INDEPENDENCE
INSTITUTE.ORG

An Upstream Intervention for Colorado Foster and Kinship Children:

Supplemental Educational Support Accounts

by Ross Izard, Senior Fellow in Education Policy, Independence Institute

IP-6-2023 • November 2023

KEY TAKEAWAYS

- Colorado lags behind many other states in providing K-12 educational support for families outside the services they receive at public schools during the school day.
- At the beginning of the 2022-2023 reporting period, more than 3,700 Colorado children were in out-of-home placement situations, including foster homes, certified and non-certified kinship care, congregate care, and qualified residential treatment programs.
- These students face significant academic challenges due to their home and family experiences, which often include abuse, neglect, separation, or other forms of instability. In Colorado, only 30 percent of students in out-of-home placement graduate high school in four years. Nationally, only an estimated three to four percent of these students will go on to earn a four-year postsecondary degree.
- Colorado lawmakers have passed several significant policies in recent years designed to help young adults who have been in out-of-home placement find stable housing, attend college, or otherwise access assistance. But these downstream supports are costly and less effective than earlier upstream interventions.
- Using lessons from K-12 savings account policies in other states, Colorado should consider the adoption of a Supplemental Educational Support Accounts (SESA) Program as one way to improve the K-12 experience and outcomes for eligible children in out-of-home placement.
- An SESA program would allow foster families and kin to utilize funds for various materials, supports, and services beyond those provided in school, including therapy, tutoring, supplemental materials, and enrichment activities.
- While it would require an appropriation, a well-designed SESA program could pay dividends by helping to alleviate the need for more costly, more complex supports later in life for these students.

INTRODUCTION

Colorado lags behind many other states in providing K-12 educational support for families outside the services they receive during the school day. This lack of support can leave particularly underserved and at-risk student populations in difficult situations—situations in which society, government agencies, and Colorado taxpayers must bear the significant downstream costs of problems better solved far earlier in a given student's educational journey.

> In Colorado, only 30 percent of students in out-of-home placement graduate from high school in four years.

Few populations of students face a harder road to success than those involved in the child-welfare system. These students face tremendous challenges due to their home and family experiences, which often involve abuse, neglect, separation, and both residential and academic instability.

At the beginning of the 2022-2023 reporting period, more than 3,700 Colorado children were in out-of-home placement situations, including foster homes, kinship care, congregate care, and qualified residential treatment programs.

Nearly 40 percent of these Colorado students attended at least two schools in a single school year, and some attended four or more. More than twice as many of them will drop out of school as the general student population. Only one in three will receive a high school diploma, compared to 84 percent of other Colorado students. Fewer than one in ten of these students will go on to obtain a four-year postsecondary degree. Many will face housing issues, incarceration, and other challenges.

The Colorado legislature has, in recent years, passed several major bills providing assistance to former foster youth who cannot afford to attend college or who are facing the risk of homelessness. However, this legislation attempts to address life outcomes rather than providing opportunities to better support these children earlier in their K-12 career—early enough to meaningfully change the trajectory of a student's life.

An SESA program would provide a set amount of annual funding for each student that can be used for services such as tutoring, therapies, music lessons, specialized programs, transportation, and a wide variety of other goods and services.

Simultaneously, states across America are adopting or expanding new student-account programs designed to provide private school tuition and other support to students who most need help. While many of these programs are incompatible with Colorado's current political environment, they do contain a number of features that would better support Colorado's out-of-home placement student populations.

A new breed of program called a supplemental educational support account (SESA) program combining the best aspects of other policies holds promise for children who too often miss out on supplemental services and activities. An SESA program would provide a set amount of annual funding for each student that can be used for services such as tutoring, therapies, music lessons, specialized programs, transportation, and a wide variety of other goods and services. This account-based system would provide much-needed K-12 help to Colorado students placed in out-of-home care either through the foster system or through kinship care.

This publication attempts to illustrate the issues faced by this special population of students, build a case for the use of upstream supports rather than downstream solutions, and offer an overview of how such a policy could look in Colorado.

OUT-OF-HOME PLACEMENT TYPES

Out-of-home placement refers to any time a child is placed in an environment outside his or her original, primary family home. While foster care is the most commonly recognized form of out-of-home placement, there are also many other situations worth noting. Each of these placement types is governed by complex court proceedings related to dependency and neglect. These proceedings involve multiple hearings and may also involve appeals by the child's biological parent(s). Ultimately, the process culminates in a decision by the courts about where the child will be placed.[1]

Each form of out-of-home placement in Colorado is outlined below.

FOSTER CARE

The most widely recognized form of out-of-home placement, "foster care," usually refers to situations in which a child is placed with a foster family with whom the child has no significant existing relationship. Foster care is typically managed by county governments and child-placement agencies, which can include a variety of corporations, partnerships, associations, firms, or other institutions that facilitate placement for a fee or otherwise arrange placement for foster children.[2]

Typically, these situations occur when a child cannot be safely or responsibly kept in his or her primary family home. A wide variety of factors could lead to such a decision, including child abuse and/or neglect, substance abuse, incarceration of a parent or caregiver, death of a parent or caregiver, financial hardships, or even military deployments.[3]

Perhaps the most defining aspect of foster care is that it is temporary. As such, children are often placed in multiple foster homes during their time in Colorado's child-welfare system. Even among children discharged from foster care for reunification with their families, many find themselves back in the system less than a year after their exit. During the reporting period ending March 31, 2023, 17 percent of foster children re-entered foster care within 12 months of exiting the system—more than double the national standard re-entry rate of 8.3 percent.[4]

...17 percent of foster children re-entered foster care within 12 months of exiting the system—more than double the national standard re-entry rate of 8.3 percent.

