

FLEXIBLE SPENDING ACCOUNT: GIVING FAMILIES EDUCATION REFORM MONEY

By Christine Cooke

INTRODUCTION

At Sutherland Institute we believe that human beings are magnificent, that each is created with the ability to learn and a purpose to accomplish great things. We believe each has unique strengths, weaknesses and interests. An education system should reflect these truths.

Currently education is synonymous with “going to school” – a narrow, limited endeavor in which students are grouped according to age, sit in rows of desks, and listen to a teacher deliver instruction to a room full of diverse learners. One-size-fits-all education happens across the nation, even though children have many different academic interests and learning styles. A century ago, this education model made more sense out of practical necessity. But in today’s world, where technology allows people to personalize almost anything, the traditional education model is far outdated. In short, public education needs a transformation.

A transformation would require a system that allows families to create an education as unique as the child. Children deserve access to an equitable education – meaning one that accounts for the individual needs and interests of the student. To do so, we need to rethink how government funds education and how families access learning.

Economist Milton Friedman captured this idea when he said, “Assumption of responsibility by government for financing education does not require that education be delivered in government-run institutions.” How should funding be directed, then? “Education spending will be most effective if it relies on parental choice and private initiative – the building blocks of success throughout our society.”¹ These comments highlight the reality that the more education spending decisions are centralized in legislative and administrative bodies, the more they will prioritize uniform, one-size-fits-none “solutions” in order to ease administrative problems faced by adults – effectively putting adults ahead of children. Instead,

transforming education to prioritize the unique needs of children requires moving away from centralized education spending decisions and towards truly local decision-makers – parents who can personalize their child’s education using the child’s education tax dollars. This can be accomplished through a Flexible Spending Account policy.

WHAT IS AN FSA?

A Flexible Spending Account allows parents to use their child’s education tax dollars to create a personalized academic program for their child using state-approved content and services. This might include a combination of personal tutors, special therapies, digital learning content, private school tuition, personalized curriculum, and a range of other services.² Parents who use a Flexible Spending Account are taking the responsibility to provide their child a high-quality education in math, reading, writing, science and other important subjects.³

Flexible Spending Accounts would be funded with a percentage of the statewide average per-pupil education funding, with the remaining funds going to fund the administration of the program and/or to the child’s geographically assigned school district.⁴ Essentially, a Flexible Spending Account means some education funds follow the child and are directed by parents instead of elected officials or administrators. This empowers parents who pursue this option with the ability to pay for an education that works for the benefit of the child’s unique needs. (Parents for whom traditional schooling is the best option will keep their child enrolled full time in a district, charter or private school). Additionally – as an added benefit for working and middle-class families and to encourage the pursuit of high-quality, low-cost education options – unused flexible spending funds would accumulate in the child’s account to pay for education beyond high school, whether professional, technical or college.⁵

HISTORY OF FSAs

Today, six states from across the country have a law creating some form of Flexible Spending Accounts. Arizona was the first, establishing FSAs in 2011 under Arizona's Empowerment Scholarship Account Program.⁶ Initially, Arizona's program was only available to parents of children with special needs, but due to the FSAs' popularity they were quickly expanded to children of active military parents; foster and adopted children; children in failing public schools; and siblings of children with an account.⁷ Arizona then expanded the program to include students residing on Native American reservations.⁸ In 2017, Arizona passed legislation that made all students eligible for the program.⁹ Since 2011, Florida, Mississippi, Tennessee, Nevada and North Carolina have passed legislation creating Flexible Spending Accounts.¹⁰

Flexible Spending Account policies have been legally challenged in several states, but thus far state high courts have upheld the core elements of FSAs as constitutional. The Arizona Education Association and Arizona School Boards Association challenged the FSA in *Niehaus v. Huppenthal*, arguing that the program was unconstitutional because it would divert public funds to religious schools.¹¹ In 2012, Maricopa County Superior Court Judge Maria Del Mar Verdin held that the accounts were constitutional because they allowed parents to have "choice among education options."¹² The case was appealed, but in 2013 the state Supreme Court held that the program was constitutional.^{13, 14}

Florida's program was also challenged. In 2014, a teacher argued that the legislation was passed in violation of the Constitution's "single subject matter" rule.¹⁵ The case was dismissed and was never appealed. The file of the case was closed in 2015.

In 2015, Nevada enacted a universal Flexible Spending Account program. After its implementation in January 2016, it was almost immediately challenged in the cases *Duncan v. State of Nevada* and *Lopez v. Schwartz*. In late 2016, the court held that the program itself is constitutional, but its funding mechanism is not.¹⁶

In short, Flexible Spending Accounts have a sound legal foundation.

WHY AN FSA?

States that offer education choice – including Flexible Spending Accounts – are already seeing the benefits.

