



West Virginia Governor Signs Most Expansive Education Savings Account Law in the Country

With national [polling](#) showing record high support for school choice, states across the country are advancing legislation to provide parents with more educational opportunities for their children. Leading the charge this year is West Virginia, which in March passed what the Cardinal Institute for West Virginia Policy has [called](#) "the nation's most inclusive education savings account program." The Hope Scholarship program will be "accessible to over 90% of the state's students."

[According](#) to the Heritage Foundation, "More than 90% of the student population in West Virginia will be eligible immediately upon implementation of the program in 2022. Current homeschoolers and private school students are not eligible unless they return to public school to meet the 45-day minimum enrollment period. However, the bill does include an opportunity for those students to become eligible. If fewer than 5% of currently eligible students enroll in the Hope Scholarship program by July 1, 2024, then eligibility will expand to 100% of West Virginia's students on July 1, 2026. That makes West Virginia's Hope Scholarship program the broadest and most inclusive education savings account program in the nation. It's truly revolutionary."



Kentucky Legislature Overrides School Choice Veto

On March 29, the Kentucky Legislature overrode a veto by Governor Andy Beshear of legislation creating tax-credit-funded education savings accounts.

As described by [EdChoice](#), "The EOA accounts are available to students in households with an annual household income of not more than 175 percent of the amount necessary to establish eligibility for reduced-price meals based on size of the household as determined annually by the USDA. Students also are eligible if they have previously received an EOA from an account-granting organization or are a member of the household of an eligible student that currently has an EOA. The program is capped at \$25 million dollars and will prioritize families with the lowest household income. The EOA program is available to students in counties with more than 90,000 people. Currently, that includes Jefferson, Fayette, Kenton, Boone, Campbell, Hardin, Daviess and Warren Counties."

In an interview with the Catholic News Agency, Andrew Vandiver, associate director of the Catholic Conference of Kentucky, [said](#) that over the last year, school choice shifted "from something parents wanted to something they

demanded.”

South Dakota Expands Tax Credit Scholarship Program

From the Heritage Foundation:

"On March 18, Gov. Kristi Noem signed into law an expansion of South Dakota's tax credit scholarship program, which provides tax credits to insurance companies that provide donations to scholarship granting organizations, which in turn provide scholarships to eligible students to offset the cost of private school tuition. Students from families whose income does not exceed 150% of the qualifying amount for free- and reduced-price lunch eligibility (approximately \$73,000 for a family of four) are eligible. The legislature expanded the program to now include students who already attend private school."



CDC Changes Social Distancing Guidance in Schools from 6 to 3 Feet

On March 19, the Centers for Disease Control and Prevention (CDC) revised its guidance on social distancing in schools, recommending that, "with universal masking, students should maintain a distance of at least 3 feet in classroom settings."

A story that same day in the [Washington Post](#) described the new guidance as representing "a significant reversal from CDC guidance issued last month that schools maintain six feet of distance between people. To achieve that, the CDC said, schools in most of the country should hold off on fully reopening. That put the CDC at odds with President Biden, who has called on schools to fully reopen. The February recommendation also came under fire from many experts as overly cautious, particularly as more evidence emerged that schools were safely operating with people closer to one another."

"An increasing number of scientists have called for smaller distances in schools, saying the risk must be weighed against growing examples of safe reopening and mounting evidence of mental health and academic harms to students who have been learning remotely for more than a year.

"'Look, 100 feet is safer than six feet, which is safer than three feet,' former CDC director Tom Frieden said during a Washington Post Live interview this week. 'Is three feet okay for most schools? Absolutely, if they mask, if they rapidly identify cases and isolate and quarantine.'

"That argument was bolstered last week by a study, published in the journal *Clinical Infectious Diseases*, that found similar rates of spread in Massachusetts school districts that used a three-foot minimum and in those that used six."

USDE Releases Updated EANS FAQs

Also on March 19, the Department of Education released [revised guidance](#) for the first round of EANS. EANS is short for the Emergency Assistance to Non-Public Schools Program, which was passed by Congress in December 2020 as part of broader COVID relief legislation. (A second round of EANS was passed in March, states will roll out that EANS II program at a later date.)

Of note:

C-14. Must an SEA establish criteria to prioritize non-public schools in approving applications for services or assistance under the EANS program?

