm-referenced test, AP, or college entrance annually for students in grades 3–12.	Yes—state or nationally norm-referenced test annually for students in grades 3–10	No	State or nationally norm-referenced test	State or nationally norm-referenced test	No

OVERSIGHT & ACCOUNTABILITY						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
Administering Agency	Currently State Department of Education; under suspended expansion: Treasurer, ESA Review Council	State-approved non-profits (currently 2)	State Board of Education; State Department of Education; approved non-profit	State Board of Education	State Treasurer; approved private financial institutions	State Education Assistance Authority
Agency Administration Fee	Yes—State Department of Education can retain up to 5%; 1% of that amount must go to Treasurer	Yes—non-profits have an allowance worth 3% of total awards	Yes—State Board of Education can retain up to 6%	Yes—State Department of Education can retain up to 4%	Yes—State Treasurer to establish "reasonable fees" for management of ESAs.	Agency can retain up to $250,000 each fiscal year
Expense Reports	Yes—quarterly	Yes—quarterly	Yes—quarterly	Yes—quarterly	In development	Yes—quarterly
Audits	Quarterly and annually all accounts; random audits; and anonymous fraud reporting, phone and website	Annual Auditor General audit of all non-profit PSLA accounts	Random throughout the year. Biennial Program reviews starting in 2019.	Quarterly and annually all accounts; random audits; and anonymous fraud reporting, phone and website	Randomly and annually by a CPA/ licensed public accountant. State Treasurer can require additional audits.	Annual verification and annual reporting.
Sanctions for Misspending	Account frozen or terminated if not repaid; legal action to recover funds.	Commissioner of Education can deny, suspend, or revoke funds.	Any fraudulently spent funds must be repaid. Fraudulent providers will be removed from program. Violators may be referred to appropriate law enforcement agency.	In development	Accounts frozen or dissolved; legal action to recover funds	Parents removed and accounts closed.

PROTECTONS FOR PARENTS & PRIVATE PROVIDERS						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
Express Prohibition Against Treating ESAs as Taxable Income	Yes	Yes	Yes	Yes	Yes	Yes
Express Prohibition Against State Control of Private Schools/ Providers	Yes	Yes	No	Yes	Yes	Funds for ESAs for students are not considered government funds for nonpublic schools, so private schools cannot be regulated.

FISCAL IMPACT						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
Costs/Savings	2013—Cost neutral; Phased-in universal ESA: General Fund savings FY 2018—$1.6 million increasing annually to FY 2021—$3.4 million	2017 expansion—no fiscal impact on state or local governments	n/a	2015—Each ESA yields a net savings to local districts of $1,000 per student	For each $1M spent, state savings: $458,000; local districts savings: $696,860	n/a
Avg. ESA amt	$11,650	$8,840	$6,637	$6,600	$5,139	$9,000
Avg. ESA as % of avg per-pupil revenue	153%	101%	80%	70%	61%	104%

Sources: Author's table based on data from EdChoice, the Institute for Justice, the Heartland Institute, and respective state legislatures and education agencies. Last updated September 1, 2017. Select fiscal impact data was provided by Martin F. Lueken, Ph.D., Director of Fiscal Policy and Analysis, EdChoice. Arizona's phased-in universal ESA annual fiscal savings from the Joint Legislative Budget Committee, February 14, 2017. *Notes:* *Arizona's ESA expansion has been suspended pending a ballot initiative scheduled for November 2018. Two legal suits against the program's suspension have been filed as of this writing. Nevada's program has been suspended because the state legislature convened without resolving an alternative funding mechanism.