In part due to their temporary custody arrangements, foster families may not have decision-making authority over major aspects of their foster children's lives, including education and healthcare. Instead, legal custody rests with the child's parent or with the county department of human/social services. In some instances, court-appointed attorneys may serve as guardians *ad litem* (or GALs), or volunteers called court-appointed special advocates may be placed in charge of advocating for the best interests of foster children.[5] These situations can be complex, but they typically occur when a court determines that a parent cannot manage the responsibility of custody.

Foster families also receive a monthly reimbursement to help offset the costs of providing food, shelter, clothing, and other related expenses. These rates vary widely across counties based on the age of the child and the level of care required. In FY 2023, daily rates for foster children ranged from approximately $40 to more than $100 dollars.[6] Medical care for these students is covered under Medicaid, and they also receive free meals at public schools.[7]

As of March 2023, there were 1,808 Colorado children in foster care through either their local county or a child-placement agency. Roughly 48 percent of students in out-of-home placement are in this type of care arrangement.[8]

...kinship care is built upon existing significant relationships with a given child in out-of-home placement.

KINSHIP CARE

Although less widely recognized, kinship care has become a major part of Colorado's child-welfare system. On the surface, kindship care looks similar to foster care in that children are removed from their homes of origin and placed in new homes temporarily due to issues affecting their health, safety, or well-being. However, this form of out-of-home placement has some important differences from standard foster care.

Most importantly, kinship care is built upon existing significant relationships with a given child in out-of-home placement. These "kin" are often family members—aunts, uncles, brothers, sisters, grandparents, etc.—but they may also be friends, neighbors, or others depending on specific circumstances.[9] Even within these categories, types of kinship vary. The various types of kinship care are outlined below:

- **Kinship Family Foster Care** – Kin caring for a child who has met the requirements for foster care certification. Children are in the legal custody of the county department of human or social services.
- **Non-certified Kinship Care** – Kin caring for a child who has *not* met the requirements for foster care certification (or who has chosen not to seek such certification). Legal custody may rest with the kinship caregiver or the county department of human or social services.
- **Informal Kinship Care** – An arrangement made between family or friends that does not directly involve child welfare. Custody may rest with the parents or with the kinship caregiver.[10]

Kinship family foster care qualifies caregivers for the same monthly stipend as other foster parents. In non-certified kinship arrangements, caregivers are not eligible for foster-care reimbursement. However, they may be eligible for various supports, including financial assistance, services to support stable permanency in the kin's home, and various supports through the Guardian Assistance Program (RGAP).[11] They may also be eligible for the Temporary Assistance to Needy Families (TANF) program, which provides monthly financial assistance to eligible low-income families. These benefits may be granted to the child involved in the situation or to both the caregiver and the child. In both cases, significant eligibility restrictions apply.[12]

Caregivers may receive training from their local counties or other agencies. However, in many cases, kinship caregivers receive little or no assistance. Interviews and state assessments of kinship care have found that kinship caregivers often deal with significant challenges for which they are unprepared physically, emotionally, and financially.

As of March 2023, there were 588 children in paid kinship care and 766 in non-paid kinship care, for a total of 1,354 children in this type of out-of-home placement statewide. Kinship care accounts for approximately 36 percent of out-of-home placements in Colorado.[13]

... kinship and foster placement account for 85 percent of Colorado out-of-home placements.

OTHER OUT-OF-HOME PLACEMENT SITUATIONS

Combined, kinship and foster placement account for 85 percent of Colorado out-of-home placements.[14] However, there are a variety of other out-of-home placement types that occur more rarely. These types of placement are summarized below:

- **Group Homes** – A type of congregate care for students in out-of-home placement, group homes are private homes in which between three and twelve children receive 24-hour care. These homes are supervised by county departments of social/human services. There are currently 40 children placed in such homes statewide, which accounts for just over one percent of out-of-home placements in Colorado.[15] While county departments of human services may place children in these group homes, they are run by private entities.
- H**ospital/Psychiatric Care** – In some instances, children may need to be cared for under the supervision of medical or psychiatric professionals. There are currently 61 children in such placements in Colorado, accounting for 1.6% of out-of-home placements. These placements are typically paid for through Medicaid.
- **Residential Treatment Facilities or Residential Child Care Facilities** – These facilities provide 24-hour care in a group setting that offers opportunities and services to be used under an individual plan for each child. These facilities may include community-based residential childcare facilities, shelter care facilities, and therapeutic or psychiatric facilities.[16] There are currently 154 children placed in residential care facilities, accounting for approximately four percent of total out-of-home placements statewide.
- D**etention or Youth Corrections Secure Placement** – In some cases, children in out-of-home placements may have been adjudicated, determined to be guilty of a delinquency, or convicted and sentenced as an adult of certain crimes. In these

instances, children may be placed in secure detention or correctional facilities rather than in a group or home setting.[17] There are currently 115 children in such placements statewide, accounting for just over three percent of total out-of-home placements.[18]

ACADEMIC CHALLENGES FOR STUDENTS IN OUT-OF-HOME PLACEMENT

Due to the difficult home and family circumstances that lead to out-of-home placements, children in the child-welfare system often face major academic challenges in addition to more traditional hurdles related to income levels, attendance, and other factors.

