

By: Representative Turner

To: Education

HOUSE BILL NO. 1263

1 AN ACT TO REENACT SECTIONS 37-181-1 THROUGH 37-181-21,  
 2 MISSISSIPPI CODE OF 1972, WHICH ARE THE EQUAL OPPORTUNITY FOR  
 3 STUDENTS WITH SPECIAL NEEDS ACT AND ESTABLISH AN EDUCATION  
 4 SCHOLARSHIP ACCOUNT (ESA) PROGRAM WITHIN THE STATE DEPARTMENT OF  
 5 EDUCATION; TO CREATE NEW SECTION 37-181-23, MISSISSIPPI CODE OF  
 6 1972, TO CODIFY AND EXTEND THE DATE OF THE REPEALER ON THE EQUAL  
 7 OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT, WHICH IS  
 8 CURRENTLY SET FORTH IN THE EFFECTIVE DATE SECTION OF THE ENABLING  
 9 LEGISLATION; TO AMEND SECTION 12, CHAPTER 441, LAWS OF 2015, TO  
 10 DELETE THE REPEALER FROM THE EFFECTIVE DATE SECTION OF THE EQUAL  
 11 OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT; AND FOR RELATED  
 12 PURPOSES.

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

14 **SECTION 1.** Section 37-181-1, Mississippi Code of 1972, is  
 15 reenacted as follows:

16 37-181-1. This chapter shall be known and may be cited as  
 17 "The Equal Opportunity for Students with Special Needs Act."

18 **SECTION 2.** Section 37-181-3, Mississippi Code of 1972, is  
 19 reenacted as follows:

20 37-181-3. The terms used in this chapter shall have the  
 21 meanings ascribed herein, unless the context clearly indicates  
 22 otherwise:



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

26           (b) "Eligible student" means any student who has had an  
27 active Individualized Education Program (IEP) within the past five  
28 (5) years.

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

32           (d) "Department" means the State Department of  
33 Education.

34           (e) "Home school district" means the public school  
35 district in which the student resides.

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

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



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

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

54 **SECTION 3.** Section 37-181-5, Mississippi Code of 1972, is  
55 reenacted as follows:

56 37-181-5. (1) An eligible student shall qualify to  
57 participate in the program if the parent signs an agreement  
58 promising:

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

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

68 (c) Not to enroll their participating student in a  
69 public school and to acknowledge as part of the agreement that the  
70 home school district has provided clear notice to the parent that  
71 the participating student has no individual entitlement to a free  
72 appropriate public education (FAPE) from their home school



73 district, including special education and related services, for as  
74 long as the student is participating in the program;

75 (d) Not to file for their participating student a  
76 certificate of enrollment indicating participation in a home  
77 instruction program under Section 37-13-91, Mississippi Code of  
78 1972; and

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

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

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

90 (b) Textbooks;

91 (c) Payment to a tutor;

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

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



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

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

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

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

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

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

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

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

115 (n) Computer hardware and software and other  
116 technological devices if an eligible school, licensed or certified  
117 tutor, licensed or certified educational service practitioner or  
118 provider, or licensed medical professional verifies in writing  
119 that these items are essential for the student to meet annual,  
120 measurable goals. Once a student is no longer eligible for the  
121 program, computer hardware and software and other technological



122 devices purchased with ESA funds may be donated to a library or a  
123 nonprofit organization with expertise and training in working with  
124 parents to educate children with disabilities or a nonprofit  
125 organization with expertise and training in working with disabled  
126 adults.

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

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

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



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

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

158           (8) Every three (3) years after initial enrollment in the  
159 program, a parent of a participating student, except a student  
160 diagnosed as being a person with a permanent disability, shall  
161 document that the student continues to be identified by the school  
162 district, a federal or state government agency, or a licensed  
163 physician or psychometrist as a child with a disability, as  
164 defined by the federal Individuals with Disabilities Education Act  
165 (20 USCS Section 1401(3)).

166           (9) A participating student shall be allowed to return to  
167 his home school district at any time after enrolling in the  
168 program, in compliance with regulations adopted by the department  
169 providing for the least disruptive process for doing so. Upon a  
170 participating student's return to his home school district, that



171 student's Education Scholarship Account shall be closed and any  
172 remaining funds shall be returned to the state's General Fund.

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

175 **SECTION 4.** Section 37-181-7, Mississippi Code of 1972, is  
176 reenacted as follows:

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

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

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

193 (b) After participation reaches fifty percent (50%) of  
194 the annual enrollment limits in subsection (1) of this section,  
195 the department shall set annual application deadlines for the





196 remaining number of available ESAs and begin to maintain a waiting  
197 list of eligible students. If the number of eligible students who  
198 apply for the program exceeds the remaining number of ESAs  
199 available, the department shall fill the available spaces using a  
200 random selection process that gives preference to students with an  
201 active Individualized Education Program (IEP); and

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

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

209 **SECTION 5.** Section 37-181-9, Mississippi Code of 1972, is  
210 reenacted as follows:

211 37-181-9. (1) The department shall create a standard form  
212 that parents of students submit to establish their student's  
213 eligibility for an Education Scholarship Account. The department  
214 shall ensure that the application is readily available to  
215 interested families through various sources, including the  
216 department's website and the copy of procedural safeguards  
217 annually given to parents.

218 (2) The department shall provide parents of participating  
219 students with a written explanation of the allowable uses of  
220 Education Scholarship Accounts, the responsibilities of parents



221 and the duties of the department. This information shall also be  
222 made available on the department's website.

223 (3) The department shall annually notify all students with  
224 an IEP of the existence of the program and shall ensure that  
225 lower-income families are made aware of their potential  
226 eligibility.

