

By: Senator(s) Carmichael

To: Education;
Appropriations

SENATE BILL NO. 2826

1 AN ACT TO AMEND SECTION 37-181-5, MISSISSIPPI CODE OF 1972,
2 TO MAKE PROVISION FOR CERTAIN LIMITS ON TUTOR SERVICES
3 REIMBURSEMENT UNDER THE EDUCATIONAL SCHOLARSHIP PROGRAM; TO AMEND
4 SECTION 37-181-7, MISSISSIPPI CODE OF 1972, TO ELIMINATE THE
5 LOTTERY METHOD OF SELECTING PARTICIPANTS IN THE EDUCATION
6 SCHOLARSHIP PROGRAM, AND TO SET STANDARDS FOR SELECTING PERSONS
7 FROM THE WAITING LIST; TO AMEND SECTION 37-181-9, MISSISSIPPI CODE
8 OF 1972, TO REQUIRE THE DEPARTMENT OF EDUCATION TO DEVELOP AN
9 ACCOUNTABILITY SYSTEM FOR THE EDUCATION SCHOLARSHIP PROGRAM,
10 REPORT TO THE LEGISLATURE ON THE POSSIBILITY OF REAPPROPRIATING
11 UNOBLIGATED FUNDS FOR THE PROGRAM, AND TO REQUIRE THE DEPARTMENT
12 TO ESTABLISH AN APPEALS PROCESS FOR PERSONS AGGRIEVED BY CERTAIN
13 DECISIONS OF THE DEPARTMENT; TO AMEND SECTION 37-181-11,
14 MISSISSIPPI CODE OF 1972, TO REQUIRE THE DIRECT PAYMENT OF TUITION
15 TO SCHOOLS, AND TO REQUIRE THE DEPARTMENT OF EDUCATION TO APPLY
16 CERTAIN STANDARDS TO TUTORS WHO PROVIDE SERVICES TO ESA PROGRAM
17 PARTICIPANTS; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 37-181-5, Mississippi Code of 1972, is
20 amended as follows:

21 37-181-5. (1) An eligible student shall qualify to
22 participate in the program if the parent signs an agreement
23 promising:

24 (a) To provide an organized, appropriate educational
25 program with measurable annual goals to their participating



26 student and, to the extent reasonably deemed appropriate by the
27 parent, to provide an education for the qualified student in at
28 least the subjects of reading, grammar, mathematics, social
29 studies and science;

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

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

40 (d) Not to file for their participating student a
41 certificate of enrollment indicating participation in a home
42 instruction program under Section 37-13-91, Mississippi Code of
43 1972; and

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

49 (2) Parents shall use the funds deposited in a participating
50 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; provided, however, that the tutor complies with the requirements set out in Section 4 of this act;

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

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



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

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

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

(6) For purposes of continuity of educational attainment, students who enroll in the program shall remain eligible to receive quarterly ESA payments until the participating student returns to a public school, completes high school, completes the school year in which the student reaches the age of twenty-one (21), or does not have eligibility verified by a parent as required under subsection (8) of this section, whichever occurs first.

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



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

(9) A participating student shall be allowed to return to his home school district at any time after enrolling in the program, in compliance with regulations adopted by the department providing for the least disruptive process for doing so. Upon a participating student's return to his home school district, that student's Education Scholarship Account shall be closed and any 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 2. 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



149 funded at * * * the base student cost under Section
150 37-151-7(1)(b) * * *.

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

153 (a) Until participation in the program reaches fifty
154 percent (50%) of the annual enrollment limits in subsection (1) of
155 this section, students shall be approved on a first-come,
156 first-served basis, with applications being reviewed on a rolling
157 basis;

158 (b) After participation reaches fifty percent (50%) of
159 the annual enrollment limits in subsection (1) of this section,
160 the department shall set annual application deadlines for the
161 remaining number of available ESAs and begin to maintain a waiting
162 list of eligible students. * * * The department shall give
163 priority to persons on the waiting list who have active Individual
164 Education Plans (IEPs), have been on the waiting list for the
165 longest time, and those who are from low-income groups as measured
166 by a standard the department considers to be most appropriate; and

167 (c) Participating students who remain eligible for the
168 program are automatically approved for participation for the
169 following year and are not subject to the random selection
170 process.

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



174 **SECTION 3.** Section 37-181-9, Mississippi Code of 1972, is
175 amended as follows:

176 37-181-9. (1) The department shall create a standard form
177 that parents of students submit to establish their student's
178 eligibility for an Education Scholarship Account. The department
179 shall ensure that the application is readily available to
180 interested families through various sources, including the
181 department's website and the copy of procedural safeguards
182 annually given to parents.

