

By: Senator(s) Collins, Ward, Watson

To: Education

SENATE BILL NO. 2695
(As Sent to Governor)

1 AN ACT TO CREATE A PILOT PROGRAM FOR THE EQUAL OPPORTUNITY
2 FOR STUDENTS WITH SPECIAL NEEDS ACT FOR THE PURPOSE OF
3 ESTABLISHING EDUCATION SCHOLARSHIP ACCOUNTS (ESA) FOR PARENTS OF
4 ELIGIBLE STUDENTS WITH SPECIAL NEEDS ON A PHASED-IN BASIS; TO
5 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 DEPARTMENT OF EDUCATION REGARDING THE ADMINISTRATION
11 OF THE FUNDS; TO PROVIDE FOR THE ISSUANCE OF ESA PROCUREMENT
12 CARDS; TO REQUIRE PEER TO PREPARE A BIENNIAL REPORT ON THE
13 SUFFICIENCY OF FUNDING FOR ESAS AND STUDENT PERFORMANCE AND
14 ASSESSMENT EVALUATION BEGINNING IN 2018 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 State Department of
34 Education.

35 (e) "Home school 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 State Department
42 of Education. An eligible school does not include a home
43 instruction program under Section 37-13-91, Mississippi Code of
44 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 acknowledge as part of the agreement that the
69 home school district has provided clear notice to the parent that
70 the participating student has no individual entitlement to a free
71 appropriate public education (FAPE) from their home school
72 district, including special education and related services, for as
73 long as the student is participating in the program;



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 online learning programs or
97 courses;



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) Educational services or therapies from a licensed
103 or certified practitioner or provider, including licensed or
104 certified paraprofessionals or educational aides;

105 (i) Services provided by a public school, including
106 individual classes and extracurricular programs;

107 (j) Tuition and fees at a postsecondary institution;

108 (k) Textbooks related to coursework at a postsecondary
109 institution;

110 (l) Surety bond payments if required by the department;

111 (m) No more than Fifty Dollars (\$50.00) in annual
112 consumable school supplies necessary for educational services and
113 therapies, daily classroom activities, and tutoring;

114 (n) Computer hardware and software and other
115 technological devices if an eligible school, licensed or certified
116 tutor, licensed or certified educational service practitioner or
117 provider, or licensed medical professional verifies in writing
118 that these items are essential for the student to meet annual,
119 measurable goals. Once a student is no longer eligible for the
120 program, computer hardware and software and other technological
121 devices purchased with ESA funds may be donated to a library or a
122 nonprofit organization with expertise and training in working with



123 parents to educate children with disabilities or a nonprofit
124 organization with expertise and training in working with disabled
125 adults.

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

136 (4) Payment for educational services through an ESA shall
137 not preclude parents from paying for educational services using
138 non-ESA funds.

139 (5) ESA funds may not be used to attend an eligible school
140 that maintains its primary location in a state other than
141 Mississippi unless that school is approved for the Educable Child
142 Program; or unless the parent verifies in writing that their child
143 cannot reasonably obtain appropriate special education and related
144 services in Mississippi at a location within thirty (30) miles of
145 their legal residence.

146 (6) For purposes of continuity of educational attainment,
147 students who enroll in the program shall remain eligible to



148 receive quarterly ESA payments until the participating student
149 returns to a public school, completes high school, completes the
150 school year in which the student reaches the age of twenty-one
151 (21), or does not have eligibility verified by a parent as
152 required under subsection (8) of this section, whichever occurs
153 first.

154 (7) Any funds remaining in a student's Education Scholarship
155 Account upon completion of high school shall be returned to the
156 state's General Fund.

157 (8) Every three (3) years after initial enrollment in the
158 program, a parent of a participating student, except a student
159 diagnosed as being a person with a permanent disability, shall
160 document that the student continues to be identified by the school
161 district, a federal or state government agency, or a licensed
162 physician or psychometrist as a child with a disability, as
163 defined by the federal Individuals with Disabilities Education Act
164 (20 USCS Section 1401(3)).

165 (9) A participating student shall be allowed to return to
166 his home school district at any time after enrolling in the
167 program, in compliance with regulations adopted by the department
168 providing for the least disruptive process for doing so. Upon a
169 participating student's return to his home school district, that
170 student's Education Scholarship Account shall be closed and any
171 remaining funds shall be returned to the state's General Fund.



