

By: Representatives Moore, Bomgar, Boyd, Busby, Byrd, Carpenter, Chism, Crawford, Criswell, Currie, DeLano, Denny, Dixon, Formby, Frierson, Mangold, McLeod, McNeal, Monsour, Mettetal, Oliver, Read

To: Education; Appropriations

HOUSE BILL NO. 943

1 AN ACT TO REVISE PROVISIONS OF SCHOLARSHIP PROGRAM KNOWN AS
2 "THE EQUAL OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT" AND
3 RENAME IT AS THE "EQUAL OPPORTUNITY FOR ALL STUDENTS ACT" FOR
4 PURPOSES OF PROVIDING EDUCATION SCHOLARSHIP ACCOUNTS (ESA) FOR
5 PARENTS OF ELIGIBLE STUDENTS; TO AMEND SECTION 37-181-1,
6 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION
7 37-181-3, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
8 ELIGIBLE STUDENT BY PRESCRIBING THE CRITERIA FOR DETERMINING
9 ELIGIBILITY FOR PARTICIPATION IN THE PROGRAM AND TO EXPAND THE
10 DEFINITION OF THE TERM TUTOR; TO AMEND SECTION 37-181-5,
11 MISSISSIPPI CODE OF 1972, TO STIPULATE THE OBLIGATIONS OF PARENTS
12 OR LEGAL GUARDIANS, STUDENTS AND SCHOOLS TO BECOME AND REMAIN
13 ELIGIBLE FOR PARTICIPATION; TO AMEND SECTION 37-181-7, MISSISSIPPI
14 CODE OF 1972, TO PROVIDE FOR THE FUNDING OF EACH STUDENT'S ESA AND
15 TO PHASE IN THE NUMBER OF AVAILABLE EDUCATION SAVINGS ACCOUNTS ON
16 AN ANNUAL BASIS; TO AMEND SECTION 37-181-9, MISSISSIPPI CODE OF
17 1972, TO REDUCE THE AMOUNT OF THE ADMINISTRATION COSTS THE STATE
18 DEPARTMENT OF EDUCATION MAY RECEIVE FROM FUNDS APPROPRIATED FOR
19 ESAS FROM SIX PERCENT TO FOUR PERCENT AFTER THREE YEARS OF
20 IMPLEMENTATION; TO AMEND SECTION 37-181-11, MISSISSIPPI CODE OF
21 1972, TO REQUIRE THE STATE DEPARTMENT OF EDUCATION OR QUALIFIED
22 NONPROFIT TO DEVELOP A SYSTEM FOR THE PAYMENT OF QUALIFIED
23 EXPENSES WHICH ARE DETERMINED TO BE COMMERCIALY VIABLE, COST
24 EFFECTIVE AND PARENT FRIENDLY; TO PROHIBIT THE ADOPTION OF A
25 PAYMENT SYSTEM THAT PLACES LIMITS ON A PARENT'S ABILITY TO BE
26 REIMBURSED FOR OUT-OF-POCKET EXPENSES THAT MEET REQUIREMENT OF A
27 QUALIFIED EXPENSE; TO AMEND SECTIONS 37-181-13 AND 37-181-15,
28 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PRECEDING
29 PROVISIONS; TO BRING FORWARD SECTIONS 37-181-17, 37-181-19 AND
30 37-181-21, MISSISSIPPI CODE OF 1972, FOR THE PURPOSE OF POSSIBLE
31 AMENDMENT; TO AMEND SECTION 12, CHAPTER 441, LAWS OF 2015, TO
32 DELETE THE REPEALER; TO CREATE A NEW CODE SECTION TO BE CODIFIED
33 AS SECTION 37-181-20, WHICH PROVIDES THAT THE MISSISSIPPI
34 ADMINISTRATIVE PROCEDURES ACT SHALL BE APPLICABLE TO THE RULES AND



35 REGULATIONS PROMULGATED BY THE STATE DEPARTMENT OF EDUCATION FOR
36 THE ADMINISTRATION OF THE PROGRAM; AND FOR RELATED PURPOSES.

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

38 **SECTION 1.** Section 37-181-1, Mississippi Code of 1972, is
39 amended as follows:

40 37-181-1. This chapter shall be known and may be cited as
41 "The Equal Opportunity for All Students * * * Act."

42 **SECTION 2.** Section 37-181-3, Mississippi Code of 1972, is
43 amended as follows:

44 37-181-3. The terms used in this chapter shall have the
45 meanings ascribed herein, unless the context clearly indicates
46 otherwise:

47 (a) "Program" means a * * * program to implement the
48 Education Scholarship Account (ESA) program created in this
49 chapter.