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

231 (5) (a) The department shall make a determination of  
232 eligibility, and shall approve the application, within twenty-one  
233 (21) business days of receiving an application for participation  
234 in the program, subject to the provisions of Section 37-181-3(b).

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

244 (6) The home school district shall provide the parent of a  
245 participating student with a complete copy of the student's school



246 records, while complying with the Family Educational Rights and  
247 Privacy Act of 1974 (20 USCS Section 1232(g)). The record shall  
248 be provided no later than thirty (30) days after a parent signs an  
249 agreement to participate in the program.

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

254 **SECTION 6.** Section 37-181-11, Mississippi Code of 1972, is  
255 reenacted as follows:

256 37-181-11. (1) To ensure that funds are spent  
257 appropriately, the State Department of Education shall adopt rules  
258 and 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) (a) The department or qualified nonprofit shall develop  
262 a system for payment of benefits, including, but not limited to,  
263 allowing educational service providers to invoice the department  
264 or designated nonprofit for qualified expenses consistent with  
265 Section 37-181-5(2), or allowing parents to seek reimbursement for  
266 qualified expenses consistent with Section 37-181-5(2).

267 (b) The department or qualified nonprofit may make  
268 payments to educational service providers or reimbursement to  
269 parents via check or warrant or electronic funds transfer or any



270 other means of payment deemed to be commercially viable or  
271 cost-effective.

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

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

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

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

284 **SECTION 7.** Section 37-181-13, Mississippi Code of 1972, is  
285 reenacted as follows:

286 37-181-13. (1) The Joint Legislative Committee on  
287 Performance Evaluation and Expenditure Review (PEER) shall prepare  
288 a biannual report, beginning in 2018 and every two (2) years  
289 thereafter, assessing the sufficiency of funding for Education  
290 Scholarship Accounts and recommending any suggested changes in  
291 state law or policy necessary to improve the program.

292 (2) The report shall assess:

293 (a) The level of participating students' satisfaction  
294 with the program;



295 (b) The level of parental satisfaction with the  
296 program;

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

300 (d) Student performance on Advanced Placement  
301 examinations or similar courses and any examinations related to  
302 college or university admission;

303 (e) The high school graduation rates and college  
304 acceptance rates of participating students;

305 (f) The percentage of funds used for each qualifying  
306 expense identified in Section 37-181-5(2);

307 (g) The fiscal impact to the state and home school  
308 districts of the program, which must consider both the impact on  
309 revenue and the impact on expenses. Furthermore, the fiscal  
310 savings associated with students departing public schools must be  
311 explicitly quantified, even if the public school losing the  
312 student(s) does not reduce its spending accordingly.

313 (3) The report shall:

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

316 (b) Protect the identity of participating students and  
317 schools by, among other things, keeping anonymous all  
318 disaggregated data.

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



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

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

327 **SECTION 8.** Section 37-181-15, Mississippi Code of 1972, is  
328 reenacted as follows:

329 37-181-15. To ensure that students are treated fairly and  
330 kept safe, all eligible schools shall:

331 (a) Comply with the nondiscrimination policies set  
332 forth in 42 USCS 1981;

333 (b) Prior to a participating student's application for  
334 enrollment, provide parents with details of the school's programs,  
335 qualifications, experience, and capacities to serve students with  
336 special needs;

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

339 (d) Hold a valid occupancy permit if required by their  
340 municipality;

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

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



344 (g) Conduct criminal background checks on employees.

345 The eligible school then shall:

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

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

350 **SECTION 9.** Section 37-181-17, Mississippi Code of 1972, is  
351 reenacted as follows:

352 37-181-17. (1) An eligible nonpublic school is autonomous  
353 and not an agent of the state or federal government and therefore:

354 (a) The State Department of Education or any other  
355 government agency shall not in any way regulate the educational  
356 program of a nonpublic school, postsecondary institution or  
357 educational service provider that accepts funds from the parent of  
358 a participating student;

359 (b) The creation of the Education Scholarship Account  
360 program does not expand the regulatory authority of the state, its  
361 officers, or any school district to impose any additional  
362 regulation of nonpublic schools, postsecondary institutions or  
363 educational service providers beyond those necessary to enforce  
364 the requirements of the program; and

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



369 institution or educational service provider shall be required to  
370 alter its creed, practices, admission policies or curriculum in  
371 order to accept participating students.

372 (2) In any legal proceeding challenging the application of  
373 this chapter to an eligible school, postsecondary institution or  
374 educational service provider the state bears the burden of  
375 establishing that the law is necessary and does not impose any  
376 undue burden on the eligible school, postsecondary institution or  
377 educational service provider.

378 **SECTION 10.** Section 37-181-19, Mississippi Code of 1972, is  
379 reenacted as follows:

380 37-181-19. The State Department of Education may receive and  
381 expend contributions from any public or private source to fund  
382 ESAs for participating students.

383 **SECTION 11.** Section 37-181-21, Mississippi Code of 1972, is  
384 reenacted as follows:

385 37-181-21. If any provision of this law or its application  
386 is held invalid, the invalidity does not affect other provisions  
387 or applications of this law which can be given effect without the  
388 invalid provision or application and to this end the provisions of  
389 this law are severable.

390 **SECTION 12.** The following shall be codified as Section  
391 37-181-23, Mississippi Code of 1972:

392 37-181-23. Sections 37-181-1 through 37-181-23, Mississippi  
393 Code of 1972, shall stand repealed on July 1, 2023.





394           **SECTION 13.** Section 12, Chapter 441, Laws of 2015, is  
395 amended as follows:

396           Section 12. This act shall take effect and be in force from  
397 and after its passage \* \* \*.

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