183 (2) The department shall provide parents of participating
184 students with a written explanation of the allowable uses of
185 Education Scholarship Accounts, the responsibilities of parents
186 and the duties of the department. This information shall also be
187 made available on the department's website.

188 (3) The department shall annually notify all students with
189 an IEP of the existence of the program and shall ensure that
190 lower-income families are made aware of their potential
191 eligibility.

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

196 (5) (a) The department shall make a determination of
197 eligibility, and shall approve the application, within twenty-one



(21) business days of receiving an application for participation in the program, subject to the provisions of Section 37-181-3(b).

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

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

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

(8) By December 1, 2019, the Mississippi Department of Education shall deliver to the Mississippi State Senate and House of Representatives recommendations on the implementation of an accountability system for the Education Scholarship Account



program. Such accountability system shall be devised so as to enable the department, the Legislature, or any other oversight body to determine:

(a) Program participants' progress toward their special needs goals (whether those are included in an Individualized Education Plan from the public school system or a service plan from the nonpublic school system);

(b) Program participants' performance on nationally norm-referenced achievement tests, and any other tests related to college or university admission;

(c) Program participants' graduation rates and college acceptance rates;

(d) Nonpublic schools' compliance with their statutory obligations (e.g., compliance with health and safety laws), as described in Section 37-181-15, Mississippi Code of 1972;

(e) Nonpublic school quality;

(f) Any other pertinent program outcomes; and

(g) Whether or not the provisions in Section 37-181-5(5), Mississippi Code of 1972, that allows parents to use ESA funds to attend a school out of state after the parent has verified in writing when the child "cannot reasonably obtain appropriate special education and related services in Mississippi at a location within thirty (30) miles of their legal residence" should be revised. Such a recommendation could provide protection for the state and for public school districts against liability



248 due to the district's alleged inability to provide appropriate
249 special education services.

250 (9) The Mississippi Department of Education shall study and
251 report to the 2020 Legislature whether or not it would be
252 advisable from the Legislature to annually give the Department of
253 Education reappropriation authority to expend unobligated balances
254 from the preceding fiscal year.

255 (10) The Department of Education shall establish an appeals
256 procedure for any parent or guardian aggrieved by any decision of
257 the department relative to a student's eligibility to participate
258 in the program, or eligibility for reimbursement for a qualifying
259 expense.

260 **SECTION 4.** Section 37-181-11, Mississippi Code of 1972, is
261 amended as follows:

262 37-181-11. (1) To ensure that funds are spent
263 appropriately, the State Department of Education shall adopt rules
264 and policies necessary for the administration of the program,
265 including the auditing of Education Scholarship Accounts, and
266 shall conduct or contract for random audits throughout the year.

267 (2) (a) The department or qualified nonprofit shall develop
268 a system for payment of benefits, including, but not limited to,
269 allowing educational service providers to invoice the department
270 or designated nonprofit for qualified expenses consistent with
271 Section 37-181-5(2), or allowing parents to seek reimbursement for
272 qualified expenses consistent with Section 37-181-5(2).



(b) The department or qualified nonprofit may make payments to educational service providers or reimbursement to parents via check or warrant or electronic funds transfer or any other means of payment deemed to be commercially viable or cost-effective, on a monthly basis.

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

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

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

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

(6) From and after July 1, 2019, the Department of Education, or any qualified nonprofit, shall institute a payment procedure by which tuition and/or fees from an eligible school will be billed by the school and paid directly to the school on a semiannual basis.

(7) Neither the department nor any qualified nonprofit shall reimburse or directly pay for any tutor unless the tutor can establish that:



298 (a) The tutor holds a current, valid Mississippi
299 teaching certificate for the subject or grade level;
300 (b) The tutor completes and submits the full-time tutor
301 participation agreement and an IRS Form W9;
302 (c) The services rendered by the tutor do not exceed
303 maximum hours set out herein. For Grades K-3, full-time tutoring
304 is considered seven hundred twenty (720) hours per school year.
305 For grades 4-12, full-time tutoring is considered nine hundred
306 (900) hours (equivalent to one hundred eighty (180) teaching
307 days);
308 (d) Full-time private tutors may not have more than
309 five (5) students at one time.

310 **SECTION 5.** This act shall take effect and be in force from
311 and after July 1, 2019.