50 (b) "Eligible student" means any student who is a
51 resident of the state and meets at least one (1) of the following:

52 (i) Was enrolled in and attended a Mississippi
53 primary or secondary public or charter school during the prior
54 academic year;

55 (ii) Is eligible to enroll in kindergarten or
56 first grade;

57 (iii) Has had an active Individualized Education
58 Program (IEP) written in accordance with the rules of the State
59 Board of Education within the past eighteen (18) months;



60 (iv) Has received a diagnosis from a physician or
61 psychologist licensed in the state for the following disabilities:
62 autism spectrum disorder, cerebral palsy, Down Syndrome,
63 Prader-Willi Syndrome, spina bifida, muscular dystrophy, Williams
64 Syndrome, a diagnosis of hearing or vision impairment or a ruling
65 referenced in Section 37-181-9(5)(b), or a specific learning
66 disability as defined as such by the federal Individuals with
67 Disabilities Education Act (20 USCS, Section 1401(b));

68 (v) Is a child of a parent who is a member of the
69 armed forces of the United States and who is on active duty or was
70 killed in the line of duty;

71 (vi) Is a foster child who has achieved permanency
72 through adoption or guardianship;

73 (vii) Is the sibling of a current eligible and
74 participating student; or

75 (viii) Is a previous recipient of an ESA under the
76 provisions of this program.

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

80 (d) "Department" means the State Department of
81 Education.

82 (e) "Home school district" means the public school
83 district in which the student resides.



84 (f) "Eligible school" means a nonpublic school * * * as
85 defined by Section 37-13-91, Mississippi Code of 1972.

86 (g) "Tutor" means a person who is certified or licensed
87 by a state, regional, or national certification or licensing
88 organization or who has earned a valid teacher's license or who
89 has at least three (3) years of experience teaching at an * * *
90 accredited preschool, elementary, secondary or postsecondary
91 institution or who has at least five (5) years documented
92 experience tutoring at least five (5) students over a five-year
93 period.

94 (h) "Postsecondary institution" means a community
95 college, college, or university accredited by a state, regional or
96 national accrediting organization.

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

100 **SECTION 3.** Section 37-181-5, Mississippi Code of 1972, is
101 amended as follows:

102 37-181-5. (1) An eligible student shall qualify to
103 participate in the program if the parent signs an agreement
104 promising:

105 (a) To provide an organized, appropriate educational
106 program with measurable annual goals to their participating
107 student and, to the extent reasonably deemed appropriate by the
108 parent, to provide an education for the qualified student in at



109 least the subjects of reading, grammar, mathematics, social
110 studies and science;

111 * * *

112 (* * *b) Not to enroll their participating student in
113 a public school and to acknowledge as part of the agreement that
114 the home school district has provided clear notice to the parent
115 that the participating student has no individual entitlement to a
116 free appropriate public education (FAPE) from their home school
117 district, including special education and related services, for as
118 long as the student is participating in the program; and

119 * * *

120 (* * *c) Not to participate in the Mississippi
121 Dyslexia Therapy Scholarship for Students with Dyslexia Program or
122 the Mississippi Speech-Language Therapy Scholarship for Students
123 with Speech-Language Impairments Program while participating in
124 the ESA program.

125 (2) Signing an agreement pursuant to subsection (1) serves
126 as the participating student's certificate of enrollment under
127 Section 37-13-91 and shall not be construed to prohibit parents
128 from enrolling their child in a home instruction program, provided
129 that the parents are using ESA funds on one (1) or more of the
130 educational expenses authorized in subsection (3) to provide their
131 participating student an education consistent with subsection
132 (1) (a).



133 (* * *3) Parents shall use the funds deposited in a
134 participating student's ESA for any of the following qualifying
135 expenses to educate the student using any of the below methods or
136 combination of methods that meet the requirement in subsection
137 (1) (a) of this section:

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

139 (b) Textbooks;

140 (c) Payment to a tutor;

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

143 (e) Fees for transportation to and from an educational
144 service provider paid to a fee-for-service transportation
145 provider;

146 (f) Tuition and/or fees for online learning programs or
147 courses;

148 (g) Fees for nationally standardized norm-referenced
149 achievement tests, including alternate assessments; and fees for
150 Advanced Placement examinations or similar courses and any
151 examinations related to college or university admission;

152 (h) Educational services or therapies from a licensed
153 or certified practitioner or provider, including licensed or
154 certified paraprofessionals or educational aides;

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

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



158 (k) Textbooks related to coursework at a postsecondary
159 institution;

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

161 (m) * * * Contributions to a Coverdell Education
162 Savings Account established under 26 USCS Section 530 for the
163 benefit of the participating student;

164 (n) Computer hardware and software and other
165 technological devices if an eligible school, licensed or certified
166 tutor, licensed or certified educational service practitioner or
167 provider, or licensed medical professional verifies in writing
168 that these items are essential for the student to meet annual,
169 measurable goals. Once a student is no longer eligible for the
170 program, computer hardware and software and other technological
171 devices purchased with ESA funds may be donated to a library or a
172 nonprofit organization with expertise and training in working with
173 parents to educate children with disabilities or a nonprofit
174 organization with expertise and training in working with disabled
175 adults.