The Every Student Succeeds Act, passed in 2015, included several statutory requirements, regulatory additions, and sub-regulatory guidance related to serving foster students and tracking educational outcomes for a uniquely underserved population that too often was absorbed and eclipsed by other, larger populations of at-risk students like those with low incomes or disabilities. Among these additions was a requirement that foster students be included in state education report cards, which created new energy in state legislatures for tracking the performance of these students and implementing new reforms and supports.[19]

As a result of these new data, we now have more information than ever before about the academic performance and outcomes of students in out-of-home placement—and the results are stark. Although these data are typically portrayed as reflecting results for "students in foster care," they also include a variety of students in other out-of-home placements (kinship care, etc.). For clarity and consistency with the presentation of the data, this section will refer to this broader group of students as "foster students."

Roughly three times as many foster students are suspended from school, and they are expelled in percentages up to four times higher than those of non-foster students.

NATIONAL DATA

As of 2022, there were more than 407,000 students in foster care nationwide. Of these, approximately 37 percent were in the system between ages zero and four, sixty-one percent were between the ages of five and seventeen, and three percent were between the ages of 18 and 20. Forty-three percent of these students are white, 23 percent are African American, and 22 percent are Hispanic. Approximately 26 percent are in foster care with a non-relative, with another 31 percent in kinship care and a further 11 percent in group homes or institutions.[20]

Nationally, foster students are chronically absent from school nearly twice as often as non-foster students. Roughly three times as many foster students are suspended from school, and they are expelled in percentages up to four times higher than those of non-foster students. Up to 50 percent of these students are classified as needing special education services (depending on the data source), and only about a third of them will reach reading proficiency by the age of 18. Only sixty-four percent of them will finish high school by age 18.[21]

Three-quarters of foster youth would like to attend college, but fewer than one in three will ever enroll, and fewer than one in ten will attain a bachelor's degree or higher.[22] Most estimates are far lower—according to the National Foster Youth Institute, only three to four percent of foster youth will achieve a four-year degree, and only between two and six percent will receive a two-year degree.[23] Over a 40-year working life, that lack of attainment costs each student more than $1 million based on median usual weekly earnings published by the Bureau of Labor Statistics.[24] If one computes those numbers in light of the nation's current foster-youth population and their expected levels of educational attainment, the total loss in career wages for these students will exceed $422 billion.[25]

Three-quarters of foster youth would like to attend college, but fewer than one in three will ever enroll, and fewer than one in ten will attain a bachelor's degree or higher.

COLORADO DATA

In 2022, the Colorado General Assembly passed HB22-1374, also known as the Foster Care Success Act. The legislation was signed into law on May 31, 2022. The bill included a variety of measures to improve the educational attainment of students in out-of-home placement, including foster-related professional development for local educators and county employees, data-collection and -sharing requirements focused on educational attainment and student success, and a new state pilot program housed in the Colorado Department of Education dedicated to improving educational opportunities for students in out-of-home placement.[26]

Perhaps the most immediately notable requirement of HB22-1374 was the new requirement for the Colorado Department of Education to publish an annual report on the academic performance and outcomes of students in out-of-home placement. The first such report was published in 2023 and contains a variety of data related to these students in Colorado in the 2021-2022 school year. As is the case with the national data, the statistics are sobering.

During the 2021-2022 school year, students in out-of-home placement took a total of 12,545 courses in math, science, language, and social studies. Only 66 percent of these classes were successfully passed. These students also experienced a grade-level transition rate 2.7 percent lower than that of the state rate, meaning that they are held back from grade advancement more often.[27]

Out-of-home placement students lag far behind the state population as a whole in both four-year graduation and completion rates for high school. Just 30 percent of them graduated from high school in four years, compared to 82 percent of Colorado students generally. While some foster youth do go on to pursue and complete alternative pathways to a GED, even these longer-term statistics show wide disparities with other students. In 2022, fewer than half of these students (45.6 percent) had completed their GED within six years of beginning high school. The general population of Colorado students, on the other hand, saw six-year completion rates approaching 90 percent.[28]

RECENT LEGISLATION RELATED TO FOSTER EDUCATION

Recent years have seen a significant rise in the number of bills aimed at assisting current or former out-of-home-placement students. In addition to the Foster Care Success Act, outlined in the previous section, the Colorado legislature has, in recent years, passed several bills that impact the education of children in the child-welfare system.

...the Colorado legislature has, in recent years, passed several bills that impact the education of children in the child-welfare system.

The largest or most impactful of these bills in the last five years are summarized below.

HB18-1306 – IMPROVING EDUCATIONAL STABILITY FOR FOSTER YOUTH

This large piece of legislation makes many changes to existing laws surrounding the education of students in out-of-home placement. These changes include adding additional guardrails to county-school relationships, requiring local education providers to immediately enroll foster students even if those students lack immunization or academic records, and allowing local education providers additional flexibility when determining when these students meet high school graduation requirements. It also requires school districts to work with counties to ensure these children have transportation to their school of origin following placement and creates

an Educational Stability Grant Program designed to help local education providers give better academic and social-emotional support to foster youth.[29]

HB22-1231 – FOSTER PARENTS' BILL OF RIGHTS

Although this bipartisan bill does not directly deal with children in out-of-home placement, it does outline a variety of statutory rights for foster parents. These new rights include the right to receive timely reimbursement for their work as foster parents; the right to request certain information regarding their foster children related to healthcare, education, and placement history; and the right to receive training and support from state and county agencies to improve parenting or related skills. This bill is instructive because the rights enumerated read, in many ways, as a critique of a system in which foster parents too often feel alone, unsupported, and unable to effectively care for their foster children.[30]