Yes. Under section 312(d)(3)(C) of the CRRSA Act, an SEA must prioritize services or assistance to nonpublic schools that enroll low-income students and are most impacted by COVID-19. An SEA must consider both factors. In other words, the SEA must have criteria that differentiate among non-public schools based on their enrollment of low-income students and the severity of the impact of COVID-19 on the school. (See C-11 and C-15). The SEA might weight the factors or weight non-public schools based on their strength of meeting the SEA's criteria. An SEA may choose to serve only non-public schools that meet its criteria; or, depending on the EANS funds available and the number of applications it receives, an SEA may also provide services or assistance to non-public schools that the SEA has not prioritized, provided the priority schools receive preference in the amount of services or assistance provided. (See C15). However an SEA proceeds, it should make its criteria clear to non-public schools so they know the basis on which their application will be evaluated and apply those criteria consistently.

C-15. What factors might an SEA consider in prioritizing non-public schools to receive services or assistance under the EANS program?

An SEA generally has flexibility with regard to how it prioritizes non-public schools to receive services or assistance under the EANS program; however, the statute requires an SEA to target low-income schools and schools most impacted by COVID-19. With respect to poverty, an SEA might target those non-public schools that enroll significant numbers or percentages of low-income students (e.g., whose family income does not exceed 185 percent of the 2020 Federal poverty guidelines) or meet a minimum threshold of low-income students. The SEA might also consider poverty bands, prioritizing schools in the highest bands first. Factors that an SEA might consider in determining non-public schools that are most impacted by COVID-19 include but are not limited to: (1) rate of community infection; (2) number of COVID-19-related deaths per capita; (3) loss of tuition revenue due to decrease in enrollment; (4) lack of capacity to provide remote learning due to insufficient technological support, and (5) data documenting the extent of learning loss or the social, emotional, or mental health impact attributable to the disruption of instruction caused by COVID-19.

An SEA has flexibility to consider other factors in prioritizing non-public schools. For example, an SEA might consider the extent to which a non-public school serves low-income children with unmet needs and did not receive equitable services under a CARES Act program. An SEA might also take information regarding receipt or forgiveness of a PPP loan prior to December 27, 2020, into account in prioritizing services or assistance for non-public schools.

D-3. Are services for sanitizing, disinfecting, and cleaning school facilities an allowable use of EANS funds?

No. Section 312(d)(4)(A) specifically authorizes a non-public school to request “supplies to sanitize, disinfect, and clean school facilities.” This authority does not extend to contracting with a vendor to perform the cleaning. If a non-public school has contracted for cleaning and seeks reimbursement, an SEA may reimburse it for the cost of supplies but not for the full cleaning contract.

D-4. May preschool children receive services or assistance under the EANS program?

If preschool children are enrolled in an eligible non-public elementary school that receives services or assistance under the EANS program, preschool children and their teachers may receive allowable services. (See C-1 and C-3 through C-5 for which non-public schools are eligible). However, unless State law considers preschool education to be part of elementary education, preschool children enrolled in a stand-alone non-public preschool may not receive services or assistance under the EANS program.

D-5. Must an SEA provide the ability for non-public schools to request any of the allowable services or assistance, or may the SEA choose which services or assistance it will offer to non-public schools?

Section 312(d)(4) of the CRRSA Act permits a non-public school receiving services or assistance under the EANS program to use those services or assistance to address educational disruptions resulting from the COVID-19 emergency for any of the activities listed in paragraphs (A) through (M) of that section. An SEA may not restrict a non-public school’s ability to request any authorized services or assistance. The SEA may, however, need to negotiate the services or assistance it will provide based on the State’s procurement requirements, the amount of EANS funds available for providing such services or assistance to the school, or other reasons. (See C-16). At the same time, such negotiations must ensure that those schools that the SEA has prioritized, based on the number of low-income children and the impact from COVID-19, are not precluded from participation. (See C-14 and C-15).

D-6. May EANS funds be used to pay the salaries of non-public school teachers or other staff?

EANS funds may not be used to provide funds to non-public schools to cover payroll. Under section 312(d)(7) of the CRRSA Act, a public agency must control funds for services or assistance provided to non-public school students and teachers under the EANS program. However, an SEA may contract with a teacher at a non-public school directly to provide secular, neutral, and non-ideological services outside of the teacher’s contractual obligation with the non-public school. The non-public school teacher must be employed by the SEA or another public entity for EANS purposes outside of the time he or she is employed by the non-public school, and the non-public school teacher must be under the direct supervision of the SEA or other public entity with respect to all EANS activities. Also, an SEA may contract with a vendor to provide staff, such as nurses or teachers, who will provide services in nonpublic schools. The contract must be under the control and supervision of the SEA or another public entity.

