

By: Representative Weathersby

To: Education

HOUSE BILL NO. 920

1 AN ACT TO AMEND SECTION 37-181-3, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF THE TERM "ELIGIBLE STUDENT" UNDER "THE
3 EQUAL OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT," TO INCLUDE
4 STUDENTS WHO HAVE HAD AN ACTIVE SECTION 504 PLAN FOR THE PAST FIVE
5 YEARS; TO BRING FORWARD SECTION 37-181-5, MISSISSIPPI CODE OF
6 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; TO AMEND SECTION
7 37-181-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE AMOUNT OF
8 THE ESA FOR AN ELIGIBLE STUDENT WITH A SECTION 504 PLAN SHALL BE
9 THE PROPORTIONATE SHARE OF FEDERAL FUNDS ALLOWED UNDER IDEA FOR
10 THE STUDENT'S EQUITABLE PARTICIPATION IN SERVICES PROVIDED BY THE
11 LOCAL EDUCATION AGENCY; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 37-181-3, Mississippi Code of 1972, is
14 amended as follows:

15 37-181-3. The terms used in this chapter shall have the
16 meanings ascribed herein, unless the context clearly indicates
17 otherwise:

18 (a) "Program" means a five-year pilot program to
19 implement the Education Scholarship Account (ESA) program created
20 in this chapter.



21 (b) "Eligible student" means any student who has had an
22 active Individualized Education Program (IEP) or Section 504 Plan
23 within the past five (5) years.

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

27 (d) "Department" means the State Department of
28 Education.

29 (e) "Home school district" means the public school
30 district in which the student resides.

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

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

43 (h) "Postsecondary institution" means a community
44 college, college, or university accredited by a state, regional or
45 national accrediting organization.



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

SECTION 2. Section 37-181-5, Mississippi Code of 1972, is brought forward as follows:

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

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

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

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



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

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

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

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

(b) Textbooks;

(c) Payment to a tutor;

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

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

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



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

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

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

(j) Tuition and fees at a postsecondary institution;

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

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

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

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



119 parents to educate children with disabilities or a nonprofit
120 organization with expertise and training in working with disabled
121 adults.

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

132 (4) Payment for educational services through an ESA shall
133 not preclude parents from paying for educational services using
134 non-ESA funds.

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

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



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

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

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

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



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

SECTION 3. Section 37-181-7, Mississippi Code of 1972, is amended as follows:

37-181-7. (1) The ESA program created in this chapter shall be limited to five hundred (500) students in the school year 2015-2016, with new enrollment limited to five hundred (500) additional students each year thereafter. Subject to appropriation from the General Fund, each student's ESA shall be funded at Six Thousand Five Hundred Dollars (\$6,500.00) for school year 2015-2016. For each subsequent year, this amount shall increase or decrease by the same proportion as the base student cost under Section 37-151-7(1)(b) is increased or decreased. However, for eligible students who have a Section 504 Plan and are currently enrolled in a nonpublic school, the amount of ESA for such students shall be funded at the amount of the proportionate share of federal funds allowed under IDEA for the student's equitable participation in services provided by the local education agency (LEA) to nonpublic school students with disabilities, provided that an individual services plan or instructional services plan has been developed by the LEA in collaboration with the nonpublic school and the parent of the eligible child.

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



193 (a) Until participation in the program reaches fifty
194 percent (50%) of the annual enrollment limits in subsection (1) of
195 this section, students shall be approved on a first-come,
196 first-served basis, with applications being reviewed on a rolling
197 basis;

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

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

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

214 **SECTION 4.** This act shall take effect and be in force from
215 and after July 1, 2019.