HB22-1374 – FOSTER CARE SUCCESS ACT

As outlined in the previous section of this publication, this legislation includes a variety of measures to improve the educational attainment of students in out-of-home placement, including foster-related professional development for local educators and county employees, data-collection and -sharing requirements focused on educational attainment and student success, and a new state pilot program housed in the Colorado Department of Education dedicated to improving educational opportunities for students in out-of-home placement. It also included a new requirement for an annual report on the academic performance of children in out-of-home placements.[31]

SB22-202 – FOSTER CARE STUDENT SERVICES COORDINATION

This short bill streamlines relationships between school districts and county departments of social or human services. Specifically, it standardizes billing processes for transportation services provided to students in out-of-home placement and authorizes school districts and the Colorado Charter School Institute to establish regional transportation plans for these students directly or through a board of cooperative educational services (BOCES). Taken as a whole, the legislation is designed to ease transportation challenges for students in out-of-home placement, who often see significant mobility between placements and schools during their time in the child-welfare system.[32]

(*Note: This bill modified a previous bill of the same title that passed in the 2021 legislative session.*)

...the legislation is designed to ease transportation challenges for students in out-of-home placement, who often see significant mobility between placements and schools during their time in the child-welfare system.

SB22-008 – HIGHER EDUCATION SUPPORT FOR FOSTER YOUTH

As outlined in a previous section of this publication, the vast majority of children in out-of-home placement would like to pursue a postsecondary degree. However, fewer than one in ten of them will ever complete a four-year college degree, often because they lack the resources to pay for college or secure the necessary loans.

To help solve this problem, SB22-008 requires all public institutions of higher education to provide "remaining balance financial assistance" to students who age out of or have been in the child-welfare system after their thirteenth birthday. This financial aid is also specifically available to students who have been in non-certified kinship care. The subject was hotly debated during the legislative session, with institutions of higher education demanding that the state cover 50 percent of the costs of this financial assistance and Republicans taking issue with new hires in the Colorado Department of Human Services acting as "student navigators" for former foster youth entering higher education.[33]

Despite the debate, state analysts predicted that only 15 percent of eligible youth would take advantage of this program—fewer than 700 students statewide—at a total financial-aid cost of $2.2 million. That equates to just .00006 of the state's current $38.5 billion budget.

HB23-1089 – SPECIAL EDUCATION SERVICES FOR STUDENTS IN FOSTER CARE

Given the large percentage of children in out-of-home placement who require special education services and the high frequency of moves among these children, ensuring consistency is an ongoing challenge for school districts, state and county agencies, and foster families.

Given the large percentage of children in out-of-home placement who require special education services and the high frequency of moves among these children, ensuring consistency is an ongoing challenge for school districts, state and county agencies, and foster families.

Prior to SB23-1089, children in out-of-home placement were considered residents of the school districts in which their placements were located. Given that these placements change often, this meant that there were too many disruptions in the special education services they may have received in their schools of origin (i.e., the schools in which they were enrolled prior to placement). This bill modifies the law to allow these students to remain residents of their school districts of origin.[34]

LATER-LIFE LEGISLATION

In addition to these bills, several pieces of legislation have been passed to help address the challenges many young adults who have been in out-of-home placement may face as they transition to adulthood. These bills include:

- SB21-1094 – Creates the Foster Youth in Transition Program, which eases the transition into adulthood for youth up to the age of 21. In addition to many other things, the bill lays out requirements and processes for emancipation proceedings and makes available a wide variety of services (such as assistance enrolling in Medicaid, securing housing, and obtaining critical documents and records. It also creates a new grant program under which eligible youth between the ages of 18 and 23 can receive additional services.[35] (NOTE: This law was later further altered by a clarifying bill: HB22-1245.)
- SB23-082 – Creates the Fostering Success Voucher Program, which provides state-funded housing vouchers to up to 100 former foster youth experiencing (or at imminent risk of experiencing) homelessness.[36]

These pieces of state legislation exist alongside a large body of federal laws and programs related to current or former students in out-of-home placement, as well as a large constellation of more general programs related to poverty, homelessness, substance abuse, and other issues. While these experiences are certainly not specific to current or former foster youth, these individuals too often do find themselves in situations where seeking help from various broader programs is necessary.

UPSTREAM SOLUTIONS VERSUS DOWNSTREAM FIXES

While both state and federal lawmakers have, in a variety of ways, attempted to help create additional supports for children in out-of-home placement, these pieces of legislation too often nibble around the edges of the practical challenges such students face.

For instance, while helping students remain in their school of origin certainly helps stabilize their K-12 educational experiences, the law does not guarantee that students are receiving adequate attention or support to succeed in that environment. Similarly, streamlining processes between school districts and county departments of human or social services eases the administrative burden for both youth in out-of-home placement and their foster families or kin, but these "fixes" do little to address the deeper challenges faced by these students. And while some programs do provide training or limited support, most legislation does not directly address the fact that many foster families or kin are ill-prepared to meet these challenges financially, mentally, or emotionally.

> ...most legislation does not directly address the fact that many foster families or kin are ill-prepared to meet these challenges financially, mentally, or emotionally.

