

By: Representative Crawford

To: Education;
Appropriations

HOUSE BILL NO. 1272

1 AN ACT TO REENACT SECTIONS 37-181-1, 37-181-3, 37-181-5,
 2 37-181-7, 37-181-9, 37-181-11, 37-181-13, 37-181-15, 37-181-17,
 3 37-181-19 AND 37-181-21, MISSISSIPPI CODE OF 1972, WHICH ESTABLISH
 4 "THE EQUAL OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT"; TO
 5 CREATE NEW SECTION 37-181-23, MISSISSIPPI CODE OF 1972, TO CODIFY
 6 AND EXTEND THE DATE OF THE REPEALER ON THE PRECEDING SECTIONS BY
 7 FIVE YEARS TO JULY 1, 2025; TO REPEAL SECTION 12, CHAPTER 441,
 8 LAWS OF 2015, WHICH PROVIDES FOR THE REPEAL OF THOSE STATUTES
 9 REENACTED BY THIS ACT AND WHICH IS NOT CODIFIED; AND FOR RELATED
 10 PURPOSES.

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

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

14 37-181-1. This chapter shall be known and may be cited as
 15 "The Equal Opportunity for Students with Special Needs Act."

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

18 37-181-3. The terms used in this chapter shall have the
 19 meanings ascribed herein, unless the context clearly indicates
 20 otherwise:



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

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

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

30 (d) "Department" means the State Department of
31 Education.

32 (e) "Home school district" means the public school
33 district in which the student resides.

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

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



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

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

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

54 37-181-5. (1) An eligible student shall qualify to
55 participate in the program if the parent signs an agreement
56 promising:

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

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

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



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

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

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

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

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

88 (b) Textbooks;

89 (c) Payment to a tutor;

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

209 37-181-9. (1) The department shall create a standard form
210 that parents of students submit to establish their student's
211 eligibility for an Education Scholarship Account. The department
212 shall ensure that the application is readily available to
213 interested families through various sources, including the
214 department's website and the copy of procedural safeguards
215 annually given to parents.

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



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

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

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

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

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

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



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

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

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

254 37-181-11. (1) To ensure that funds are spent
255 appropriately, the State Department of Education shall adopt rules
256 and policies necessary for the administration of the program,
257 including the auditing of Education Scholarship Accounts, and
258 shall conduct or contract for random audits throughout the year.

259 (2) (a) The department or qualified nonprofit shall develop
260 a system for payment of benefits, including, but not limited to,
261 allowing educational service providers to invoice the department
262 or designated nonprofit for qualified expenses consistent with
263 Section 37-181-5(2), or allowing parents to seek reimbursement for
264 qualified expenses consistent with Section 37-181-5(2).

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



268 other means of payment deemed to be commercially viable or
269 cost-effective.

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

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

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

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

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

284 37-181-13. (1) The Joint Legislative Committee on
285 Performance Evaluation and Expenditure Review (PEER) shall prepare
286 a biannual report, beginning in 2018 and every two (2) years
287 thereafter, assessing the sufficiency of funding for Education
288 Scholarship Accounts and recommending any suggested changes in
289 state law or policy necessary to improve the program.

290 (2) The report shall assess:

291 (a) The level of participating students' satisfaction
292 with the program;



- 293 (b) The level of parental satisfaction with the
294 program;
- 295 (c) Student performance on nationally standardized
296 norm-referenced achievement tests for those participating students
297 whose parents have requested participation in such tests;
- 298 (d) Student performance on Advanced Placement
299 examinations or similar courses and any examinations related to
300 college or university admission;
- 301 (e) The high school graduation rates and college
302 acceptance rates of participating students;
- 303 (f) The percentage of funds used for each qualifying
304 expense identified in Section 37-181-5(2);
- 305 (g) The fiscal impact to the state and home school
306 districts of the program, which must consider both the impact on
307 revenue and the impact on expenses. Furthermore, the fiscal
308 savings associated with students departing public schools must be
309 explicitly quantified, even if the public school losing the
310 student(s) does not reduce its spending accordingly.
- 311 (3) The report shall:
- 312 (a) Apply appropriate analytical and behavioral science
313 methodologies to ensure public confidence in the study; and
- 314 (b) Protect the identity of participating students and
315 schools by, among other things, keeping anonymous all
316 disaggregated data.
- 317 (4) PEER may accept grants to assist in funding the study.



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

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

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

327 37-181-15. To ensure that students are treated fairly and
328 kept safe, all eligible schools shall:

329 (a) Comply with the nondiscrimination policies set
330 forth in 42 USCS 1981;

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

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

337 (d) Hold a valid occupancy permit if required by their
338 municipality;

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

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



342 (g) Conduct criminal background checks on employees.

343 The eligible school then shall:

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

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

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

350 37-181-17. (1) An eligible nonpublic school is autonomous
351 and not an agent of the state or federal government and therefore:

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

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

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



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

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

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

378 37-181-19. The State Department of Education may receive and
379 expend contributions from any public or private source to fund
380 ESAs for participating students.

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

383 37-181-21. If any provision of this law or its application
384 is held invalid, the invalidity does not affect other provisions
385 or applications of this law which can be given effect without the
386 invalid provision or application and to this end the provisions of
387 this law are severable.

388 **SECTION 12.** The following shall be codified as Section
389 37-181-23, Mississippi Code of 1972:

390 37-181-23. This section and Sections 37-181-1, 37-181-3,
391 37-181-5, 37-181-7, 37-181-9, 37-181-11, 37-181-13, 37-181-15,



392 37-181-17, 37-181-19 and 37-181-21, Mississippi Code of 1972,
393 shall stand repealed on July 1, 2025.

394 **SECTION 13.** Section 12, Chapter 441, Laws of 2015, which
395 provides for the repeal of Sections 37-181-1, 37-181-3, 37-181-5,
396 37-181-7, 37-181-9, 37-181-11, 37-181-13, 37-181-15, 37-181-17,
397 37-181-19 and 37-181-21, Mississippi Code of 1972, is repealed.

398 **SECTION 14.** This act shall take effect and be in force from
399 and after July 1, 2020.