LEGAL STATUS						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
Legal Challenge(s)	Yes—*Niehaus v. Huppenthal* (2011)	Yes—*Faasse v. Scott* (2014)	No	No	Yes—*Duncan vs Nevada* (August 2015) & *Lopez v. Schwartz* (September 2015)	No
Filed By	• AZ School Boards Association; • AZ Education Association; • AZ Association of School Business Officials; and • Sharon Niehaus, Continental Elementary School District (in Green Valley) Governing Board member	• FL Education Association; • Tom Faasse, FEA member, public school teacher, and parent; and • Three more public school parents	n/a	n/a	• ACLU of NV on behalf of individuals: Ruby Duncan; Rabbi Mel Hecht; Howard Watts III; Leora Olivas; and Adam Berger • Educate Nevada Now and the Education Law Center of New Jersey	n/a
Status *(continued)*	Program upheld in 2012 & 201—ESAs are: • Neutral toward religion— parents have a variety of educational choices; and parents choose, not government. • Do not violate the "Aid Clause"—beneficiaries are students, not schools; and no public funds are earmarked for a particular private school; (continued below)	Program upheld in 2014—Plaintiff's motion dismissed with prejudice for: Failure to show special injury, as claimed, to public school children and teachers because public schools will lose funding. The case was filed primarily on procedural grounds relating to Florida's single-subject rule.	n/a	n/a	September 29, 2006, Nevada Supreme Court issued a consolidated ruling that ESAs are constitutional and they: • Do not violate Article XI Section 1, so the state legislature is free to encourage other methods of education.	n/a

LEGAL STATUS *(continued)*						
States	**Arizona**	**Florida**	**Mississippi**	**Tennessee**	**Nevada**	**North Carolina**
Status *(continued)*	• Do not forfeit students' right to a "free public education"—they can re-enroll, just like home—and private-schooled students; parents are not coerced into accepting ESAs; and ESAs expand education options, not restrict them 2014—AZ Supreme Court refuses to review appeal, so the program remains constitutional *On August 8, 2017, a group challenging the ESA expansion (SB 1431) submitted enough signatures to have it put to a vote on the November 2018 ballot. The Secretary of State's Office is currently validating those signatures. The latest expansion has been suspended, but the previous ESA program is operational.		n/a	n/a	• Do not violate Article XI Section 2 requiring the state legislature to provide for "a uniform system of common schools." • Do not violate Article XI, Section 10, because funds placed in ESAs belong to parents and are not public funds. • However, the lack of a distinct funding mechanism violates Article XI, Section 6, which requires the legislature to appropriate funds for public schools before appropriating other funds (Section 16 only of Senate Bill 302, 2015). The legislature is currently finalizing program funding details. *On June 4, 2017, the legislature reached a compromise that did not fund the program.	n/a

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[193] State of California Treasurer's Office, ScholarShare Administrative Fund, Financial Statements With Independent Auditor's Report for the Fiscal Year Ended June 30, 2016, p. 3, http://www.treasurer.ca.gov/scholarshare/publications/administrative/2016.pdf. See also State of California Treasurer's Office, ScholarShare Plan Details and Information, https://www.scholarshare.com/plan/details.shtml; "The Seven-Member ScholarShare Investment Board," http://www.treasurer.ca.gov/scholarshare/members.asp; cf. Liz Pulliam, "State Gets Closer to Program for Tax-Deferred College Accounts," *Los Angeles Times*, April 2, 1999, http://articles.latimes.com/1999/apr/02/business/fi-23411; "New California Program Makes It Easier to Save for College," *Los Angeles Times*, October 3, 1999, http://articles.latimes.com/1999/oct/03/business/fi-18165; and "ScholarShare: How it Works," Los Angeles Times, October 3, 1999, http://articles.latimes.com/1999/oct/03/business/fi-18171.

[194] Daisy Gonzales, "AB-34 Student financial aid: Children's Savings Account Program Bill Analysis," Assembly Appropriations Committee, May 10, 2017, p. 2, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB34; Chuck Nicol, "AB-34 Student financial aid: Children's Savings Account Program Bill Analysis," Assembly Higher Education Committee, April 25, 2017, p. 3, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB34; and California Treasurer's Office, ScholarShare College Savings Plan Annual Report, June 30, 2016, p. 4, http://www.treasurer.ca.gov/scholarshare/publications/csp/direct/2016.pdf.

[195] Amanda Kahn Fried, San Francisco Office of the Treasurer and Tax Collector, College Savings Plan presentation to the Assembly Budget Subsommittee No. 2 on Education Finance, March 14, 2017, Room 244, p. 18, http://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/March%2014%20-%20Student%20Aid%20CCC%20and%20Financial%20Aid%20Issues.pdf; and SFUSD San Francisco Public Schools, College Savings Accounts, http://www.sfusd.edu/en/graduation-college-and-career/financing-college/college-savings-accounts.html. The original source for the statistic that students with savings accounts are seven times more likely to attend college is: William Elliott III & Sondra Beverly, "The Role of Savings and Wealth in Reducing "Wilt" between Expectations and College Attendance," Center for Social Development at the George Warren Brown School of Social Work at Washington University, Research Brief, CSD Publication No. 10-04, January 2010, p. 2, https://csd.wustl.edu/Publications/Documents/RB10-04.pdf.