The statistics outlined in this publication make clear that despite efforts nationally and at the state level, students in out-of-home placement far too often find themselves slipping through the cracks educationally. This early failure leads to significant impacts on longer-term life outcomes, which necessitates the passage of new legislation addressing the downstream impacts of upstream failures in the educational process. For instance, Colorado has been forced to adopt measures to lessen the cost of going to college, help transitioning youth navigate the complexities of adulthood, and provide housing vouchers to homeless or nearly homeless former foster students.

All these are admirable goals, and the policies are, in most cases, considered necessary and helpful by members of both political parties. However, critical questions remain:

Are downstream fixes truly the best policy option available? Would this legislation be necessary if these students were given the educational opportunities and support they need *before* they find themselves thrust into difficult situations as adults?

POTENTIAL POLICY SOLUTIONS – SUPPLEMENTAL EDUCATIONAL SUPPORT ACCOUNTS FOR STUDENTS IN OUT-OF-HOME PLACEMENT

...the concept of funding student accounts for the purpose of supplementing and enriching the public K-12 experience for certain populations of students has merit for Colorado students in out-of-home placement.

STUDENT ACCOUNT POLICIES IN OTHER STATES

2023 has seen a dramatic rise in the number of states passing programs known as education savings accounts, or ESAs. Arkansas, Florida, Iowa, and Utah passed large-scale programs that will ultimately be open to nearly every K-12 student in those states. Other states like Arizona and West Virginia passed similar legislation in recent years. And these programs, new and controversial though they may be, are increasingly a hot topic of conversation in high-profile political races and at dinner tables across the nation.

A detailed discussion of private school choice programs is beyond the scope of this paper and falls well outside current political realities in Colorado. However, the concept of funding student accounts for the purpose of supplementing and enriching the public K-12 experience for certain populations of students has merit for Colorado students in out-of-home placement.

The key to the usefulness and popularity of student-account programs is the flexibility they afford to students in need of additional support. Families may use their annual allocation for a wide array of services, products, and materials. For instance, by the end

of full implementation in the 2024-25 school year, the newly passed law in Arkansas will allow families to use their accounts to pay for:

- School supplies, equipment, and technology
- Instructional materials for either in-person or virtual learning
- Instructional or tutoring services
- Supplemental materials or supplies required by a course of study
- College-admissions assessments or other examinations
- Examinations required to obtain an industry-based credential
- Additional educational services for students with disabilities[37]

Other states allow for even broader potential uses of these funds. Arizona's program, for instance, also allows funds to be used for:

- Assistive technology
- Educational/psychological evaluations
- Educational therapies and services
- Paraprofessional support
- Life and vocational skills training programs
- Insurance or surety bond payments[38]

As of November 2022, the Arizona program included 3,233 approved vendors from which families could choose for various services.[39]

K-12 SUPPLEMENTAL EDUCATIONAL SUPPORT ACCOUNTS (SESAS) – AN OVERVIEW

Severed from the controversial use of funds for tuition at a private school, account-based student programs still provide robust support that is limited or absent in students' public K-12 journey.

Structured properly, the same framework undergirding these programs could be used to provide upstream support for students in out-of-home placement. These students would remain in their chosen schools and would not receive tuition support for private education or related services. Instead, they would receive an annual allocation that could be used for a wide range of supplemental or wraparound services that would enrich, enhance, and strengthen the K-12 academic experience for these students.

In essence, SESAs would leave the politically charged provisions of other state laws on the cutting board and instead move forward with focused support for one of Colorado's most underserved student populations.

In essence, SESAs would leave the politically charged provisions of other state laws on the cutting board and instead move forward with focused support for one of Colorado's most underserved student populations.

VENDORS AND ALLOWABLE USES

While other aspects of the proposed program—student/family eligibility, funding levels, administrative considerations, etc.—would require narrow tailoring, allowable uses of funds under an SESA program would benefit from being as broad as possible to serve diverse student needs.

It is nearly impossible to predict the wide array of services, materials, therapies, or other items that students might need to be successful at any given point in their academic journeys. At any given moment, a particular student might need speech therapy, counseling, tutoring, academic supplements, or a whole host of other goods or services. This statement is particularly true with regard to students in out-of-home placement who may be dealing with serious social, emotional, or behavioral issues in addition to strictly academic challenges. As such, artificially constraining the allowable use of funds only to those goods or services that might be useful to more traditional student populations could limit the program's ability to provide meaningful assistance to this unique population of students.

…this interest in meeting myriad student needs must be balanced with the need to limit fraud, abuse, or inappropriate use of funds.

However, this interest in meeting myriad student needs must be balanced with the need to limit fraud, abuse, or inappropriate use of funds. For example, the program would not be working as intended if a family could use their allotted funds to purchase a big-screen television rather than school materials. Unfortunately, the need to create additional security and accountability may be particularly important in certain out-of-home placement situations in which not all involved adults can be counted on to act in the best interests of the child in all situations.

