

By: Senator(s) Collins, Ward, Watson

To: Education

SENATE BILL NO. 2695
(As Passed the Senate)

1 AN ACT ENTITLED "THE EQUAL OPPORTUNITY FOR STUDENTS WITH
2 SPECIALS NEEDS ACT"; TO CREATE A FIVE-YEAR PILOT PROGRAM FOR THE
3 PURPOSE OF ESTABLISHING EDUCATION SCHOLARSHIP ACCOUNTS (ESAS) FOR
4 PARENTS OF ELIGIBLE STUDENTS WITH SPECIAL NEEDS ON A PHASED-IN
5 BASIS; TO PRESCRIBE THE CRITERIA FOR DETERMINING ELIGIBILITY FOR
6 PARTICIPATION IN THE PROGRAM AND RECEIPT OF PROGRAM FUNDS; TO
7 PROVIDE FOR THE FUNDING OF EACH STUDENT'S ESA; TO STIPULATE THE
8 OBLIGATIONS OF PARENTS OR LEGAL GUARDIANS, STUDENTS AND SCHOOLS TO
9 BECOME AND REMAIN ELIGIBLE FOR PARTICIPATION; TO PRESCRIBE THE
10 DUTIES OF THE BOARD OF EDUCATION REGARDING THE ADMINISTRATION OF
11 THE FUNDS; TO PROVIDE FOR THE ISSUANCE OF ESA PROCUREMENT CARDS;
12 TO REQUIRE THE PEER COMMITTEE TO PREPARE A BIENNIAL REPORT ON THE
13 SUFFICIENCY OF FUNDING FOR ESAS AND STUDENT PERFORMANCE AND
14 ASSESSMENT EVALUATION BEGINNING IN 2019 AND EVERY TWO YEARS
15 THEREAFTER; TO PROVIDE FOR THE ADMINISTRATIVE, FINANCIAL AND
16 ACADEMIC ACCOUNTABILITY STANDARDS TO BE ADHERED TO BY
17 PARTICIPATING SCHOOLS; AND FOR RELATED PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 **SECTION 1.** This act shall be known and may be cited as "The
20 Equal Opportunity for Students With Special Needs Act."

21 **SECTION 2.** The terms used in this act shall have the
22 meanings ascribed herein, unless the context clearly indicates
23 otherwise:



24 (a) "Program" means a five-year pilot program to
25 implement the Education Scholarship Account (ESA) Program created
26 in this act.

27 (b) "Eligible student" means any student who has had an
28 active Individualized Education Program (IEP) within the past
29 eighteen (18) months.

30 (c) "Parent" means a resident of this state who is a
31 parent, legal guardian, custodian or other person with the
32 authority to act on behalf of the eligible student.

33 (d) "Department" means the Mississippi Department of
34 Education.

35 (e) "Homeschool district" means the public school
36 district in which the student resides.

37 (f) "Eligible school" means a nonpublic school that has
38 enrolled a participating student. An eligible school must be
39 accredited by a state or regional accrediting agency or possess a
40 provisional letter of accreditation from a state or regional
41 accrediting agency or be approved/licensed by the Mississippi
42 Department of Education. An eligible school does not include a
43 home instruction program under Section 37-13-91, Mississippi Code
44 of 1972.

45 (g) "Tutor" means a person who is certified or licensed
46 by a state, regional, or national certification or licensing
47 organization or who has earned a valid teacher's license or who
48 has experience teaching at an eligible postsecondary institution.



49 (h) "Postsecondary institution" means a community
50 college, college, or university accredited by a state, regional or
51 national accrediting organization.

52 (i) "Educational service provider" means an eligible
53 school, tutor, or other person or organization that provides
54 education-related services and products to participating students.

55 **SECTION 3.** (1) An eligible student shall qualify to
56 participate in the program if the parent signs an agreement
57 promising:

58 (a) To provide an organized, appropriate educational
59 program with measurable annual goals to their participating
60 student and, to the extent reasonably deemed appropriate by the
61 parent, to provide an education for the qualified student in at
62 least the subjects of reading, grammar, mathematics, social
63 studies and science;

64 (b) To document their participating student's
65 disability at intervals and in a manner required under subsection
66 (8) of this section;

67 (c) Not to enroll their participating student in a
68 public school and to release the homeschool district from all
69 obligations to educate the student as long as the student is not
70 enrolled in a public school. Participation in the program shall
71 have the same effect as a parental refusal to receipt of consent
72 to service under 20 USC Sections 614(a)(1), 1414(a)(1)(D) and
73 1414(C) of the IDEA;



74 (d) Not to file for their participating student a
75 certificate of enrollment indicating participation in a home
76 instruction program under Section 37-13-91, Mississippi Code of
77 1972; and

78 (e) Not to participate in the Mississippi Dyslexia
79 Therapy Scholarship for Students with Dyslexia Program or the
80 Mississippi Speech-Language Therapy Scholarship for Students with
81 Speech-Language Impairments Program while participating in the ESA
82 Program.

