

By: Representatives Kinkade, Brown (20th),  
Williamson, Reynolds

To: Education

HOUSE BILL NO. 1000

1 AN ACT TO AMEND SECTION 37-181-3, MISSISSIPPI CODE OF 1972,  
 2 TO REVISE THE DEFINITION OF "ELIGIBLE STUDENT" UNDER THE EQUAL  
 3 OPPORTUNITY FOR ALL STUDENTS WITH DISABILITIES ACT FOR THE PURPOSE  
 4 OF EXPANDING ELIGIBILITY TO CHILDREN IN FOSTER CARE; TO AMEND  
 5 SECTION 37-181-5, MISSISSIPPI CODE OF 1972, TO PRESCRIBE TERMS OF  
 6 ELIGIBILITY FOR CHILDREN IN FOSTER CARE; TO AMEND SECTION  
 7 37-181-7, MISSISSIPPI CODE OF 1972, TO INCREASE THE NUMBER BY  
 8 WHICH THE ANNUAL ENROLLMENT OF PARTICIPANTS IN THE ESA PROGRAM TO  
 9 900 NEW ENROLLEES ANNUALLY, PROVIDED THAT 400 OF SUCH NEW  
 10 ENROLLEES ARE CHILDREN IN FOSTER CARE; TO PROVIDE THE PROVIDING OF  
 11 ESAS TO CHILDREN IN FOSTER CARE WILL BE CONDUCTED ON A LIMITED  
 12 PILOT PROGRAM BASIS, SUBJECT TO APPROPRIATION OF FUNDS FOR SUCH  
 13 EXPANSION BY THE LEGISLATURE; TO ESTABLISH THE "FOSTER CHILDREN  
 14 EDUCATION SCHOLARSHIP ACCOUNT FUND" AS A SPECIAL FUND IN THE STATE  
 15 TREASURY; TO BRING FORWARD SECTION 37-181-9 AND 37-181-11,  
 16 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENTS; AND  
 17 FOR RELATED PURPOSES.

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

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

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

24 (a) "ESA program" means the Education Scholarship  
 25 Account (ESA) program created in this chapter.



26 (b) "Eligible student" means:

27 (i) Any student who has had an active

28 Individualized Education Program (IEP) within the past three (3)

29 years and has maintained eligibility \* \* \*;

30 (ii) Any student who is a compulsory-school-age

31 child, as defined in Section 37-13-91, who has been placed in the

32 legal custody of the Mississippi Department of Child Protection

33 Services by a youth court or through other legal means and who was

34 in the legal custody of the department;

35 (iii) Any student who is a compulsory-school-age

36 child, as defined in Section 37-13-91, who has been placed in a

37 qualified residential child care agency by a parent, legal

38 guardian, court of competent jurisdiction, or other person or

39 entity acting in the best interest of the individual; or

40 (iv) Any student who is a compulsory-school-age

41 child, as defined in Section 37-13-91, who has been adopted from

42 the department's legal custody or adopted while residing at a

43 qualified residential child care agency as described in paragraph

44 (n) of this subsection.

45 (c) "Participating student" means any student who meets

46 the qualifications of an eligible student as defined in paragraph

47 (b) of this section and is participating in an ESA program at an

48 eligible school.



49           (d) "Parent" means a resident of this state who is a  
50 parent, legal guardian, custodian or other person with the  
51 authority to act on behalf of the eligible student.

52           (e) "Department" means the State Department of  
53 Education.

54           (f) "Home school district" means the public school  
55 district in which the student resides.

56           (g) "Eligible school" means a state-accredited special  
57 purpose school, a state-accredited nonpublic school, or a  
58 nonpublic school located in the state that has enrolled a  
59 participating student and is providing services for the  
60 participating student's disability or special education needs, or  
61 is providing services addressing a participating student's IEP.  
62 An eligible school does not include a home instruction program  
63 under Section 37-13-91, Mississippi Code of 1972.

64           (h) "Tutor" means a person who is certified or licensed  
65 by a state, regional, or national certification, licensing, or  
66 accreditation organization or who has earned a valid teacher's  
67 license or who has experience teaching at an eligible  
68 postsecondary institution.

69           (i) "Postsecondary institution" means a community  
70 college, college, or university accredited by a state, regional or  
71 national accrediting organization.



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

75 (k) "Awarded ESA school year" means the duration of the  
76 school year in which ESA program funds are deposited in a  
77 student's ESA.

78 (l) Nothing in this section shall negate federal law  
79 requiring public school districts to identify and provide services  
80 to students with disabilities who live within the public school  
81 district, including those enrolled in nonpublic schools or home  
82 instruction programs.

83 (m) An eligible school shall provide notice to a  
84 participating student's home school district when the eligible  
85 student enrolls in the eligible school with an ESA. Furthermore,  
86 a public school district providing special education services to a  
87 participating student enrolled in an eligible school shall be  
88 reimbursed by the eligible school, or parent or guardian who  
89 submitted the ESA application, fair market value for any special  
90 education services rendered to the eligible student in an amount  
91 not to exceed the amount of ESA funds reimbursed to the eligible  
92 student during the awarded ESA school year.

93 (n) "Qualified residential child care agency" means an  
94 entity that provides a home for children and was licensed by the  
95 Mississippi Department of Child Protection Services at the time  
96 that the student was housed by the agency.



97           **SECTION 2.** Section 37-181-5, Mississippi Code of 1972, is  
98 amended as follows:

99           37-181-5. (1) (a) An eligible student, as described under  
100 the provisions of Section 37-181-3(b)(i), shall qualify to  
101 participate in the ESA program if the parent signs an agreement  
102 promising:

103                   ( \* \* \* i) To provide an organized, appropriate  
104 educational program with measurable annual goals to their  
105 participating student and to provide an education for the  
106 participating student in at least the subjects of reading,  
107 grammar, mathematics, social studies and science;

108                   ( \* \* \* ii) To document their participating  
109 student's disability at intervals and in a manner required under  
110 subsection (8) of this section;

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

119                   ( \* \* \* iv) Not to file for their participating  
120 student a certificate of enrollment indicating participation in a



121 home instruction program under Section 37-13-91, Mississippi Code  
122 of 1972; and

123 ( \* \* \*y) Not to participate in the Mississippi  
124 Dyslexia Therapy Scholarship for Students with Dyslexia Program or  
125 the Mississippi Speech-Language Therapy Scholarship for Students  
126 with Speech-Language Impairments Program while participating in  
127 the ESA program.

128 (b) An eligible student, as described under the  
129 provisions of Section 37-181-3(b)(ii), (iii) and (iv), shall  
130 qualify to participate in the ESA program as long as he or she:

131 (i) Remains in the custody of the Mississippi  
132 Department of Child Protection; or

133 (ii) Remains in a qualified residential child care  
134 agency; or

135 (iii) Remains in the legal custody of the  
136 individual(s) who adopted him or her from the department's legal  
137 custody or while residing at a qualified residential child care  
138 agency; and

139 (iv) Has not been adjudicated as an emancipated  
140 minor by a court of competent jurisdiction.

141 (2) Parents, legal guardians and qualified residential child  
142 care agency providers shall use the funds deposited in a  
143 participating student's ESA for any of the following qualifying  
144 expenses, which shall be incurred within the awarded ESA school  
145 year, to educate the student using any of the below methods or



146 combination of methods that meet the requirement in subsection  
147 (1) (a) (i) of this section:

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

149 (b) Textbooks related to academic coursework;

150 (c) Payment to a tutor, as defined in Section  
151 37-181-3(h);

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

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

158 (f) Educational services or therapies from a licensed  
159 or certified practitioner or provider, including licensed or  
160 certified paraprofessionals or educational aides;

161 (g) Tuition and fees related to dual enrollment at a  
162 postsecondary institution;

163 (h) Textbooks related to academic coursework at a  
164 postsecondary institution;

165 (i) Surety bond payments if required by the department;

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

169 (k) Computer hardware and software and other  
170 technological devices if an eligible school, licensed or certified



171 tutor, licensed or certified educational service practitioner or  
172 provider, or licensed medical professional verifies in writing  
173 that these items are essential for the student to meet annual,  
174 measurable educational and academic goals or goals within the  
175 scope of the eligible student's IEP. Once a student is no longer  
176 participating in the ESA program, computer hardware and software  
177 and other technological devices purchased with ESA funds shall be  
178 donated to a public school or public library. Qualifying expenses  
179 for computer hardware and software include only those expenses  
180 incurred within the awarded ESA school year.

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

188 (4) (a) Eligible schools, postsecondary institutions and  
189 educational service providers that serve participating students  
190 shall provide the parent or guardian who submitted the ESA program  
191 application with an original itemized receipt, including the  
192 service provider's name and address, for all qualifying expenses.  
193 The parent or guardian who submitted the ESA application shall  
194 provide the original itemized receipt to the department.





195           (b) In lieu of providing the parent or guardian who  
196 submitted the ESA program application with an original itemized  
197 receipt, the eligible schools, postsecondary institutions and  
198 educational service providers may provide to the department an  
199 original itemized receipt approved and signed off on by the parent  
200 or guardian who submitted the ESA application, including the  
201 service provider's name and address, for all qualifying expenses.

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

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

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

216           (8) Every three (3) years after initial enrollment in the  
217 ESA program, a parent of a participating student, except a student  
218 diagnosed as being a person with a permanent disability, shall  
219 document that the student continues to be identified by the school



220 district, a federal or state government agency, or a licensed  
221 physician or psychometrist as a child with a disability, as  
222 defined by the federal Individuals with Disabilities Education Act  
223 (20 USCS Section 1401(3)).

224 (9) An eligible student shall be allowed to return to his  
225 home school district at any time after enrolling in the ESA  
226 program, in compliance with regulations adopted by the department  
227 providing for the least disruptive process for doing so. Upon the  
228 participating student's return to his or her home school district,  
229 the student's Education Scholarship Account shall be closed and  
230 any remaining funds shall be distributed to the student's home  
231 school district at the end of the awarded ESA school year.

232 (10) The department shall begin accepting applications for  
233 the ESA program on July 1, 2020, and shall establish a separate  
234 ESA application process for children in foster care determined to  
235 be eligible students under Section 37-181-3(b) (i), (iii) and (iv)  
236 for purposes of beginning the acceptance of those applications on  
237 July 1, 2023.

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

240 37-181-7. (1) The ESA program created in this chapter shall  
241 be limited to five hundred (500) students in the school year  
242 2015-2016, with new enrollment limited to \* \* \* nine hundred (900)  
243 additional students each year thereafter, subject to the  
244 contingencies outlined in this subsection and, provided that four



245 hundred (400) of the enrollees shall be children in foster care  
246 whose eligibility is determined as described in Section  
247 37-181-3(b) (ii), (iii) and (iv). The expansion of the ESA Program  
248 allowing for the automatic eligibility for children in foster care  
249 shall be conducted on a limited pilot basis, and shall be subject  
250 to the Legislature making the necessary appropriations to  
251 implement and sustain the continued expansion as prescribed  
252 herein. Subject to appropriation from the General Fund, each  
253 student's ESA shall be funded at Six Thousand Five Hundred Dollars  
254 (\$6,500.00) for school year 2015-2016. For each subsequent year,  
255 this amount shall increase or decrease by the same proportion as  
256 the base student cost under Section 37-151-7(1) (b) is increased or  
257 decreased.

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

260 (a) Until participation in the ESA program reaches  
261 fifty percent (50%) of the annual enrollment limits in subsection  
262 (1) of this section, students shall be approved on a first-come,  
263 first-served basis, with applications being reviewed on a rolling  
264 basis;

265 (b) After participation reaches fifty percent (50%) of  
266 the annual enrollment limits in subsection (1) of this section,  
267 the department shall set annual application deadlines for the  
268 remaining number of available ESAs and begin to maintain a waiting  
269 list of eligible students. The waitlist will be maintained in the



270 chronological order in which applications are received. The  
271 department shall award ESA program applications in chronological  
272 order according to the waitlist; and

273 (c) Participating students who remain eligible for the  
274 ESA program are automatically approved for participation for the  
275 following year and are not subject to the random selection  
276 process.

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

280 **SECTION 4.** Section 37-181-9, Mississippi Code of 1972, is  
281 brought forward as follows:

282 37-181-9. (1) The department shall create a standard form  
283 that parents of students submit to establish their student's  
284 eligibility for an Education Scholarship Account. The department  
285 shall ensure that the application is readily available to  
286 interested families through various sources, including the  
287 department's website and the copy of procedural safeguards  
288 annually given to parents.

289 (2) The department shall provide parents of participating  
290 students with a written explanation of the allowable uses of  
291 Education Scholarship Accounts, the responsibilities of parents  
292 and the duties of the department. This information shall also be  
293 made available on the department's website.



294 (3) The department shall annually notify all students with  
295 an IEP of the existence of the ESA program and shall ensure that  
296 lower-income families are made aware of their potential  
297 eligibility.

298 (4) The department may deduct an amount up to a limit of six  
299 percent (6%) from appropriations used to fund Education  
300 Scholarship Accounts to cover the costs of overseeing the funds  
301 and administering the ESA program.

302 (5) (a) The department shall make a determination of  
303 eligibility, and shall approve the application, within twenty-one  
304 (21) business days of receiving an application for participation  
305 in the ESA program, subject to the provisions of Section  
306 37-181-3(b).

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

316 (6) The home school district shall provide the parent of a  
317 participating student with a complete copy of the student's school  
318 records, while complying with the Family Educational Rights and



319 Privacy Act of 1974 (20 USCS Section 1232(g)). The record shall  
320 be provided no later than thirty (30) days after a parent signs an  
321 agreement to participate in the ESA program.

322 **SECTION 5.** Section 37-181-11, Mississippi Code of 1972, is  
323 brought forward as follows:

324 37-181-11. (1) To ensure that funds are spent  
325 appropriately, the State Department of Education shall adopt rules  
326 and policies necessary for the administration of the ESA program,  
327 including the auditing of Education Scholarship Accounts, and  
328 shall conduct or contract for random audits throughout the year.

329 (2) (a) The department shall develop a system for payment  
330 of benefits, including, but not limited to, allowing educational  
331 service providers to invoice the department for qualified expenses  
332 consistent with Section 37-181-5(2), or allowing the parent or  
333 guardian who submitted the ESA program application to seek  
334 reimbursement for qualified expenses consistent with Section  
335 37-181-5(2).

336 (b) The department may make payments to educational  
337 service providers or reimbursement to the parent or guardian who  
338 submitted the ESA program application via check or warrant or  
339 electronic funds transfer or any other means of payment deemed to  
340 be commercially viable or cost-effective.

341 (c) The department may also establish by rule that some  
342 payments to educational service providers will be made on a



343 quarterly basis, rather than an annual basis, if the educational  
344 services will be rendered over an extended period of time.

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

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

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

353 **SECTION 6.** (1) There is established in the State Treasury a  
354 special fund to be designated as the "Foster Children Education  
355 Scholarship Account Fund." The special fund shall consist of  
356 funds appropriated or otherwise made available by the Legislature  
357 in any manner, and funds from any other source designated for  
358 deposit into the special fund. During the regular legislative  
359 session held in calendar year 2023, the Legislature shall  
360 appropriate not less than Three Million Dollars (\$3,000,000.00)  
361 from the State General Fund for deposit into the Foster Children  
362 Education Scholarship Account Fund. Monies in the fund shall only  
363 be spent upon appropriation by the Legislature to the State  
364 Department of Education and shall only be used by the department  
365 for the purpose of funding ESA for eligible foster children in  
366 accordance with the provisions of this act.



367           (2) Unexpended amounts remaining in the special fund at the  
368 end of a fiscal year shall not lapse into the State General Fund  
369 but shall remain in the Foster Children Education Scholarship  
370 Account Fund. Any investment earnings or interest earned on  
371 amounts in the special fund shall be deposited to the credit of  
372 the special fund.

373           **SECTION 7.** This act shall take effect and be in force from  
374 and after July 1, 2023.