Academic Outcomes

Certainly, research about the relationship between school choice and outcomes is mixed, but a number of recent studies show that education choice has a number of positive outcomes.¹⁷ School choice can have positive impacts on academic outcomes. And while some argue that school choice will harm traditional district public schools, studies show that many school choice options have resulted in improvements for public schools.

Researcher Greg Forster analyzed empirical research on school choice, looking specifically at "gold standard" evaluations through 2013. According to his research, 11 of the 12 random-assignment studies of school choice programs found a positive impact on academic outcomes.¹⁸ None had a negative impact on academic outcomes.¹⁹ Likewise, examining the Opportunity Scholarship Program in Washington, D.C., researcher Patrick Wolf found that of those who were not offered the scholarship, only 70 percent of students graduated from high school, while 91 percent of those who used the scholarship graduated.²⁰

As for school choice's effect on public schools, Forster's research found that according to 22 of the 23 empirical evaluations, school choice had positive impacts on traditional public schools.²¹ Importantly, none of the studies showed a negative impact on public schools.²² Additionally, an evaluation of the John M. McKay Scholarships for Students with Disabilities Program found that public schools improved academic performance for students with disabilities as more private schools chose to participate in the program.²³

Parent Satisfaction

Studies overwhelmingly show that parents using Arizona's Empowerment Scholarship Account program are satisfied with the results. A 2013 survey of parents with children in kindergarten through 12th

grade (with no responses about 10th grade) found the following: 71 percent of parents reported being “very satisfied,” 19 percent were “satisfied,” and 10 percent were “somewhat satisfied.”²⁴ No parents reported any dissatisfaction and none even responded feeling neutral about the program.²⁵ This could be attributed to the fact that parents – as survey responders – are able to select what they believe is working.

Flexible Spending Accounts also underscore where accountability in education is most effective – with the parents. When parents have more options, providers have little choice but to innovate to improve what they can offer to children.

Additionally, education spending decisions in the context of a Flexible Spending Account are more independent of the politics that typically drive centralized education spending processes. Policymakers, of course, are right to feel an obligation toward taxpayers whose money is being spent. But the purpose of education is to meet the individual academic needs of children, who are generally under the care of parents – the people best situated to act in a child’s best interest, especially compared with elected officials, special interests or central administrators making decisions from hundreds or thousands of miles away.

Customization in Education

Since all children have unique interests, strengths, weaknesses and callings in life, it’s important that parents are able to customize learning for their students. Flexible Spending Accounts allow families to spend the funds on a variety of services, depending on a child’s actual needs and interests. This creates demand for new academic opportunities that in turn ensure a robust marketplace of options designed to serve the needs of children rather than adults.

Better Education, No New Taxes

Some education advocates perennially argue that the Utah education system could be improved with more money, sometimes by way of a tax increase. However, research shows that it’s not the amount of money spent on public education that impacts student outcomes, it’s how the money is spent.²⁶ A 2016 Utah survey showed that Utahns think schools need more money, but many don’t think their education

taxes should increase.²⁷ This could reflect a general public distrust of how increased taxes will be managed. In fact, there is a recurring nationwide discussion about waste in education spending.²⁸ Flexible Spending Accounts have the potential to improve management of education funding, without the need to increase taxes, because the use of Flexible Spending Accounts reflects natural human instincts with regard to money. Flexible Spending Accounts could also be an innovation for which improved outcomes could be worth an increase in funds.

People are more likely to use money wisely when it’s their own money instead of someone else’s.²⁹ Likewise, they are more likely to spend money wisely if they are spending it on themselves or those they love, rather than on people they are not acquainted with.³⁰ Notice that centralized education funding decisions follow the most ineffective scenario: spending someone else’s money (taxpayers’) on people you don’t know (other people’s children). An FSA, on the other hand, taps into parents’ natural inclination to find the best value for their child – the highest quality services for the most reasonable prices.

RECOMMENDATIONS FOR UTAH

Utah is unlike any other state. We prioritize learning as a critical element of who we are meant to be as human beings, and we recognize education as something bigger than a source of income or a means of training a workforce. Utah has a vibrant civil society, with strong families and private-sector (often nonprofit) organizations that allow for the pursuit of education beyond what one may be able to pay for outside of their own resources. We desire local control, and are reluctant to accept federal intervention in education.

Policies should reflect the principles of the people creating and living with them. Flexible Spending Accounts meet this standard for Utah and allow families to seek the best possible learning path for a child within a framework that encourages entrepreneurs to find local solutions to education needs.