83 (2) Parents shall use the funds deposited in a participating
84 student's ESA for any of the following qualifying expenses to
85 educate the student using any of the below methods or combination
86 of methods that meet the requirement in subsection (1)(a) of this
87 section:

88 (a) Tuition and/or fees at an eligible school;

89 (b) Textbooks;

90 (c) Payment to a tutor;

91 (d) Payment for purchase of curriculum, including any
92 supplemental materials required by the curriculum;

93 (e) Fees for transportation to and from an educational
94 service provider paid to a fee-for-service transportation
95 provider;

96 (f) Tuition and/or fees for an online learning program
97 or course;



98 (g) Fees for nationally standardized norm-referenced
99 achievement tests, including alternate assessments; and fees for
100 Advanced Placement examinations or similar courses and any
101 examinations related to college or university admission;

102 (h) Diagnostic fees or costs charged by a licensed
103 physician or psychometrist for the purpose of determining or
104 re-determining that a student is a child with a disability and
105 eligible to participate in the program;

106 (i) Educational therapies or services from a licensed
107 or certified practitioner or provider, including licensed or
108 certified paraprofessionals or educational aides;

109 (j) Services provided by a public school, including
110 individual classes and extracurricular programs;

111 (k) Tuition and/or fees at a postsecondary institution;

112 (l) Textbooks related to coursework at a postsecondary
113 institution;

114 (m) Surety bond payments if required by the department;

115 (n) No more than Fifty Dollars (\$50.00) in annual
116 consumable school supplies necessary for educational services and
117 therapies, daily classroom activities, and tutoring;

118 (o) Computer hardware and software and other
119 technological devices if an eligible school, licensed or certified
120 tutor, licensed or certified educational service practitioner or
121 provider, or licensed medical professional verifies in writing
122 that these items are essential for the student to meet annual,



123 measurable goals. Once a student is no longer eligible for the
124 program, computer hardware and software and other technological
125 devices purchased with ESA funds shall be donated to a nonprofit
126 organization with expertise and training in working with parents
127 to educate children with disabilities or a nonprofit organization
128 with expertise and training in working with disabled adults.

129 (3) Neither a participating student, nor anyone on the
130 student's behalf, may receive cash or cash-equivalent items, such
131 as gift cards or store credit, from any refunds or rebates from
132 any provider of services or products in this program. Any refunds
133 or rebates shall be credited directly to the participating
134 student's ESA. The funds in an ESA may only be used for
135 education-related purposes. Eligible schools, postsecondary
136 institutions and educational service providers that serve
137 participating students shall provide parents with a receipt for
138 all qualifying expenses.

139 (4) Payment for educational services through an ESA shall
140 not preclude parents from paying for educational services using
141 non-ESA funds.

142 (5) ESA funds may not be used to physically attend an
143 eligible school that maintains its primary physical location in a
144 state other than Mississippi unless that school is approved for
145 the Educable Child Program; or unless the parent verifies in
146 writing that their child cannot reasonably obtain appropriate
147 special education and related services at a Mississippi nonpublic



148 school physically located within thirty (30) miles of their legal
149 residence.

150 (6) For purposes of continuity of educational attainment,
151 students who enroll in the program shall remain eligible to
152 receive quarterly ESA payments until the participating student
153 returns to a public school, completes high school, completes the
154 school year in which the student reaches the age of twenty-one
155 (21), or does not have eligibility verified by a parent as
156 required under subsection (9) of this section, whichever occurs
157 first.

158 (7) Any funds remaining in a student's Education Scholarship
159 Account upon completion of high school may be used to attend or
160 take courses from a postsecondary institution, with qualifying
161 expenses subject to the applicable conditions stipulated in
162 Section 3(2) of this act.