[196] City and County of San Francisco, Treasurer & Tax Collector, Kindergarten to College (K2C), http://sftreasurer.org/kindergarten-college-k2c; City and County of San Francisco, Office of Financial Empowerment, K2C FAQ, http://sfgov.org/ofe/k2c-faq

[197] City and County of San Francisco, Office of Financial Empowerment, Program Rules, http://sfgov.org/ofe/sites/default/files/Program%20Rules-English.pdf.

[198] City and County of San Francisco, Treasurer & Tax Collector, Kindergarten to College (K2C), http://sftreasurer.org/kindergarten-college-k2c; City and County of San Francisco, Office of Financial Empowerment, K2C FAQ, http://sfgov.org/ofe/k2c-faq; and City and County of San Francisco, Office of Financial Empowerment, Program Rules, http://sfgov.org/ofe/sites/default/files/Program%20Rules-English.pdf.

[199] City and County of San Francisco, Office of Financial Empowerment, Program Rules, http://sfgov.org/ofe/sites/default/files/Program%20Rules-English.pdf.

[200] AB-34 Student financial aid: Children's Savings Account Program, Introduced by Assembly Member Nazarian,

December 5, 2016, http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB34; placed on suspense file May 10, 2017, http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201720180AB34; Daisy Gonzales, "AB-34 Student financial aid: Children's Savings Account Program Bill Analysis," Assembly Appropriations Committee, May 10, 2017, p. 2, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB34; Chuck Nicol, "AB-34 Student financial aid: Children's Savings Account Program Bill Analysis," Assembly Higher Education Committee, April 25, 2017, p. 3, http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB34. See also Jim Miller, "California newborns would get state-seeded college savings accounts under bill," *Sacramento Bee*, March 27, 2017, http://www.sacbee.com/news/politics-government/capitol-alert/article141118218.html. See also AB 209 - Tax deductions: 529 college savings plans, introduced by Assembly Members Patterson, Bigelow, Brough, and Melendez on February 2, 2015, and died on February 1, 2016, http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0201-0250/ab_209_bill_20150202_introduced.html; "College Savings Relief Act AB 209 (Bigelow, Brough, Melendez, Patterson): Fact Sheet," January 2015, http://collegecampaign.org/wp-content/uploads/2015/01/AB-209-Patterson-Fact-Sheet.pdf. Carlos Anguiano, "AB 209 - Tax deductions: 529 college savings plans bill analysis," Assembly Committee on Revenue and Taxation, April 10, 2015, http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0201-0250/ab_209_cfa_20150410_151016_asm_comm.html; and Carlos Anguiano, "AB 209 - Tax deductions: 529 college savings plans bill analysis, Assembly Committee on Revenue and Taxation, May 16, 2015, http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0201-0250/ab_209_cfa_20150516_104840_asm_comm.html.

201 See Vicki E. Alger, "Gratitude for Our Armed Forces Should Not Stop at the Schoolhouse Door: Providing Educational Choice through Military Education Savings Accounts," Independent Women's Forum, Policy Brief, May 12, 2012, http://c1355372.cdn.cloudfiles.rackspacecloud.com/bf4ee144-6355-4644-9cc5-94e3a7f711da/MilitaryEd_p3.pdf; Vicki E. Murray (Alger), GI Junior Scholarships: Expanding Education Options for Children from Military Families in California, Pacific Research Institute, September 21, 2010, https://www.pacificresearch.org/article/new-study-finds-gi-junior-scholarships-would-expand-education-options-for-ca-military-children/; and Lindsey M. Burke and Anne Ryland, "A GI Bill for Children of Military Families: Transforming Impact Aid into Education Savings Accounts," Heritage Foundation, Backgrounder No. 3180, June 2, 2017, http://www.heritage.org/education/report/gi-bill-children-military-families-transforming-impact-aid-education-savings; cf. Emma Brown, "As Trump pushes school choice, Heritage wants to let 800K military kids use public dollars for private education," *Washington Post*, June 2, 2017, https://www.washingtonpost.com/news/education/wp/2017/06/02/as-trump-pushes-school-choice-heritage-wants-to-let-800k-military-kids-use-public-dollars-for-private-education/?utm_term=.6c018644f71c.