D-8. Are there otherwise allowable expenses for services or assistance for which an SEA may not reimburse a non-public school?

Yes. Although an SEA may provide the services or assistance listed below directly to a non-public school or through a contract with an individual, association, agency, or organization under the EANS program (see D-1), the SEA may not reimburse a non-public school for:

- Improvements to ventilation systems (including windows), except for portable air purification systems, which may be reimbursed.
- Any expenses reimbursed through a loan guaranteed under the PPP (15 U.S.C. 636(a)) prior to December 27, 2020.
- Staff training and professional development on sanitization, the use of PPE, and minimizing the spread of COVID-19.
- Redeveloping instructional plans, including curriculum development, for remote or hybrid learning or to address learning loss.
- Initiating and maintaining education and support services or assistance for remote or hybrid learning or to address learning loss. (Section 312(d)(4)(M)).

E-2. How can an SEA maintain control of services or assistance for allowable activities that might affect the infrastructure of a non-public school?

Section 312(d)(4)(C) of the CRRSA Act authorizes a non-public school to request services and assistance under the EANS program for “improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school.” That authority, however, is tempered by several other provisions. Section 312(d)(7) of the CRRSA Act, for example, requires an SEA or another public agency to keep title to materials, equipment and property purchased with EANS funds and the public agency must administer such materials, equipment, and property. Moreover, 34 C.F.R. § 76.661 requires that equipment and supplies purchased with EANS funds must be able to be removed from a non-public school without remodeling the non-public school facility. Clearly, a portable air purification system could meet these requirements because an SEA could keep title and it could be removed when no longer needed without remodeling the non-public school facility. A ventilation system that is installed and becomes a capital improvement in a non-public school, however, would not meet these requirements. Similarly, new windows would not be permissible, but repairing old windows to facilitate air flow could be allowable. In sum, whether this particular authorized activity is allowable depends on the attendant circumstances.

E-rate in the News

The COVID relief bill passed by Congress and signed by President Biden in March included over \$7 billion for the E-rate program, a major expansion of funding.

Meanwhile, the [Washington Post](#) ran a story recently on accusations of overcharging in the program.

Study: School Choice Correlates to Higher Statewide NAEP Scores

A new study by Patrick J. Wolf, Jay P. Greene, Matthew Ladner, James D. Paul [finds that](#) "higher levels of education freedom are significantly associated with higher NAEP achievement levels and higher NAEP achievement gains."

Moreover, "The extent to which school choice programs are regulated by state governments, along with per-pupil spending amounts and class sizes, in contrast, have no consistent significant association with state-level student NAEP outcomes. This descriptive analysis supports the idea that expanding parental options in education, in all its forms, is consistent with improvements in average student performance for U.S. states."

As explained in the [Wall Street Journal](#), "While the study can't prove causation, the authors note that school choice increases competitive pressure on public schools—well documented in other studies—which could help improve NAEP scores across the board."

Biden Spending Proposal Contains Big Increases for Education

President Biden's 2022 proposed budget includes \$102.8 billion for the Department of Education, a \$29.8 billion or 41% increase over 2021. Included is \$36.5 billion in Title I grants, a \$20 billion increase from 2021, and \$15.5 billion for Individuals with Disabilities Education Act (IDEA) grants, representing a \$2.6 billion increase.

Presidential budget requests are not binding and are subject to decision-making by Congress.



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A Thank You, and a Farewell

Biden Administration education officials joined the CAPE board during its spring meeting, which was once again handled virtually because of COVID-19. Everyone at CAPE appreciated the opportunity to discuss the challenges and opportunities facing private schools with some old friends at the Department of Education, like Maureen Dowling, Director of the Office of Non-Public Education, and an important new face, Scott Sargrad, Deputy Chief of Staff for Policy and Programs. A big thank you to Scott, Maureen, and everyone else who participated.

And now for more somber news. Robert L. "Bob" Lamborn has passed away at the age of 102. Bob served as Executive Director of CAPE in the 1970's during important, formative years for the organization. More information about Bob's life is [available here](#). R.I.P.

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