To address the tension between these two policy needs, lawmakers should couple broad statutory and regulatory allowances with thoughtful prohibitions and accountability measures (measures discussed in the next section of this paper). As a starting place, the policy could rely on the broad, non-tuition usage of funds seen in Arizona's program, such as:

- School supplies, equipment, and technology
- Instructional materials for either in-person or virtual learning
- Instructional or tutoring services
- Supplemental materials or supplies required by a course of study
- College-admissions assessments or other examinations
- Examinations required to obtain an industry-based credential
- Additional educational services for students with disabilities
- Assistive technology
- Educational/psychological evaluations
- Educational therapies and services
- Paraprofessional support
- Life and vocational skills training programs
- Fees or equipment for extracurricular activities, such as music lessons, sports, or camps

To limit potential misuse of funds, lawmakers could also consider several specific prohibitions, such as those included in Arkansas's program:

- Televisions
- Video game consoles or accessories
- Home theater or audio equipment[40]

Beyond these allowable and prohibited uses, the SESA program should include a number of other safeguards against misuse of funds. These could include:

- Allowing for the review and potential denial of any purchase made by either the administering state agency or that agency's designee (in instances where the state may contract out all or part of the program's administration)
- Prohibiting any form of cash refund to families and requiring that all refunds instead be credited back to the SESA account from which they were paid
- Prohibiting the resale of any technology or similar items purchased with an SESA within a certain period of time and/or requiring disclosure of such sales to the relevant state agency
- Providing a regulatory process through which vendors could be approved or denied for participation in the program, including the ability to bar vendors from participation should they engage in inappropriate business practices related to SESA funds
- Allowing families who misuse their funds to be disallowed from further participation in the program or subject to investigation by the Colorado Attorney General or the administering state agency

... the SESA program should include a number of other safeguards against misuse of funds.

Finally, lawmakers will have to consider how to handle unused funds at the end of each year. In general, it is advantageous to allow families to retain unused funds for use in future years for two reasons. First, it creates incentives to economize and shop for the most price-effective services. In the absence of fund retention year over year, families may reasonably adopt a "use it or lose it" mentality in which they feel obligated to spend their entire annual allocation, even if doing so is not necessarily in the best

interests of the child at that time. And second, allowing families to retain funds allows for future planning. For instance, families may opt to save a portion of their SESA funds over a period of years for college entrance exams, industry certification programs, or other postsecondary opportunities.

FUNDING CONSIDERATIONS

Annual ESA allocations are typically at a level that provides meaningful support to families who would like to access private education. Additionally, the number often scales with student needs. For instance, in Arizona, average funding for students with no disabilities ranges from $4,000 to $9,000, depending on grade level (with students in higher grades receiving larger allocations due to the increased costs of education in those grades). At the other end of the spectrum, students with moderate or severe disabilities may receive up to $43,000 per year.[41]

> Determining precisely how much these accounts should receive per year would be a matter of balancing the financial needs of foster families and kin with those of the state budget.

In Colorado, Supplemental Educational Support Accounts would not be used to fund private school tuition or fees and would instead be reserved for other services for eligible students. As a result, annual per-student allocations would likely be considerably lower.

Determining precisely how much these accounts should receive per year would be a matter of balancing the financial needs of foster families and kin with those of the state budget. These families consistently identify a need for more financial support related to the care of their foster children, but specific estimates of how much is needed are difficult to find.[42] Too low an amount would not provide a meaningful level of additional support for children in out-of-home placement, which would limit the program's utility and return on investment in the long run. On the other hand, too high an allocation could lead to significant political disagreements or budgetary strains. If the legislature were to set initial funding for Supplemental Educational Support Accounts at a modest $2,000 per child, per year, annual costs would not exceed $7 million even if every child in foster or kinship care chose to participate (which is

unlikely).[43] That equates to approximately .000016 of the state's total budget and aligns closely with the funding allocated for other downstream programs in recent years.

CHILD/FAMILY ELIGIBILITY

Perhaps the most difficult aspect of implementing Supplemental Educational Support Accounts would be determining which children and families are eligible for such accounts. In other programs, these determinations are largely made based on income level, school performance, disability status, or a variety of other student-related factors. Parents typically make decisions about where and when to utilize funds.

However, with regard to students in out-of-home placement, the issue is more complex due to inconsistency related to which adult has the legal authority to make educational decisions for a given child. Depending on the specifics of a given situation, these decisions may rest with the birth parents, the foster or kinship family, county government officials, court-appointed guardians ad litem (GALs), or court-appointed special advocates (CASAs). For SESAs to be an effective means of improving educational experiences for children in the child-welfare system, the underlying policy would have to be carefully crafted to ensure that families can access funds for approved purposes with minimal complication or paperwork. At the same time, this streamlined approach would need to be balanced against the need to prevent inappropriate or fraudulent use of funds by bad actors.

In other programs, "parent" is typically defined broadly. These broad definitions could help ensure that no Colorado child falls through the cracks of a Supplement Support Account Program. For instance, in Arkansas, the term includes:

- A biological or adoptive parent
- A legal guardian or custodian
- A person standing in loco parentis to a participating student
- Another person with legal authority to act on behalf of a participating student[44]

> Perhaps the most difficult aspect of implementing Supplemental Educational Support Accounts would be determining which children and families are eligible for such accounts.

These categories would be sufficient to include all or nearly all families involved with out-of-home placement. With thoughtful rulemaking that includes feedback from all stakeholders—including state agencies, local agencies, nonprofits, foster families, and kin—any SESA policy could likely navigate the complexities of legal decision-making for children in out-of-home placement.

Should these complexities prove too difficult to tackle in a single piece of legislation, lawmakers could consider a staged-implementation approach. Custody arrangements with kin often prove to be more straightforward than other types of care arrangements. And given that the Colorado legislature has, in recent years, pushed to encourage kinship care rather than traditional foster care whenever possible, this approach would dovetail with existing policy trends. It would also have the effect of driving down the overall initial costs of the program by reducing the pool of potentially eligible students from more than 3,100 to 1,354.