202 Lindsey M. Burke and Anne Ryland, "A GI Bill for Children of Military Families: Transforming Impact Aid into Education Savings Accounts," Heritage Foundation, Backgrounder No. 3180, June 2, 2017, http://www.heritage.org/education/report/gi-bill-children-military-families-transforming-impact-aid-education-savings

203 U.S. Department of Education, Office of Elementary and Secondary Education, About Impact Aid, last modified March 21, 2017, https://www2.ed.gov/about/offices/list/oese/impactaid/whatisia.html; U.S. Department of Education, Office of Elementary and Secondary Education, Office of Impact Aid Programs, last modified February 13, 2017, https://www2.ed.gov/about/offices/list/oese/impactaid/index.html; and U.S. Department of Education, Office of Elementary and Secondary Education, Programs and Grants Impact Aid Programs, last modified August 24, 2011, https://www2.ed.gov/about/offices/list/oese/impactaid/programs.html.

204 Educational Options and Performance of Military-Connected School Districts, Department of Defense, June2011, pp. 3, 6, and 17, http://www.dodea.edu/Partnership/upload/Reports-to-Congress-2011-Education-Options.pdf.

205 2015 Demographics: Profile of the Military Community, Military One Source, pp. iv and 33, http://download.militaryonesource.mil/12038/MOS/Reports/2015-Demographics-Report.pdf.

206 Author's estimates based on data showing California Active Duty members have 170,127 dependents, and approximately 62.3 percent of them are likely children, based on the national average, or 105,989 children. Of those children, approximately 53.6 percent are ages six to 18 again based on national averages, or 56,810 school-age children. See *2015 Demographics: Profile of the Military Community*, Military One Source, pp. 126, 142, 145, and 179, http://download.militaryonesource.mil/12038/MOS/Reports/2015-Demographics-Report.pdf.

207 Author's calculation based on total Impact Aid funding for California of $47,269,282 / 56,810 estimated school-age military dependents = $832. See U.S. Department of Education, Impact Aid Fiscal Year 2017 Budget, https://www2.ed.gov/about/overview/budget/budget17/justifications/b-impactaid.pdf. For state specific amounts see U.S. Department of Education, Fiscal Years 2016-2018 State Tables for the U.S. Department of Education, last updated May 23, 2017, http://www2.ed.gov/about/overview/budget/statetables/index.html. See State Tables by Program, compiled for posting on the WEB by the Budget Service on May 24, 2017, http://www2.ed.gov/about/

overview/budget/statetables/18stbyprogram.pdf. The actual 2016 payments are as follows: Impact Aid Basic Support Payments, $43,366,398; Impact Aid Payments for Children with Disabilities, $3,157,700; and Impact Aid Construction, $745,184.

[208] Author's calculation based on $12,316,795,000 in total benefits / 1,069,034 recipients = $11,521 per recipient. See U.S. Department of Veterans Affairs, Veterans Benefits Administration, "Benefits for Education Fiscal Year 2015," pp. 10, 14-15, http://benefits.va.gov/REPORTS/abr/ABR-Education-FY15-02032016.pdf.

[209] Department of Veterans Affairs, Veterans Benefits Administration, "Benefits for Education Fiscal Year 2015," p. 14, http://benefits.va.gov/REPORTS/abr/ABR-Education-FY15-02032016.pdf.

[210] Private schools in California are already required to file affidavits with the state. As of May 4, 2017, the California Department of Education lists more than 20,200 registered full-time private schools enrolling six or more students in its private school directory. See Private School Affidavit Data, May 4, 2017,http://www.cde.ca.gov/ds/si/ps/documents/privateschools1617.xls. The department does not list registered private schools enrolling less than six students. See also California Department of Education, Private Schools, http://www.cde.ca.gov/ds/si/ps/; cf. California Section 33190, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33190.