163 (8) Upon the participating student's graduation from a
164 postsecondary institution or after any period of four (4)
165 consecutive years after the completion of high school in which the
166 student is not enrolled in a postsecondary institution, the
167 participating student's Education Scholarship Account shall be
168 closed and any remaining funds shall be returned to the state's
169 General Fund.

170 (9) Every three (3) years after initial enrollment in the
171 program, a parent of a participating student, except a student
172 diagnosed by a licensed physician or psychometrist as being a



173 person with a permanent disability, shall document that the
174 student continues to be identified by the school district, a
175 federal or state government agency, or a licensed physician as a
176 child with a disability.

177 (10) A participating student shall be allowed to return to
178 his homeschool district at any time after enrolling in the
179 program, in compliance with regulations adopted by the department
180 providing for the least disruptive process for doing so. Upon a
181 participating student's return to his homeschool district, that
182 student's Education Scholarship Account shall be closed and any
183 remaining funds shall be returned to the state's General Fund.

184 (11) The department or designated nonprofit shall begin
185 accepting applications for the program on July 1, 2015.

186 **SECTION 4.** (1) The ESA Program created in this act shall be
187 limited to participation of five hundred (500) new students each
188 year beginning with the school year 2015-2016. Subject to
189 appropriation from the General Fund, each student's ESA shall be
190 funded at Seven Thousand Dollars (\$7,000.00) for school year
191 2015-2016. For each subsequent year, this amount shall increase
192 or decrease by the same proportion as the base student cost under
193 Section 37-151-7(1)(b) is increased or decreased.

194 (2) Subject to appropriation, eligible students shall be
195 approved for participation in the program as follows:

196 (a) Until participation in the program reaches fifty
197 percent (50%) of the enrollment limits in subsection (1) of this



198 section, students shall be approved on a first-come, first-served
199 basis, with applications being reviewed on a rolling basis.

200 (b) After participation reaches fifty percent (50%) of
201 the enrollment limits in subsection (1) of this section, the
202 designated nonprofit administering the program shall set annual
203 application deadlines for the remaining number of available ESAs
204 and begin to maintain a waiting list of eligible students. If the
205 number of eligible students who apply for the program exceeds the
206 remaining number of ESAs available, the designated nonprofit
207 administering the program shall fill the available spaces using a
208 weighted random selection process, with preference given to
209 students with an active Individualized Education Program (IEP).

210 (c) Participating students who remain eligible for the
211 program are automatically approved for participation for the
212 following year and are not subject to the random selection
213 process.

214 (3) No funds for an ESA may be expended from the Mississippi
215 Adequate Education Program, nor shall any school district be
216 required to provide funding for an ESA.

217 **SECTION 5.** (1) The Mississippi Board of Education shall
218 contract with a qualified nonprofit organization with expertise
219 and training in working with parents to educate children with
220 disabilities to administer the program.

221 (2) The designated nonprofit shall create a standard form
222 that parents of students submit to establish their student's



223 eligibility for an Education Scholarship Account. The designated
224 nonprofit shall ensure that the application is readily available
225 to interested families through various sources, including the
226 department's website.

227 (3) The designated nonprofit shall provide parents of
228 participating students with a written explanation of the allowable
229 uses of Education Scholarship Accounts, the responsibilities of
230 parents and the duties of the designated nonprofit. This
231 information shall also be made available on the department's and
232 designated nonprofit's website.

233 (4) The department shall annually notify all students with
234 an IEP of the existence of the program and shall ensure that
235 lower-income families are made aware of their potential
236 eligibility.

237 (5) The designated nonprofit may deduct an amount up to a
238 limit of six percent (6%) from appropriations used to fund
239 Education Scholarship Accounts to cover the costs of overseeing
240 the funds and administering the program.

241 (6) The designated nonprofit shall make payments to
242 participating students' Education Scholarship Accounts on a
243 quarterly basis, unless there is evidence of misuse of the fund
244 pursuant to Section 6 of this act.

245 (7) The designated nonprofit shall make a determination of
246 eligibility, and shall approve the application, within twenty-one
247 (21) business days of receiving an application for participation



248 in the program, subject to the provisions of Section 4(2) of this
249 act.

250 (8) The homeschool district shall provide the parent of a
251 participating student with a complete copy of the student's school
252 records, while complying with the Family Educational Rights and
253 Privacy Act of 1974 (20 USC Section 1232(g)). The record shall be
254 provided no later than thirty (30) days after a parent signs an
255 agreement to participate in the program.