ACCOUNTABILITY AND FRAUD PREVENTION

While the proposed SESA program would benefit from a wide variety of vendors and services, the state has an interest in ensuring that funds allocated for the benefit of students in out-of-home placement are used appropriately and in ways that accomplish the intent of the underlying legislation. Unfortunately, unregulated programs have fallen victim to fraud in other states. In Arizona, for instance, an earlier version of the state's current program was found by the Arizona Auditor General to have involved 900 transactions at unapproved merchants totaling $700,000 in fraudulent or inappropriate purchases.[45] (It is worth noting, however, that some groups have challenged this claim and argued that some purchases were inaccurately or unfairly flagged as fraudulent.)[46]

Determining precisely how much these accounts should receive per year would be a matter of balancing the financial needs of foster families and kin with those of the state budget.

The most potent tools for preventing misuse of funds are the ability to review and approve or deny purchases at the time they are made—either as general practice or on a random-sampling basis—and a mechanism through which vendors are approved or denied for participation in the program. However, several other steps could be taken to further strengthen the oversight of an SESA program and ensure that funds are being used for their intended purpose: improving the educational experience of students in out-of-home placement.

In Arkansas, state law requires the Arkansas Department of Education to adopt rules that include the performance of random audits each year on individual accounts and participating vendors. The department must also create:

- A service through which potential fraud can be anonymously reported
- A mechanism for refunding SESA funds directly to student accounts from service providers
- A process through which instances of fraud or misuse can be referred to the attorney general for investigation and potential action
- Surety bonds for vendors receive more than $100,000 in account funds
- Processes by which vendors may be disqualified should they be found to be abusing the program for financial gain[47]

In addition to these requirements, a strong SESA law should include a mechanism through which families engaging in inappropriate behavior related to account funds can be removed from the program. In general, to limit the impact of false accusations or mistakes, such decisions should be appealable either to the state board of education or another deliberative entity that can make a final determination in difficult cases. While no policy can completely eliminate bad behavior, these safeguards should provide adequate peace of mind to lawmakers, the public, and program participants that the SESA program is being operated with a high degree of fidelity and in the best interests of participating students.

CONCLUSION

Colorado children in out-of-home placement need additional supports that can help solve upstream problems before they require downstream solutions like those passed in recent years. By modifying the framework of existing programs in other states to operate as a support system for these students, Colorado lawmakers have an opportunity to provide new forms of financial and other assistance to some of the state's most underserved children.

While the work of other state legislatures forms a good foundation on which Colorado can build, any policy creating Supplemental Educational Support Accounts should be uniquely tailored to meet the needs of Colorado students. As part of that process, policymakers ought to involve a wide variety of stakeholders—state agencies, nonprofits, foster and kinship families, and others—in policy discussions as early as possible.

With a thoughtful approach and focus on helping this unique population of students, Colorado can continue its push to dramatically expand support for students in out-of-home placement.

With a thoughtful approach and focus on helping this unique population of students, Colorado can continue its push to dramatically expand support for students in out-of-home placement.

ENDNOTES

1 “How to Navigate the Dependency and Neglect Court Process,” Colorado Department of Human Services, https://drive.google.com/file/d/0B9eaXW7_92zSbVA5YXlPZC13U0U/view?resourcekey=0-Zn_Ta7bhBEILYsvokElyFA.

2 “Child Welfare Placement Services,” Colorado Department of Human Services, https://co4kids.org/placement-services/#:~:text=Kinship%20and%20Foster%20Families,improve%20the%20situation%20at%20home.

3 “Foster Care in Colorado,” CO4Kids (Colorado Department of Human Services), https://co4kids.org/foster-care-colorado. Some reasons, such as financial hardship or military deployment, must be tied to safety concerns in order to qualify as reasons for out-of-home placement.

4 “(Federal) Re-Entry to Foster Care,” Colorado Department of Humans Services Community Performance Center, https://colorado.rom.socwel.ku.edu/reports/105.

5 Legal requirements related to care and temporary custody can be found in C.R.S. 19-3-403, https://advance.lexis.com/documentpage/?pdmfid=1000516&crid=3e0434db-3e20-4508-ba2b-65d2eb17047a&nodeid=AATAAGAAFAAD&nodepath=%2FROOT%2FAAT%2FAATAAG%2FAATAAGAAF%2FAATAAGAAFAAD&level=4&haschildren=&populated=false&title=19-3-403.+Temporary+custody+-+hearing+-+time+limits+-+restriction+-+rules.&config=014FJAAyNGJkY2Y4Zi1mNjgyLTRkN2YtYmE4OS03NTYzNzYzOTg0OGEKAFBvZENhdGFsb2d592qv2Kywlf8caKqYROP5&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A68CM-0B53-CGX8-03P6-00008-00&ecomp=7gf59kk&prid=3c34eb5f-413e-42ac-b28f-4336ee8ff5d1.

6 “Colorado Foster Care,” Interstate Compact on the Placement of Children, http://icpcstatepages.org/colorado/foster-care/.

7 “Foster Care and Adoption FAQs,” CO4Kids (Colorado Department of Humans Services, https://co4kids.org/foster-care-faqs/.

8 “Children Current in Out-of-Home Placement (by Type of Placement,” Colorado Department of Humans Services Community Performance Center, https://colorado.rom.socwel.ku.edu/reports/250.

9 “Kinship Care in Colorado,” CO4Kids (Colorado Department of Human Services), https://cdhs.colorado.gov/our-services/child-and-family-services/kinship.

10 Ibid.

11 “Relative Guardian Assistance Program,” Colorado Department of Human Services, https://cdhs.colorado.gov/relative-guardianship-assistance-program.