172 (10) The department shall begin accepting applications for
173 the program on July 1, 2015.

174 SECTION 4. (1) The ESA program created in this act shall be
175 limited to five hundred (500) students in the school year
176 2015-2016, with new enrollment limited to five hundred (500)
177 additional students each year thereafter. Subject to
178 appropriation from the General Fund, each student's ESA shall be
179 funded at Six Thousand Five Hundred Dollars (\$6,500.00) for school
180 year 2015-2016. For each subsequent year, this amount shall
181 increase or decrease by the same proportion as the base student
182 cost under Section 37-151-7(1)(b) is increased or decreased.

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

185 (a) Until participation in the program reaches fifty
186 percent (50%) of the annual enrollment limits in subsection (1) of
187 this section, students shall be approved on a first-come,
188 first-served basis, with applications being reviewed on a rolling
189 basis;

190 (b) After participation reaches fifty percent (50%) of
191 the annual enrollment limits in subsection (1) of this section,
192 the department shall set annual application deadlines for the
193 remaining number of available ESAs and begin to maintain a waiting
194 list of eligible students. If the number of eligible students who
195 apply for the program exceeds the remaining number of ESAs
196 available, the department shall fill the available spaces using a



197 random selection process that gives preference to students with an
198 active Individualized Education Program (IEP); and

199 (c) Participating students who remain eligible for the
200 program are automatically approved for participation for the
201 following year and are not subject to the random selection
202 process.

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

206 **SECTION 5.** (1) The department shall create a standard form
207 that parents of students submit to establish their student's
208 eligibility for an Education Scholarship Account. The department
209 shall ensure that the application is readily available to
210 interested families through various sources, including the
211 department's website and the copy of procedural safeguards
212 annually given to parents.

213 (2) The department shall provide parents of participating
214 students with a written explanation of the allowable uses of
215 Education Scholarship Accounts, the responsibilities of parents
216 and the duties of the department. This information shall also be
217 made available on the department's website.

218 (3) The department shall annually notify all students with
219 an IEP of the existence of the program and shall ensure that
220 lower-income families are made aware of their potential
221 eligibility.



222 (4) The department may deduct an amount up to a limit of six
223 percent (6%) from appropriations used to fund Education
224 Scholarship Accounts to cover the costs of overseeing the funds
225 and administering the program.

226 (5) (a) The department shall make a determination of
227 eligibility, and shall approve the application, within twenty-one
228 (21) business days of receiving an application for participation
229 in the program, subject to the provisions of Section 2(b) of this
230 act.

231 (b) The department shall provide for a procedure that
232 children with a ruling of hearing impairment or children suspected
233 of a hearing loss shall receive a comprehensive educational
234 assessment which may include the areas of cognitive development,
235 language/speech, audiological and academic achievement from the
236 state-funded Mississippi Assistance Center for Hearing Loss.
237 Children with a ruling of visual impairment or children suspected
238 of a visual impairment shall receive a comprehensive low vision
239 evaluation from the state-funded Low Vision Clinic.

240 (6) The home school district shall provide the parent of a
241 participating student with a complete copy of the student's school
242 records, while complying with the Family Educational Rights and
243 Privacy Act of 1974 (20 USCS Section 1232(g)). The record shall
244 be provided no later than thirty (30) days after a parent signs an
245 agreement to participate in the program.



246 (7) The State Board of Education may contract with a
247 qualified nonprofit organization with expertise and training in
248 working with parents to educate children with disabilities to
249 administer the program.

250 **SECTION 6.** (1) To ensure that funds are spent
251 appropriately, the State Department of Education shall adopt rules
252 and policies necessary for the administration of the program,
253 including the auditing of Education Scholarship Accounts, and
254 shall conduct or contract for random audits throughout the year.

255 (2) (a) The department or qualified nonprofit shall develop
256 a system for payment of benefits, including, but not limited to,
257 allowing educational service providers to invoice the department
258 or designated nonprofit for qualified expenses consistent with
259 Section 3(2) of this act, or allowing parents to seek
260 reimbursement for qualified expenses consistent with Section 3(2)
261 of this act.