[211] There are more than 1,100 nonpublic schools and agencies certified to provide special education services. See California Department of Education, Services and Resources, http://www.cde.ca.gov/sp/se/sr/; and California Department of Education, Special Education – *CalEdFacts*, last updated February 19, 2016, http://www.cde.ca.gov/sp/se/sr/cefspeced.asp. See also California Department of Education, Data Collection and Reporting: Nonpublic Schools/Agencies, http://www.cde.ca.gov/sp/se/ds/index.asp; California Department of Education, California Nonpublic, Nonsectarian Schools and Agencies Certification Data Worksheet, updated April 24, 2017, http://www.cde.ca.gov/sp/se/ds/documents/npsadatawrksht0417.xls. Current law also allows local public schools to contract with out-of-state providers to offer services to students with special needs. Currently there are more than 70 registered out-of-state providers in 22 states: Arizona, Colorado, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Massachusetts, Maryland, Michigan, Missouri, Montana, Nebraska, New Mexico, Nevada, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Wyoming. See California Nonpublic, Nonsectarian Schools and Agencies Certification Data Worksheet, updated April 24, 2017, http://www.cde.ca.gov/sp/se/ds/documents/npsadatawrksht0417.xls; California Department of Education, Nonpublic Schools/Agencies Out-of-State Placement, http://www.cde.ca.gov/sp/se/ds/osplacmntrpt.asp; cf. California *Education Code* 56365(f), http://codes.findlaw.com/ca/education-code/edc-sect-56365.html.

[212] As of 2017 the California Department of Education lists nearly 400 registered "Heritage Schools," which provide educational, academic, and enrichment tutoring to students enrolled in public or private schools full-time. See California Department of Education, Frequently Asked Questions Heritage Schools, http://www.cde.ca.gov/ls/pf/he/hsfaq.asp; California Department of Education, Heritage School Registration Form Search, http://www3.cde.ca.gov/hsrs/search.aspx; cf. California *Education Code* Section 33195, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33195; and 33195.4, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33195.4.

[213] Most existing tax-credit and ESA programs expressly guarantee nonpublic education providers' autonomy and confirm that their participation does not make them an entity of the state. Most programs further require only that participating nonpublic providers comply with health and safety codes, and that they comply with nondiscrimination policies set forth in various federal regulations, which most nonpublic providers already do. For example, under 42 USC 1981, nonpublic schools are prohibited from discriminating based on race, color, and national origin. Private schools that accept federal funds must also comply with nondiscrimination requirements under 42 USC 2000d, which applies to race, color, and national origin, as well as 29 USC 794, which concerns disability.

[214] Fenit Nirappil, "California tax donations lost in bureaucracy," *Orange County Register*, August 27, 2015, http://www.ocregister.com/2015/08/27/california-tax-donations-lost-in-bureaucracy/; and Melody Gutierrez, "California's poor leave $2 billion in tax credits unclaimed," *San Francisco Chronicle*, February 23, 2017, http://www.sfgate.com/news/article/California-s-poor-leave-2B-in-tax-credits-10952199.php.

[215] It will be important for the Attorney General's Office to specify what information should be reported on a fiscal, calendar, or school year basis. The reporting requirements detailed are based on those required by the Arizona Department of Revenue, Private School Tuition Organization Income Tax Credit Reports, https://www.azdor.gov/ReportsResearch/SchoolTaxCredit.aspx#private; cf. Manual for School Tuition Organizations, Arizona Department of Revenue, Office of Economic Research and Analysis, updated March 1, 2017, https://www.azdor.gov/Portals/0/RefundCredits/SchoolTuitionOrganizationManual.pdf; and Arizona Department of Education, Empowerment Scholarship Account Program, ESA Data, http://www.azed.gov/esa/17data/. Starting in the 2017-18 school year, the Arizona Department of Education along with the Arizona Department of Revenue will share ad-

ministration of the ESA program, and the state Treasurer will contract with financial management firms to manage ESA accounts. See SB 1431, empowerment scholarships; expansion; phase-in, https://apps.azleg.gov/BillStatus/BillOverview/69282. Florida publishes quarterly and annual reports of its programs. See the Florida Department of Education, Florida Tax Credit Scholarship Program, http://www.fldoe.org/schools/school-choice/facts-figures.stml; and Step Up For Students, The Gardiner Scholarship Program: Summary of Progress, https://www.stepupforstudents.org/newsroom/the-results/.