176 (* * * 4) Neither a participating student, nor anyone on the
177 student's behalf, may receive cash or cash-equivalent items, such
178 as gift cards or store credit, from any refunds or rebates from
179 any provider of services or products in this program. Any refunds
180 or rebates shall be credited directly to the participating
181 student's ESA. The funds in an ESA may only be used for
182 education-related purposes. Eligible schools, postsecondary



183 institutions and educational service providers that serve
184 participating students shall provide parents with a receipt for
185 all qualifying expenses.

186 (* * *5) Payment for educational services through an ESA
187 shall not preclude parents from paying for educational services
188 using non-ESA funds.

189 (* * *6) ESA funds may not be used to attend an eligible
190 school that maintains its primary location in a state other than
191 Mississippi unless that school is approved for the Educable Child
192 Program; or unless the parent verifies in writing that their child
193 cannot reasonably obtain appropriate * * * services in Mississippi
194 at a location within thirty (30) miles of their legal residence.

195 (* * *7) For purposes of continuity of educational
196 attainment, students who enroll in the program shall remain
197 eligible to receive quarterly ESA payments at the funding amount
198 specified in Section 37-181-7 until the participating student
199 returns to a public school, completes high school * * * or
200 completes the school year in which the student reaches the age of
201 twenty-one (21), * * * whichever occurs first.

202 (* * *8) Any funds remaining in a student's Education
203 Scholarship Account upon completion of high school shall be
204 returned to the state's General Fund.

205 * * *

206 (9) A participating student shall be allowed to return to
207 his home school district at any time after enrolling in the



208 program, in compliance with regulations adopted by the department
209 providing for the least disruptive process for doing so. Upon a
210 participating student's return to his home school district, that
211 student's Education Scholarship Account shall be closed and any
212 remaining funds shall be returned to the state's General Fund.

213 * * *

214 **SECTION 4.** Section 37-181-7, Mississippi Code of 1972, is
215 amended as follows:

216 37-181-7. (1) Beginning with the 2016-2017 school year, the
217 ESA program created in this chapter shall be limited to * * * the
218 equivalent of one percent (1%) of the estimated statewide total
219 public school enrollment in the preceding school year * * *, with
220 new enrollment limited to * * * an additional * * * one percent
221 (1%) of the statewide public school enrollment each year
222 thereafter.

223 (2) * * * (a) There is created a special fund in the State
224 Treasury to pay for the Education Scholarship Accounts established
225 in this chapter. Payments made to this special fund under this
226 subsection by the State Department of Education shall be made at
227 the same time and in the same manner as adequate education program
228 payments are made to school districts under Sections 37-151-101
229 and 37-151-103. Amounts payable to the special fund shall be
230 determined on a monthly basis by the State Department of Education
231 based on the number of scholarship accounts approved by the



232 department and funded as provided under subsection (3) of this
233 section.

234 (b) Nothing in this subsection shall be construed to
235 require that any school district be required to provide funding
236 for a scholarship account nor to prevent the department from
237 funding all ADA units for each school district in the annual
238 allotment calculation. In connection with its annual report to
239 the Legislature requesting MAEP funding, the department shall
240 provide an analysis of any changes to ADA counts for school
241 districts as a result of the implementation of this article.

242 (3) * * * Each student's ESA shall be funded at the
243 following amounts for the 2016-2017 school year and shall increase
244 or decrease each subsequent year by the same proportion as the
245 base student cost under Section 37-151-7(1)(b):

246 (a) For students with disabilities meeting the
247 definition of "eligible student" and prescribed under Section
248 37-181-3(b)(iii) and (iv), the amount shall be Six Thousand Five
249 Hundred Dollars (\$6,500.00);

250 (b) For students within a household with a household
251 income not greater than two hundred percent (200%) of the federal
252 poverty level, the amount shall be Five Thousand Dollars
253 (\$5,000.00);

254 (c) For students within a household with a household
255 income greater than two hundred percent (200%) but less than three



256 hundred fifty percent (350%) of the federal poverty level, the
257 amount shall be Four Thousand Dollars (\$4,000.00); or

258 (d) For all other participating students, the amount
259 shall be Three Thousand Dollars (\$3,000.00).