256 **SECTION 6.** (1) To ensure that funds are spent
257 appropriately, the designated nonprofit shall adopt rules and
258 policies necessary for the administration of the program,
259 including the auditing of Education Scholarship Accounts, and
260 shall conduct or contract for random audits throughout the year.

261 (2) Effective with the 2015-2016 school year, the designated
262 nonprofit shall issue ESA cards provided by the Department of
263 Finance and Administration for the use of parents making
264 expenditures under this act on behalf of a participating student.
265 ESA cards shall be issued to parents upon entry to the program and
266 shall expire when the participating student's Education
267 Scholarship Account is closed, except for the periodic expiration
268 and replacement of cards in the normal course of business. All
269 unexpended amounts shall remain in the student's ESA, combined
270 with the following year's allocation of ESA funds, subject to
271 Section 3(6) and (8) of this act.



272 (3) The Department of Finance and Administration may deduct
273 an amount up to a limit of one percent (1%) from appropriations
274 used to fund Education Scholarship Accounts to cover the costs of
275 providing ESA cards.

276 (4) The Department of Finance and Administration, taking
277 into consideration requests from the parents of participating
278 students, shall use Merchant Category Classification Codes (MCC
279 Codes), or a similar system as practicable and consistent with
280 current technology, to identify categories of providers that
281 provide services and products consistent with Section 3(2) of this
282 act. The Department of Finance and Administration shall make
283 publicly available a list of blocked and unblocked MCC Codes, for
284 the purposes of the program.

285 (5) The designated nonprofit shall adopt a process for
286 removing educational service providers that defraud parents and
287 for referring cases of fraud to law enforcement.

288 (6) The designated nonprofit shall establish or contract for
289 the establishment of an online anonymous fraud reporting service.

290 (7) The designated nonprofit shall establish or contract for
291 the establishment of an anonymous telephone hotline for fraud
292 reporting.

293 (8) The designated nonprofit may require a surety bond or
294 similar financial instrument for parents of participating
295 students, to the extent such products are available for purchase
296 at a minimal cost.



297 (9) The designated nonprofit shall promulgate regulations
298 implementing policies on misspending of ESA funds. Any amount not
299 spent in the allowable categories pursuant to the agreement will:

300 (a) Cause the ESA card to be temporarily suspended and
301 the parent contacted through the mail at his home address by a
302 notification explaining the suspension, detailing the violation
303 and requesting the parent to:

304 (i) Provide additional documentation justifying
305 the expenditure; or

306 (ii) Repay the misspent amount within fifteen (15)
307 business days.

308 (b) If the parent does not provide sufficient
309 documentation or refuses to repay the amount, the designated
310 nonprofit shall begin the removal process and shall seek to
311 recover the misspent funds using administrative measures or other
312 appropriate measures, including referral to collections, seeking a
313 civil judgment, or referral to law enforcement.

314 (c) If the parent repays the amount within the
315 requested timeframe then one (1) offense will be recorded and held
316 in the parent's file.

317 (d) Three (3) offenses within a consecutive three-year
318 period shall disqualify the parent's student from participating in
319 the program.

320 (e) If the designated nonprofit determines a parent has
321 failed to comply with the terms of the agreement as specified in



322 Section 3(1) of this act, the designated nonprofit shall suspend
323 the participating student's ESA and shall notify the parent in
324 writing that the Education Scholarship Account has been suspended
325 and that no further transactions will be allowed or disbursements
326 made. The notification shall specify the reason for the
327 suspension and state that the parent has twenty-one (21) business
328 days to respond and take corrective action.

329 (f) If the parent fails to contact the designated
330 nonprofit, furnish reasonable and necessary information, or make a
331 report that may be required for reinstatement within the
332 twenty-one-day period, the designated nonprofit may remove the
333 parent and their participating student(s) from the program.

334 (g) A parent may appeal the designated nonprofit's
335 decision to the circuit court in the county in which the
336 participating student resides.

337 (h) The designated nonprofit shall refer cases of
338 substantial misuse of funds to law enforcement agencies for
339 investigation if evidence of fraudulent intent and use of an ESA
340 is obtained.