[216] California Department of Education, Fingertip Facts on Education in California – CalEdFacts, http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp; and Frequently Asked Questions, http://www.cde.ca.gov/ds/dc/es/refaq.asp. These categories include: African-American, not Hispanic, American Indian or Alaska Native, Asian, Filipino, Hispanic or Latino, Pacific Islander, White not Hispanic, Two or More Races Not Hispanic, or None Reported.

[217] Tax-credit scholarship programs in Arizona (two of its four programs), Florida, Iowa, Indiana, Montana, Nevada, Oklahoma, Pennsylvania (two programs), and South Carolina do not have a prior year public school enrollment requirement. Prior public school enrollment is conditional for tax-credit scholarship programs in Arizona (one of its four programs) and South Dakota. Arizona's corporate tax-credit scholarship program exempts low-income students enrolled in private preschools for students with special needs, private school kindergarteners, military dependents, and prior scholarship recipients under this program or the individual tax-credit scholarship program. South Dakota's tax-credit scholarship program exempts students starting school in the state for the first time and students entering kindergarten. Among ESA programs, only Nevada requires prior public school enrollment. Florida's ESA program does not have a prior year public school enrollment requirement. ESA programs in Arizona, Mississippi, and Tennessee have conditional prior public school enrollment requirements. Arizona's ESA program does not require prior public school enrollment for kindergarteners, children of active-duty military members, children whose parents were killed in the line of duty, siblings of current or previous ESA recipients, or preschoolers with special needs. Mississippi exempts students eligible to enroll in kindergarten or first grade, children of active-duty military members, children whose parents were killed in the line of duty, foster children, and siblings of current or previous ESA recipients. Tennessee exempts students starting school in the state for the first time and students who received an ESA in the previous year. See "School Choice in America," EdChoice, last modified Apr. 13, 2017, http://www.edchoice.org/school-choice/school-choice-in-america; and Miss. Code Ann. §§ 37-181-1 through 21.

[218] Three percent of those families have children in both public and private schools. See Council for American Private Education, Facts and Studies – Family Income, http://www.capenet.org/facts.html. Nationwide the median annual income of homeschool families matches that of the national median, between $75,000 and $79,999. See Brian D. Ray, "Academic Achievement and Demographic Traits of Homeschool Students: A Nationwide Study, 2010," Academic Leadership, Vol. 8, Iss. 1 (Winter 2010), pp. 12-13, https://www.nheri.org/AcademicAchievementAndDemographicTraitsOfHomeschoolStudentsRay2010.pdf; cf. Brian D. Ray, "Research Facts on Homeschooling," National Home Education Research Institute, March 23, 2016, https://www.nheri.org/ResearchFacts.pdf.

[219] There are 500,511 students enrolled in K-12 private schools full time: kindergarten, 44,774; elementary, 301,767; and high school, 153,970. See EdData, *Private School Enrollment, 2015-16*, http://www.ed-data.org/state/CA.

[220] California Department of Education, "Private Schools Frequently Asked Questions- Schooling at Home," http://www.cde.ca.gov/sp/ps/psfaq.asp#D. The exact number of homeschooled students in California is unknown. The U.S. Department of Education estimates that nationwide approximately 3.4 percent of the school-age population is homeschooled. See Jeremy Redford, Danielle Battle, and Stacey Bielick, Homeschooling in the United States: 2012, (NCES 2016-096. REV). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, April 2017, https://nces.ed.gov/pubs2016/2016096rev.pdf. Based on that percentage one estimate suggests that the number of homeschooled students in California is between 201,994 and 269,325. See Coalition for Responsible Homeschooling, "Homeschooling Numbers," n.d., https://www.responsiblehomeschooling.org/homeschooling-101/homeschooling-numbers/. Another estimate based on U.S. Census data and an average state homeschool registration rate of 2.7 percent estimates that there are between 184,440 and 189,319homeschooled students in California. See Ann Zeise, "Number of Homeschoolers in US 2016-2017," A2Z Homeschool, updated August 16, 2016, http://a2zhomeschooling.com/thoughts_opinions_home_school/numbers_homeschooled_students/.

[221] 2017-18 May Revision to the Governor's Budget: K-12 Education, Revised on January 20, 2017, p. 19, http://www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/K-12Education.pdf.