260 (4) The State Department of Education shall accept program
261 applications on a monthly basis, during which a parent may apply
262 to determine if his or her child is an eligible student. This
263 enrollment period shall occur twelve (12) times a year, opening on
264 the first day of each month and closing on the last day of the
265 same month. During this period, parents shall be able to submit
266 applications for the program in the manner prescribed by the
267 department. At the close of each enrollment period, the
268 department shall review and send to the parents, within fifteen
269 (15) business days, notification of whether his or her application
270 for the program has been approved or denied.

271 (a) If an application is denied, the department shall
272 provide the parents written notification by certified mail or by
273 electronic communication of the reason or reasons for the denial.

274 (b) If an application has been approved, the child
275 shall be classified as a participating student.

276 (5) If the department receives more applications during a
277 monthly enrollment period than are available positions, as
278 provided for in subsection (1), the department shall use a random
279 selection process that gives first preference to students with
280 disabilities pursuant to Section 37-181-3(b)(iii) and (iv) and



281 second preference to students meeting the income definition of
282 subsection (3) (b) of this section.

283 (6) Once enrollment limits have been reached as prescribed
284 under subsection (1) of this section, the department shall
285 continue to accept applications and shall notify parents who have
286 submitted applications that such application will be placed in a
287 queue until the department begins enrolling new students for the
288 following year. At that time, applications will be processed in
289 the order in which they were received, following the procedure
290 prescribed in subsection (5) of this section.

291 (7) Participating students who remain eligible for the
292 program are automatically approved for participation for the
293 following year and are not subject to the random selection
294 process.

295 **SECTION 5.** Section 37-181-9, Mississippi Code of 1972, is
296 amended as follows:

297 37-181-9. (1) The department shall create a standard form
298 that parents of students submit to establish their student's
299 eligibility for an Education Scholarship Account. The department
300 shall ensure that the application is readily available to
301 interested families through various sources, including the
302 department's website and the copy of procedural safeguards
303 annually given to parents.

304 (2) The department shall provide parents of participating
305 students with a written explanation of the allowable uses of



306 Education Scholarship Accounts, the responsibilities of parents
307 and the duties of the department. This information shall also be
308 made available on the department's website.

309 (3) The department shall annually notify all students with
310 an IEP of the existence of the program and shall ensure that
311 lower-income families are made aware of their potential
312 eligibility.

313 (4) In the first three (3) years of the program's operation,
314 beginning with the 2016-2017 school year, the department may
315 deduct an amount up to a limit of six percent (6%) from
316 appropriations used to fund Education Scholarship Accounts to
317 cover the costs of overseeing the funds and administering the
318 program. In subsequent years, the department may deduct an amount
319 up to a limit of four percent (4%) from appropriations used to
320 fund Education Scholarship Accounts for administrative costs.

321 (5) * * * The department shall provide for a procedure that
322 children with a ruling of hearing impairment or children suspected
323 of a hearing loss shall receive a comprehensive educational
324 assessment which may include the areas of cognitive development,
325 language/speech, audiological and academic achievement from the
326 state-funded Mississippi Assistance Center for Hearing Loss.
327 Children with a ruling of visual impairment or children suspected
328 of a visual impairment shall receive a comprehensive low vision
329 evaluation from the state-funded Low Vision Clinic.



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

336 (7) The State Board of Education * * * shall contract with a
337 qualified nonprofit organization * * * to administer the program.

338 (8) The State Department of Education shall create a
339 standard form for physicians and psychologists to verify that they
340 have provided a diagnosis for an eligible child as defined under
341 the provisions of Section 37-181-3(b)(iv).

342 **SECTION 6.** Section 37-181-11, Mississippi Code of 1972, is
343 amended as follows:

344 37-181-11. (1) To ensure that funds are spent
345 appropriately, the State Department of Education shall adopt rules
346 and policies necessary for the administration of the program,
347 including the auditing of Education Scholarship Accounts, and
348 shall conduct or contract for random audits throughout the year.

349 (2) (a) The department or qualified nonprofit shall develop
350 a system for * * * paying qualified expenses that the department
351 determines to be commercially viable, cost effective and parent
352 friendly. The department shall not adopt a system that limits
353 parents to being reimbursed for out-of-pocket expenses.



354 (b) The department or qualified nonprofit may develop a
355 system to make payments directly to educational service
356 providers * * * on behalf of parents.

357 (c) The department * * * shall make funds available to
358 participants through quarterly installments as provided in Section
359 37-181-7.