12 While TANF is a state program, each county has different processes and information related to kinship care and associated benefits. See, for instance, “Kinship Care Benefits, Adams County Government, https://adcogov.org/kinship-care-benefits.

13 Supra, Note 7.

14 Supra, Note 7.

15 Supra, Note 7.

16 Supra, Note 15.

17 Supra, Note 15.

18 Supra, Note 7.

19 Elysia V. Clemns, Kristin Klopfenstein, Trent L. LaLonde, & Matt Tis, “The Effects of Placement and School Stability on Academic Growth Trajectories of Students in Foster Care,” *Children and Youth Services Review*, February 9, 2018, https://www.unco.edu/cebs/foster-care-research/pdf/Academic-Growth-Trajectories.pdf.

20 Fast Facts – Foster Care & Education Data at a Glance, American Bar Association Center on Children and the Law, January 2022, https://docs.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=2134&Command=Core_Download.

21 Ibid.

22 Ibid.

23 “Higher Education for Foster Youth,” National Foster Youth Institute, https://nfyi.org/issues/higher-education/.

24 “Earnings and Unemployment Rates by Educational Attainment, 2021,”) U.S. Bureau of Labor Statistics, https://www.bls.gov/emp/chart-unemployment-earnings-education.htm.

25 Calculations are the author’s based on National Bureau of Labor Statistics median usual weekly earnings by educational attainment and assume 40-year working life beginning at age 22 with a foster-youth four-year college graduation rate of five percent.

26 HB22-1374 (relevant provisions now codified as C.R.S. 22-32-138 and C.R.S. 25-5-116), https://leg.colorado.gov/bills/hb22-1374.

27 Foster Care Success Act Annual Evaluation Report – Reporting Period July 1, 2021 through June 30, 2022, Colorado Department of Education, https://www.cde.state.co.us/studentsupport/fostercaresuccessactrpt.

28 Ibid.
29 HB18-1306, https://leg.colorado.gov/sites/default/files/documents/2018A/bills/2018a_1306_enr.pdf.
30 HB20-1231, https://leg.colorado.gov/sites/default/files/2022a_1231_signed.pdf.
31 Supra, Note 27.
32 SB20-202, https://leg.colorado.gov/sites/default/files/documents/2020A/bills/2020a_202_01.pdf.
33 HB22-008, https://leg.colorado.gov/sites/default/files/2022a_008_signed.pdf.
34 HB23-1089, https://leg.colorado.gov/sites/default/files/2023a_1089_signed.pdf.
35 HB21-1094, https://leg.colorado.gov/sites/default/files/2021a_1094_signed.pdf.
36 SB23-082, https://leg.colorado.gov/sites/default/files/2023a_082_signed.pdf.
37 SB294/Act 237, 6-18-2503(11) https://www.arkleg.state.ar.us/Acts/FTPDocument?path=%2FACTS%2F2023R%2FPublic%2F&file=237.pdf&ddBienniumSession=2023%2F2023R.
38 "Allowable Expenses for All ESA Students," Arizona Department of Education, https://www.azed.gov/sites/default/files/2023/03/Published-Allowable-List-2023-03-17.pdf.
39 "Empower Scholarship Account Program FY23 Quarter 1 Report," Arizona Department of Education, https://www.azed.gov/sites/default/files/2022/11/FY2023%20Q1%20SBE%20Report.pdf.
40 Supra, Note 38.
41 "Approximate Annual ESA Funding – 2022-2023 School Year," Arizona Department of Education, https://www.azed.gov/sites/default/files/2023/02/ESA%20Funding%20Chart%20%202022.2023.pdf.
42 Framework for Centering Constituent Voices in the Child Welfare System," Colorado Department of Human Services, https://www.familyvoicesunited.org/sites/default/files/Framework%20for%20Centering%20Constituent%20Voices%20in%20the%20Child%20Welfare%20System%20-Survey%20Results%20Flyer%20Final.pdf.
43 Author's calculations are based on the 3,162 students currently in foster, kinship, or noncertified kinship care in Colorado. Calculations assume that the Colorado Department of Human Services would retain ten percent, or approximately $632,000 dollars, to administer this program.
44 SB 294/Act 237, 6-18-2503(7) https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2023R%2FPublic%2FACT237.pdf.
45 Auditor General Report No. 16-107, Arizona Auditor General, October 2018, https://www.azauditor.gov/sites/default/files/16-107_24Mo_Followup.pdf.
46 Fraud in Arizona's Empowerment Scholarship Accounts? Not So Much, Matt Beienberg, January 22, 2019, https://www.goldwaterinstitute.org/fraud-in-arizonas-empowerment-scholarship-accounts-not-so-much/.
47 294/Act 237, 6-18-2504 https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FACTS%2F2023R%2FPublic%2FACT237.pdf.

INDEPENDENCE INSTITUTE is a non-profit, non-partisan Colorado think tank. It is governed by a statewide board of trustees and holds a 501(c)(3) tax exemption from the IRS. Its public policy research focuses on economic growth, education reform, local government effectiveness, and Constitutional rights.

JON CALDARA is President of the Independence Institute.

DAVID KOPEL is Research Director of the Independence Institute.

PAM BENIGNO is Director of the Education Policy Center.

ROSS IZARD is a Senior Fellow in Education Policy at Independence Institute.

ADDITIONAL RESOURCES can be found at i2i.org.

INDEPENDENCE
INSTITUTE.ORG

727 East 16th Avenue | Denver, Colorado 80203 | 303.279.6536