[222] 2017-18 May Revision to the Governor's Budget: K-12 Education, Revised on January 20, 2017, p. 19, http://www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/K-12Education.pdf; and "Proposition 38: School Vouchers. State-Funded Private and Religious Education. Public School Funding. Initiative Constitutional Amendment," LAO Analysis, Legislative Analyst's Office, 2000, http://www.lao.ca.gov/ballot/2000/38_11_2000.html.

[223] Most existing tax-credit and ESA programs expressly guarantee nonpublic education providers' autonomy and confirm that their participation does not make them an entity of the state. Most programs further require only that participating nonpublic providers comply with health and safety codes, and that they comply with nondiscrimination policies set forth in various federal regulations, which most nonpublic providers already do. For example, under 42 USC 1981, nonpublic schools are prohibited from discriminating based on race, color, and national origin. Private schools that accept federal funds must also comply with nondiscrimination requirements under 42 USC 2000d, which applies to race, color, and national origin, as well as 29 USC 794, which concerns disability.

[242] As of the 2013-14 school year. See Legislative Analyst's Office, "Overview of Special Education in California," presented to the Assembly Budget Subcommittee No. 2 on Education Finance, May 5, 2015, http://www.lao.ca.gov/handouts/education/2015/Overview-of-Special-Education-in-California050515.pdf; cf. Rachel Ehlers, "Overview of Special Education in California," Legislative Analyst's Office, January 3, 2013, http://www.lao.ca.gov/reports/2013/edu/special-ed-primer/special-ed-primer-010313.aspx; and California Department of Education, Special Education – CalEdFacts, last updated February 19, 2016, http://www.cde.ca.gov/sp/se/sr/cefspeced.asp.

[225] California Department of Education, "Special Education Task Force Submits Recommendations to Improve Outcomes for Students with Disabilities, Establish One Coherent System of Education," Press Release: #15-19, March 9, 2015, http://www.cde.ca.gov/nr/ne/yr15/yr15rel18.asp.

[226] Laura Hill, Paul Warren, Patrick Murphy, Iwunze Ugo, and Aditi Pathak, Special Education Finance in California, Public Policy Institute of California, November 2016, pp. 5 and 14, http://www.ppic.org/content/pubs/report/R_1116LHR.pdf.

[227] *One System: Reforming Education to Serve All Students*, Final Report of California's Statewide Task Force on Special Education, March 2015, p. 53, http://www.smcoe.org/assets/files/about-smcoe/superintendents-office/statewide-special-education-task-force/Task%20Force%20Report%205.18.15.pdf; Rachel Ehlers, "Overview of Special Education in California," Legislative Analyst's Office, January 3, 2013,
http://www.lao.ca.gov/reports/2013/edu/special-ed-primer/special-ed-primer-010313.aspx

[228] Legislative Analyst's Office, "Overview of Special Education in California," presented to the Assembly Budget Subcommittee No. 2 on Education Finance, May 5, 2015, p. 5, http://www.lao.ca.gov/handouts/education/2015/Overview-of-Special-Education-in-California050515.pdf

[229] Thirty-three states fund special education through their primary funding formulas. See Maria Millard & Stephanie Aragon, "State funding for students with disabilities," Education Commission of the States, June 2015, pp. 2 and 4, http://www.ecs.org/clearinghouse/01/19/47/11947.pdf. See also Rachel Ehlers, "Overview of Special Education in California," Legislative Analyst's Office, January 3, 2013, http://www.lao.ca.gov/reports/2013/edu/special-ed-primer/special-ed-primer-010313.aspx; cf. Legislative Analyst's Office, "Overview of Special Education in California," presented to the Assembly Budget Subcommittee No. 2 on Education Finance, May 5, 2015, http://www.lao.ca.gov/handouts/education/2015/Overview-of-Special-Education-in-California050515.pdf; and Legislative Analyst's Office, "The 2017-18 Budget: Analysis of Special Education 'Disconnect'," LAO Budget and Policy Post, March 1, 2017, http://www.lao.ca.gov/Publications/Report/3598**.** For a review of other state's funding formulas, see Deborah A. Verstegen, "A 50 State Survey of School Finance Policies (2015)," 2015, https://schoolfinancesdav.wordpress.com/; and "Special Education," https://schoolfinancesdav.files.wordpress.com/2015/04/special.pdf.