Sutherland Institute recommends a Flexible Spending Account policy for Utah with the following features:

- Categories for eligibility should include the following: (1) children who are eligible for free and reduced-price lunch, (2) students from families experiencing intergenerational poverty, (3) students with special needs, (4) students who have been adopted or are being fostered, and (5) students residing on Native American reservations, as well as siblings of those who qualify under the other categories.
- Accounts could be funded with 90 percent of the amount given to the district. The other 10 percent could go to the school district and the program’s administration.
- An expenditure-review system should be implemented to ensure purchases are for approved educational expenses. Funding distribution would depend on compliance. For ease, this could be a designated debit card system that electronically tracks expenditures.
- Unused funds should be able to roll over to the following year, and parents should be allowed to use funds remaining after a child graduates from high school to pay for technical, professional or college education.
- The state should create a list of approved purchases, which could include several of the following: curriculum and textbooks, exams and college entrance assessments, personal tutors, private school tuition, special needs therapies, and other services or programs.³¹
- Students should be subject to the same assessment laws as other district public schools, including the opportunity to opt out of certain assessments.
- Legislation should include a requirement to gather longitudinal data (graduation rates, post-secondary attainment, etc.) in order to compare outcomes of FSA students with traditional district public school students.

CONCLUSION

All children deserve the chance to achieve great things unique to them. Parents deserve as many options as possible to make sure this happens. Flexible Spending Accounts allow parents to access a better education now. Public education needs to change, and we believe Flexible Spending Accounts can help accomplish this transformation.

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¹ Lindsey M. Burke, *The Education Debit Card: What Arizona Parents Purchase with Education Savings Accounts*, 16 (August 2013).

² Lindsey M. Burke and Jonathan Butcher, *The Education Card II*, 1 (February 2016). <http://www.edchoice.org/wp-content/uploads/2016/02/2016-2-The-Education-Debit-Card-II-WEB-1.pdf>.

³ Burke, *The Education Debit Card*, 1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ American Federation for Children, “Ariz. Legislature passes bill giving Native American students on Tribal Lands access to Empowerment Scholarship Accounts,” (April 2, 2015), <https://www.federationforchildren.org/ariz-legislature-passes-bill-giving-native-american-students-tribal-lands-access-empowerment-scholarship-accounts/>

⁹ Daarel Burnette II, “Arizona Expands Education Savings Accounts to Entire Student Population,” (April 7, 2017), http://blogs.edweek.org/edweek/charterschoolice/2017/04/republican_gov_doug_ducey_has.html.

¹⁰ Burke and Butcher, *The Education Card II*, 30-31.

¹¹ *Niehaus v. Huppenthal*, Case No. 1 CA-CV 12-0242 (AZ Ct. App., Div. 1, October 1, 2013).

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ EdChoice, *School Choice FAQs*, “Is School Choice Constitutional?” https://www.edchoice.org/school-choice_faqs/is-school-choice-constitutional/.

¹⁵ *Tom Faasse, et al. v. Rick Scott*, as Governor and Head of the Department of Revenue, et al.

¹⁶ *School Choice FAQs*, “Is School Choice Constitutional?”

¹⁷ Dan Goldhaber, “School Choice as Education Reform: What Do We Know? ERIC Digest,” <http://www.ericdigests.org/2002-1/choice.html>

¹⁸ Burke, *The Education Debit Card*, 5.

¹⁹ *Ibid.*

²⁰ Burke, *The Education Debit Card*, 6.

²¹ Burke, *The Education Debit Card*, 5.

²² *Ibid.*

²³ Burke, *The Education Debit Card*, 6.

²⁴ Jonathan Butcher and Jason Bedrick, *Schooling Satisfaction: Arizona Parents' Opinion on Using Education Savings Accounts* (October 2013), 3.

²⁵ Ibid.

²⁶ Eric A. Hanushek, *The Economics of Schooling: Production and Efficiency in Public Schools*, (September 1986). <http://hanushek.stanford.edu/sites/default/files/publications/Hanushek%201986%20JEL%2024%283%29.pdf>

²⁷ Benjamin Wood, "Survey shows misplaced mistrust in Utah schools, administrators," (October 28, 2016), <http://www.sltrib.com/home/4443251-155/survey-shows-misplaced-mistrust-in-utah>.

²⁸ Neal McCluskey, "Education Waste: We Have Only Ourselves to Blame," (February 15, 2011), <http://www.cato.org/publications/commentary/education-waste-we-have-only-ourselves-blame>.

²⁹ Interview With Economist Milton Friedman, "Your World," <http://www.foxnews.com/story/2006/11/16/your-world-interview-with-economist-milton-friedman.html> (May 2004).

³⁰ Ibid.

³¹ Theoretically it makes sense to include in a Flexible Spending Account program as many educational options as possible. However, a more limited Flexible Spending Account program would still be good policy. For example, if private school tuition became prohibitive to creating a Flexible Spending Account program, we believe that excluding private school tuition from the approved state list would still bring about a transformation in practical options for families and students.

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