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

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

365 (5) The department shall establish or contract for the
366 establishment of an anonymous telephone hotline for fraud
367 reporting.

368 **SECTION 7.** Section 37-181-13, Mississippi Code of 1972, is
369 amended as follows:

370 37-181-13. (1) The Joint Legislative Committee on
371 Performance Evaluation and Expenditure Review (PEER) shall prepare
372 a biannual report, beginning in 2018 and every two (2) years
373 thereafter, assessing the sufficiency of funding for Education
374 Scholarship Accounts and recommending any suggested changes in
375 state law or policy necessary to improve the program.

376 (2) The report shall assess:

377 (a) The level of participating students' satisfaction
378 with the program;



379 (b) The level of parental satisfaction with the
380 program;

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

384 (d) Student performance on Advanced Placement
385 examinations or similar courses and any examinations related to
386 college or university admission;

387 (e) The high school graduation rates and college
388 acceptance rates of participating students;

389 (f) The percentage of funds used for each qualifying
390 expense identified in Section 37-181-5(3);

391 (g) The fiscal impact to the state and home school
392 districts of the program, which must consider both the impact on
393 revenue and the impact on expenses. Furthermore, the fiscal
394 savings associated with students departing public schools must be
395 explicitly quantified, even if the public school losing the
396 student(s) does not reduce its spending accordingly.

397 (3) The report shall:

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

400 (b) Protect the identity of participating students and
401 schools by, among other things, keeping anonymous all
402 disaggregated data.

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



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

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

411 **SECTION 8.** Section 37-181-15, Mississippi Code of 1972, is
412 amended as follows:

413 37-181-15. To ensure that students are treated fairly and
414 kept safe, all eligible schools shall:

415 (a) Comply with the nondiscrimination policies set
416 forth in 42 USCS 1981;

417 (b) Prior to a participating student's application for
418 enrollment, provide parents with details of the school's programs,
419 qualifications, experience, and capacities to serve students with
420 special needs if they have such capacity;

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

423 (d) Hold a valid occupancy permit if required by their
424 municipality;

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

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



428 (g) Conduct criminal background checks on employees.

429 The eligible school then shall:

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

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

434 **SECTION 9.** Section 37-181-17, Mississippi Code of 1972, is
435 brought forward as follows:

436 37-181-17. (1) An eligible nonpublic school is autonomous
437 and not an agent of the state or federal government and therefore:

438 (a) The State Department of Education or any other
439 government agency shall not in any way regulate the educational
440 program of a nonpublic school, postsecondary institution or
441 educational service provider that accepts funds from the parent of
442 a participating student;

443 (b) The creation of the Education Scholarship Account
444 program does not expand the regulatory authority of the state, its
445 officers, or any school district to impose any additional
446 regulation of nonpublic schools, postsecondary institutions or
447 educational service providers beyond those necessary to enforce
448 the requirements of the program; and

449 (c) Eligible schools, postsecondary institutions and
450 educational service providers shall be given the maximum freedom
451 to provide for the educational needs of their students without
452 governmental control. No eligible school, postsecondary



453 institution or educational service provider shall be required to
454 alter its creed, practices, admission policies or curriculum in
455 order to accept participating students.

456 (2) In any legal proceeding challenging the application of
457 this chapter to an eligible school, postsecondary institution or
458 educational service provider the state bears the burden of
459 establishing that the law is necessary and does not impose any
460 undue burden on the eligible school, postsecondary institution or
461 educational service provider.

462 **SECTION 10.** Section 37-181-19, Mississippi Code of 1972, is
463 brought forward as follows:

464 37-181-19. The State Department of Education may receive and
465 expend contributions from any public or private source to fund
466 ESAs for participating students.

467 **SECTION 11.** Section 37-181-21, Mississippi Code of 1972, is
468 brought forward as follows:

469 37-181-21. If any provision of this law or its application
470 is held invalid, the invalidity does not affect other provisions
471 or applications of this law which can be given effect without the
472 invalid provision or application and to this end the provisions of
473 this law are severable.

474 **SECTION 12.** Section 12, Chapter 441, Laws of 2015 is amended
475 as follows:

476 Section 12. This act shall take effect and be in force from
477 and after its passage * * *.



478 **SECTION 13.** The following shall be codified as Section
479 37-181-20, Mississippi Code of 1972:

480 37-181-20. The provisions of this article requiring the
481 State Department of Education to promulgate rules and regulations
482 and to develop procedures, forms and any other policies for the
483 administration of the provisions contained herein are subject to
484 the Mississippi Administrative Procedures Act.

485 **SECTION 14.** This act shall take effect and be in force from
486 and after its passage.