341 **SECTION 7.** (1) The Joint Legislative Committee on
342 Performance Evaluation and Expenditure Review (PEER) shall prepare
343 a biannual report, beginning in 2019 and every two (2) years
344 thereafter, assessing the sufficiency of funding for Education
345 Scholarship Accounts and recommending any suggested changes in
346 state law or policy necessary to improve the program.



347 (2) The report shall assess:

348 (a) The level of participating students' satisfaction
349 with the program;

350 (b) The level of parental satisfaction with the
351 program;

352 (c) Student performance on nationally standardized
353 norm-referenced achievement tests for those participating students
354 whose parents have requested participation in such tests;

355 (d) Student performance on Advanced Placement
356 examinations or similar courses and any examinations related to
357 college or university admission;

358 (e) The high school graduation rates and college
359 acceptance rates of participating students;

360 (f) The percentage of funds used for each qualifying
361 expense identified in Section 3(2) of this act;

362 (g) The fiscal impact to the state and homeschool
363 districts of the program, which must consider both the impact on
364 revenue and the impact on expenses. Furthermore, the fiscal
365 savings associated with students departing public schools must be
366 explicitly quantified, even if the public school losing the
367 student(s) does not reduce its spending accordingly.

368 (3) The report shall:

369 (a) Apply appropriate analytical and behavioral science
370 methodologies to ensure public confidence in the study; and



371 (b) Protect the identity of participating students and
372 schools by, among other things, keeping anonymous all
373 disaggregated data.

374 (4) PEER may accept grants to assist in funding the study.

375 (5) PEER shall provide the Legislature with a final copy of
376 the evaluation of the program before December 31, 2019. At the
377 same time, the study shall also be placed in a prominent location
378 on the PEER website.

379 (6) PEER must make its data and methodology available for
380 public review while complying with the requirements of the Family
381 Educational Rights and Privacy Act (20 USC Section 1232(g)).

382 **SECTION 8.** To ensure that students are treated fairly and
383 kept safe, all eligible schools shall:

384 (a) Comply with the nondiscrimination policies set
385 forth in 42 USC 1981;

386 (b) Prior to a participating student's application for
387 enrollment, provide parents with details of the school's programs,
388 qualifications, experience, and capacities to serve students with
389 disabilities;

390 (c) Comply with all health and safety laws or codes
391 that apply to nonpublic schools;

392 (d) Hold a valid occupancy permit if required by their
393 municipality;

394 (e) Have no public record of fraud or malfeasance;



395 (f) Offer participating students the option of taking a
396 nationally standardized norm-referenced achievement test;

397 (g) Conduct criminal background checks on employees.
398 The eligible school then shall:

399 (i) Exclude from employment any person not
400 permitted by state law to work in a nonpublic school; and

401 (ii) Exclude from employment any person that might
402 reasonably pose a threat to the safety of students.

403 **SECTION 9.** (1) An eligible nonpublic school is autonomous
404 and not an agent of the state or federal government and therefore:

405 (a) The department or any other government agency shall
406 not in any way regulate the educational program of a nonpublic
407 school, postsecondary institution or educational service provider
408 that accepts funds from the parent of a participating student;

409 (b) The creation of the Education Scholarship Account
410 Program does not expand the regulatory authority of the state, its
411 officers, or any school district to impose any additional
412 regulation of nonpublic schools, postsecondary institutions or
413 educational service providers beyond those necessary to enforce
414 the requirements of the program; and

415 (c) Eligible schools, postsecondary institutions and
416 educational service providers shall be given the maximum freedom
417 to provide for the educational needs of their students without
418 governmental control. No eligible school, postsecondary
419 institution or educational service provider shall be required to



420 alter its creed, practices, admission policies or curriculum in
421 order to accept participating students.

422 (2) In any legal proceeding challenging the application of
423 this act to an eligible school, institution or educational service
424 provider, the state bears the burden of establishing that the law
425 is necessary and does not impose any undue burden on the eligible
426 school, institution or provider.

427 **SECTION 10.** The designated nonprofit may receive and expend
428 contributions from any public or private source to fund ESAs for
429 participating students.

430 **SECTION 11.** If any provision of this law or its application
431 is held invalid, the invalidity does not affect other provisions
432 or applications of this law which can be given effect without the
433 invalid provision or application and to this end the provisions of
434 this law are severable.

435 **SECTION 12.** This act shall take effect and be in force from
436 and after its passage and shall stand repealed as of June 30,
437 2020.