262 (b) The department or qualified nonprofit may make
263 payments to educational service providers or reimbursement to
264 parents via check or warrant or electronic funds transfer or any
265 other means of payment deemed to be commercially viable or
266 cost-effective.

267 (c) The department may also establish by rule that some
268 payments to educational service providers will be made on a
269 quarterly basis, rather than an annual basis, if the educational
270 services will be rendered over an extended period of time.



271 (3) The department shall adopt a process for removing
272 educational service providers that defraud parents and for
273 referring cases of fraud to law enforcement.

274 (4) The department shall establish or contract for the
275 establishment of an online anonymous fraud reporting service.

276 (5) The department shall establish or contract for the
277 establishment of an anonymous telephone hotline for fraud
278 reporting.

279 **SECTION 7.** (1) The Joint Legislative Committee on
280 Performance Evaluation and Expenditure Review (PEER) shall prepare
281 a biannual report, beginning in 2018 and every two (2) years
282 thereafter, assessing the sufficiency of funding for Education
283 Scholarship Accounts and recommending any suggested changes in
284 state law or policy necessary to improve the program.

285 (2) The report shall assess:

286 (a) The level of participating students' satisfaction
287 with the program;

288 (b) The level of parental satisfaction with the
289 program;

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

293 (d) Student performance on Advanced Placement
294 examinations or similar courses and any examinations related to
295 college or university admission;



296 (e) The high school graduation rates and college
297 acceptance rates of participating students;

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

300 (g) The fiscal impact to the state and home school
301 districts of the program, which must consider both the impact on
302 revenue and the impact on expenses. Furthermore, the fiscal
303 savings associated with students departing public schools must be
304 explicitly quantified, even if the public school losing the
305 student(s) does not reduce its spending accordingly.

306 (3) The report shall:

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

309 (b) Protect the identity of participating students and
310 schools by, among other things, keeping anonymous all
311 disaggregated data.

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

313 (5) PEER shall provide the Legislature with a final copy of
314 the evaluation of the program before December 31, 2018. At the
315 same time, the study shall also be placed in a prominent location
316 on the PEER website.

317 (6) PEER must make its data and methodology available for
318 public review while complying with the requirements of the Family
319 Educational Rights and Privacy Act (20 USCS Section 1232(g)).



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

322 (a) Comply with the nondiscrimination policies set
323 forth in 42 USCS 1981;

324 (b) Prior to a participating student's application for
325 enrollment, provide parents with details of the school's programs,
326 qualifications, experience, and capacities to serve students with
327 special needs;

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

330 (d) Hold a valid occupancy permit if required by their
331 municipality;

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

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

335 (g) Conduct criminal background checks on employees.

336 The eligible school then shall:

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

339 (ii) Exclude from employment any person who might
340 reasonably pose a threat to the safety of students.

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

343 (a) The State Department of Education or any other
344 government agency shall not in any way regulate the educational



345 program of a nonpublic school, postsecondary institution or
346 educational service provider that accepts funds from the parent of
347 a participating student;

348 (b) The creation of the Education Scholarship Account
349 program does not expand the regulatory authority of the state, its
350 officers, or any school district to impose any additional
351 regulation of nonpublic schools, postsecondary institutions or
352 educational service providers beyond those necessary to enforce
353 the requirements of the program; and

354 (c) Eligible schools, postsecondary institutions and
355 educational service providers shall be given the maximum freedom
356 to provide for the educational needs of their students without
357 governmental control. No eligible school, postsecondary
358 institution or educational service provider shall be required to
359 alter its creed, practices, admission policies or curriculum in
360 order to accept participating students.

361 (2) In any legal proceeding challenging the application of
362 this act to an eligible school, postsecondary institution or
363 educational service provider the state bears the burden of
364 establishing that the law is necessary and does not impose any
365 undue burden on the eligible school, postsecondary institution or
366 educational service provider.

367 **SECTION 10.** The State Department of Education may receive
368 and expend contributions from any public or private source to fund
369 ESAs for participating students.



370 **SECTION 11.** If any provision of this law or its application
371 is held invalid, the invalidity does not affect other provisions
372 or applications of this law which can be given effect without the
373 invalid provision or application and to this end the provisions of
374 this law are severable.

375 **SECTION 12.** This act shall take effect and be in force from
376 and after its passage and shall stand repealed as of June 30,
377 2020.