[230] As noted previously, Nevada's ESA program has not become operational yet. Tennessee's ESA program for special needs students began operations in January 2017, so a program report is not available yet. See Tennessee Department of Education, Individualized Education Account Program: 2015–16 Program Development Report, January 2017, http://www.tn.gov/assets/entities/education/attachments/iea_program_development_report_2015-16.pdf. Meanwhile, Mississippi's Equal Opportunity for Students with Special Needs ESA caps all accounts at $6,637. This is a poor model because funding does not reflect actual costs, even though that amount is adjusted proportionally up or down based on fluctuations in state funding to public schools. See "School Choice in America," *EdChoice*, last modified Apr. 13, 2017, http://www.edchoice.org/school-choice/school-choice-in-america.

[231] Arizona Department of Education, Empowerment Scholarship Account Program, ESA Data, http://www.azed.gov/esa/17data/. See "Average Award Report," https://cms.azed.gov/home/GetDocumentFile?id=58a4c2631130c1096041f539.

[232] Florida ESAs for special needs students average $10,000, but they are weighted by grade level and cost of living for each county of residence. Actual amounts are based on public school per-student spending for special needs students. See Step Up for Students, Special Needs Scholarship, https://www.stepupforstudents.org/for-parents/special-needs/how-the-scholarship-works/; and "Florida Personal Learning Scholarship Account: Basic scholarship amounts for 2016-17," https://www.stepupforstudents.org/wp-content/uploads/2016-17-Gardiner-Scholarship-Amounts.pdf.

[233] Martin Lueken, "On Educational Costs: Fixed, Quasi-fixed and Variable Costs," *EdChoice*, March 26, 2017; and "Will School Choice Lead to Fewer Resources for Students Who Remain in Public Schools?" *EdChoice*, September 2, 2015, https://www.edchoice.org/blog/will-school-choice-lead-to-fewer-resources-for-students-who-remain-in-public-schools/. See also Martin Lueken, The Tax-Credit Scholarship Audit, *EdChoice* Director of Fiscal Policy and Analysis, *EdChoice*, October 31, 2016, https://www.edchoice.org/wp-content/uploads/2017/03/Tax-Credit-Scholarship-Audit-by-Martin-F.-Lueken-UPDATED.pdf; cf. http://www.edchoice.org/wp-content/uploads/2016/02/2015-9-The-Fiscal-Calculator-WEB.pdf; John Merrifield and Michael Ford, The Fiscal Calculator: How to Improve Fiscal Impact Assessments of Private School Choice Legislation, *EdChoice*, September 2015, http://www.edchoice.org/wp-content/uploads/2016/02/2015-9-The-Fiscal-Calculator-WEB.pdf; and Benjamin Scfaidi, The Fiscal Effects of School Choice Programs on Public School Districts, *EdChoice*, March 2012, https://www.edchoice.org/wp-content/uploads/2015/07/The-Fiscal-Effects-of-School-Choice-Programs.pdf. See also Vicki E. Murray (Alger), *Citizens' Guide to California Public School Finance*, Pacific Research Institute, March 31, 2009, https://www.pacificresearch.org/article/citizens-guide-to-california-public-school-finance/; full report, https://web.archive.org/web/20111216005754/https://www.pacificresearch.org/docLib/20090330_CA_Public_School_Finance.pdf.

[234] Marguerite Roza and Jon Fullerton, "Funding Phantom Students," *Education Next*, Summer 2013/Vol. 13, No. 3, pp. 8-16, quotation from p. 12, http://educationnext.org/files/ednext_XIII_3_roza.pdf; cf. "School Funding Practices Keep Dollars in Districts for 'Phantom Students'," *Education Next* alert, May 1, 2013, http://educationnext.org/school-funding-practices-keep-dollars-in-districts-for-%E2%80%9Cphantom-students%E2%80%9D/.

[235] The additional $4,306 per student from other local, state, and federal sources is excluded. See 2017-18 May Revision to the Governor's Budget: K–12 Education, Revised on January 20, 2017, p. 19, http://www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/K-12Education.pdf; California's 2017–18 Governor's Budget, Released on January 10, 2017, http://www.ebudget.ca.gov/budget/2017-18/#/Home. Student enrollment represent the 2015-16 school year, the latest year available. See Ed-Data, http://www.ed-data.org/state/CA ; and California Department of Education, *CalEdFacts*, http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp.