

By: Representative Roberson

To: Education

HOUSE BILL NO. 1229

1 AN ACT TO BRING FORWARD SECTIONS 37-181-1 THROUGH 37-181-23,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE EQUAL OPPORTUNITY FOR
3 STUDENTS WITH SPECIAL NEEDS ACT, FOR PURPOSES OF AMENDMENT; AND
4 FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 37-181-1, Mississippi Code of 1972, is
7 brought forward as follows:

8 37-181-1. This chapter shall be known and may be cited as
9 "The Equal Opportunity for Students with Special Needs Act."

10 **SECTION 2.** Section 37-181-3, Mississippi Code of 1972, is
11 brought forward as follows:

12 37-181-3. The terms used in this chapter shall have the
13 meanings ascribed herein, unless the context clearly indicates
14 otherwise:

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

17 (b) "Eligible student" means any student who has had an
18 active Individualized Education Program (IEP) within the past
19 three (3) years and has maintained eligibility.



20 (c) "Participating student" means any student who meets
21 the qualifications of an eligible student as defined in paragraph
22 (b) of this section and is participating in an ESA program at an
23 eligible school.

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

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

31 (g) "Eligible school" means a state-accredited special
32 purpose school, a state-accredited nonpublic school, or a
33 nonpublic school located in the state that has enrolled a
34 participating student and is providing services for the
35 participating student's disability or special education needs, or
36 is providing services addressing a participating student's IEP.
37 An eligible school does not include a home instruction program
38 under Section 37-13-91, Mississippi Code of 1972.

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



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

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

50 (k) "Awarded ESA school year" means the duration of the
51 school year in which ESA program funds are deposited in a
52 student's ESA.

53 (l) Nothing in this section shall negate federal law
54 requiring public school districts to identify and provide services
55 to students with disabilities who live within the public school
56 district, including those enrolled in nonpublic schools or home
57 instruction programs.

58 (m) An eligible school shall provide notice to a
59 participating student's home school district when the eligible
60 student enrolls in the eligible school with an ESA. Furthermore,
61 a public school district providing special education services to a
62 participating student enrolled in an eligible school shall be
63 reimbursed by the eligible school, or parent or guardian who
64 submitted the ESA application, fair market value for any special
65 education services rendered to the eligible student in an amount
66 not to exceed the amount of ESA funds reimbursed to the eligible
67 student during the awarded ESA school year.



68 **SECTION 3.** Section 37-181-5, Mississippi Code of 1972, is
69 brought forward as follows:

70 37-181-5. (1) An eligible student shall qualify to
71 participate in the ESA program if the parent signs an agreement
72 promising:

73 (a) To provide an organized, appropriate educational
74 program with measurable annual goals to their participating
75 student and to provide an education for the participating student
76 in at least the subjects of reading, grammar, mathematics, social
77 studies and science;

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

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

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



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

97 (2) Parents shall use the funds deposited in a participating
98 student's ESA for any of the following qualifying expenses, which
99 shall be incurred within the awarded ESA school year, to educate
100 the student using any of the below methods or combination of
101 methods that meet the requirement in subsection (1)(a) of this
102 section:

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

104 (b) Textbooks related to academic coursework;

105 (c) Payment to a tutor, as defined in Section
106 37-181-3(h);

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

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

113 (f) Educational services or therapies from a licensed
114 or certified practitioner or provider, including licensed or
115 certified paraprofessionals or educational aides;



116 (g) Tuition and fees related to dual enrollment at a
117 postsecondary institution;

118 (h) Textbooks related to academic coursework at a
119 postsecondary institution;

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

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

124 (k) Computer hardware and software and other
125 technological devices if an eligible school, licensed or certified
126 tutor, licensed or certified educational service practitioner or
127 provider, or licensed medical professional verifies in writing
128 that these items are essential for the student to meet annual,
129 measurable educational and academic goals or goals within the
130 scope of the eligible student's IEP. Once a student is no longer
131 participating in the ESA program, computer hardware and software
132 and other technological devices purchased with ESA funds shall be
133 donated to a public school or public library. Qualifying expenses
134 for computer hardware and software include only those expenses
135 incurred within the awarded ESA school year.

136 (3) Neither a participating student, nor anyone on the
137 student's behalf, may receive cash or cash-equivalent items, such
138 as gift cards or store credit, from any refunds or rebates from
139 any provider of services or products in the ESA program. Any
140 refunds or rebates shall be credited directly to the participating



141 student's ESA. The funds in an ESA may only be used for
142 education-related purposes as defined in this chapter.

143 (4) (a) Eligible schools, postsecondary institutions and
144 educational service providers that serve participating students
145 shall provide the parent or guardian who submitted the ESA program
146 application with an original itemized receipt, including the
147 service provider's name and address, for all qualifying expenses.
148 The parent or guardian who submitted the ESA application shall
149 provide the original itemized receipt to the department.

150 (b) In lieu of providing the parent or guardian who
151 submitted the ESA program application with an original itemized
152 receipt, the eligible schools, postsecondary institutions and
153 educational service providers may provide to the department an
154 original itemized receipt approved and signed off on by the parent
155 or guardian who submitted the ESA application, including the
156 service provider's name and address, for all qualifying expenses.

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

160 (6) For purposes of continuity of educational attainment,
161 students who enroll in the ESA program shall remain eligible to
162 receive quarterly ESA payments until the participating student
163 returns to a public school, completes high school, completes the
164 school year in which the student reaches the age of twenty-one
165 (21), or does not have eligibility verified by a parent as



166 required under subsection (8) of this section, whichever occurs
167 first.

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

171 (8) Every three (3) years after initial enrollment in the
172 ESA program, a parent of a participating student, except a student
173 diagnosed as being a person with a permanent disability, shall
174 document that the student continues to be identified by the school
175 district, a federal or state government agency, or a licensed
176 physician or psychometrist as a child with a disability, as
177 defined by the federal Individuals with Disabilities Education Act
178 (20 USCS Section 1401(3)).

179 (9) An eligible student shall be allowed to return to his
180 home school district at any time after enrolling in the ESA
181 program, in compliance with regulations adopted by the department
182 providing for the least disruptive process for doing so. Upon the
183 participating student's return to his or her home school district,
184 the student's Education Scholarship Account shall be closed and
185 any remaining funds shall be distributed to the student's home
186 school district at the end of the awarded ESA school year.

187 (10) The department shall begin accepting applications for
188 the ESA program on July 1, 2020.

189 **SECTION 4.** Section 37-181-7, Mississippi Code of 1972, is
190 brought forward as follows:



191 37-181-7. (1) The ESA program created in this chapter shall
192 be limited to five hundred (500) students in the school year
193 2015-2016, with new enrollment limited to five hundred (500)
194 additional students each year thereafter. Subject to
195 appropriation from the General Fund, each student's ESA shall be
196 funded at Six Thousand Five Hundred Dollars (\$6,500.00) for school
197 year 2015-2016. For each subsequent year, this amount shall
198 increase or decrease by the same proportion as the base student
199 cost under Section 37-151-7(1)(b) is increased or decreased.

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

202 (a) Until participation in the ESA program reaches
203 fifty percent (50%) of the annual enrollment limits in subsection
204 (1) of this section, students shall be approved on a first-come,
205 first-served basis, with applications being reviewed on a rolling
206 basis;

207 (b) After participation reaches fifty percent (50%) of
208 the annual enrollment limits in subsection (1) of this section,
209 the department shall set annual application deadlines for the
210 remaining number of available ESAs and begin to maintain a waiting
211 list of eligible students. The waitlist will be maintained in the
212 chronological order in which applications are received. The
213 department shall award ESA program applications in chronological
214 order according to the waitlist; and



215 (c) Participating students who remain eligible for the
216 ESA program are automatically approved for participation for the
217 following year and are not subject to the random selection
218 process.

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

222 **SECTION 5.** Section 37-181-9, Mississippi Code of 1972, is
223 brought forward as follows:

224 37-181-9. (1) The department shall create a standard form
225 that parents of students submit to establish their student's
226 eligibility for an Education Scholarship Account. The department
227 shall ensure that the application is readily available to
228 interested families through various sources, including the
229 department's website and the copy of procedural safeguards
230 annually given to parents.

231 (2) The department shall provide parents of participating
232 students with a written explanation of the allowable uses of
233 Education Scholarship Accounts, the responsibilities of parents
234 and the duties of the department. This information shall also be
235 made available on the department's website.

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



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

244 (5) (a) The department shall make a determination of
245 eligibility, and shall approve the application, within twenty-one
246 (21) business days of receiving an application for participation
247 in the ESA program, subject to the provisions of Section
248 37-181-3(b).

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

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



264 **SECTION 6.** Section 37-181-11, Mississippi Code of 1972, is
265 brought forward as follows:

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

271 (2) (a) The department shall develop a system for payment
272 of benefits, including, but not limited to, allowing educational
273 service providers to invoice the department for qualified expenses
274 consistent with Section 37-181-5(2), or allowing the parent or
275 guardian who submitted the ESA program application to seek
276 reimbursement for qualified expenses consistent with Section
277 37-181-5(2).

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

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



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

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

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

295 **SECTION 7.** Section 37-181-13, Mississippi Code of 1972, is
296 brought forward as follows:

297 37-181-13. (1) The Joint Legislative Committee on
298 Performance Evaluation and Expenditure Review (PEER) shall prepare
299 a biannual report, beginning in 2018 and every two (2) years
300 thereafter, assessing efficacy of Education Scholarship Accounts,
301 to include the sufficiency of funding, and recommending any
302 suggested changes in state law or policy necessary to improve the
303 ESA program.

304 (2) The report shall assess:

305 (a) The degree to which eligible schools are meeting
306 the needs of participating students as defined by the
307 participating students' IEPs;

308 (b) The level of participating students' satisfaction
309 with the ESA program;

310 (c) The level of parental satisfaction with the ESA
311 program;



312 (d) Participating students' performance, both
313 pre-assessment and post-assessment, on the eligible school's
314 current assessment used to demonstrate academic progress, a
315 nationally standardized norm-referenced achievement test, or a
316 current state board-approved screener, as required in Section
317 37-181-15(f);

318 (e) Participating students' performance on Advanced
319 Placement examinations or similar courses and any examinations
320 related to college or university admission;

321 (f) The four-year high school graduation rates and
322 college acceptance rates of participating students;

323 (g) The percentage of funds used for each qualifying
324 expense identified in Section 37-181-5(2); and

325 (h) The fiscal impact to the state and home school
326 districts of the ESA program, which must consider both the impact
327 on revenue and the impact on expenses. Furthermore, the fiscal
328 savings associated with students departing public schools must be
329 explicitly quantified, even if the public school losing the
330 student(s) does not reduce its spending accordingly.

331 (3) The report shall:

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

334 (b) Protect the identity of participating students and
335 schools by, among other things, keeping anonymous all
336 disaggregated data.



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

338 (5) PEER shall provide the Legislature with a final copy of
339 the report of the ESA program before December 31 each year the
340 report is due. At the same time, the study shall also be placed
341 in a prominent location on the PEER website.

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

345 **SECTION 8.** Section 37-181-15, Mississippi Code of 1972, is
346 brought forward as follows:

347 37-181-15. To ensure that students are treated fairly and
348 kept safe, all eligible schools shall:

349 (a) Comply with the nondiscrimination policies set
350 forth in 42 USCS 1981;

351 (b) Prior to a participating student's application for
352 enrollment, provide parents with details of the school's programs,
353 record of student achievement, qualifications, experience,
354 capacities to serve students with special needs, and capacity to
355 serve the participating student within the scope of their IEP;

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

358 (d) Hold a valid occupancy permit if required by their
359 municipality;

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



361 (f) Require participating students to take a
362 pre-assessment at the beginning of the school year and a
363 post-assessment at the end of the school year. The eligible
364 school shall have the option to select their current assessment
365 used to demonstrate academic progress, a nationally standardized
366 norm-referenced achievement test, or a current state
367 board-approved screener;

368 (g) Notify a parent or guardian applying for the ESA
369 program that the parent or guardian waives the right of the
370 participating student to an individual entitlement to a free and
371 appropriate public education (FAPE) from their home school
372 district, including special education and related services, for as
373 long as the student is participating in the ESA program;

374 (h) Conduct criminal background checks on employees
375 and:

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

378 (ii) Exclude from employment any person who might
379 reasonably pose a threat to the safety of students; and

380 (i) An eligible school shall certify to the department
381 upon enrollment of a participating student that the eligible
382 school shall provide services for the participating student's
383 disability or special education needs, or shall provide services
384 addressing a participating student's IEP.



385 **SECTION 9.** Section 37-181-17, Mississippi Code of 1972, is
386 brought forward as follows:

387 37-181-17. (1) An eligible nonpublic school is autonomous
388 and not an agent of the state or federal government and therefore:

389 (a) The State Department of Education or any other
390 government agency shall not regulate the educational program of a
391 nonpublic school, postsecondary institution or educational service
392 provider that accepts funds from the parent of a participating
393 student beyond the requirements of the ESA program as promulgated
394 in this chapter;

395 (b) The creation of the Education Scholarship Account
396 program does not expand the regulatory authority of the state, its
397 officers, or any school district to impose any additional
398 regulation of nonpublic schools, postsecondary institutions or
399 educational service providers beyond those necessary to enforce
400 the requirements of the ESA program; and

401 (c) Eligible schools, postsecondary institutions and
402 educational service providers shall be given the maximum freedom
403 to provide for the educational needs of their students without
404 governmental control. No eligible school, postsecondary
405 institution or educational service provider shall be required to
406 alter its creed, practices, admission policies or curriculum in
407 order to accept participating students.

408 (2) Eligible schools, or the parent or guardian who
409 submitted the ESA application, must submit student performance



410 data to the State Department of Education at the end of the school
411 year, including the individual results of the pre-assessment and
412 post-assessment required in Section 37-181-15(f).

413 (3) In any legal proceeding challenging the application of
414 this chapter to an eligible school, postsecondary institution or
415 educational service provider the state bears the burden of
416 establishing that the law is necessary and does not impose any
417 undue burden on the eligible school, postsecondary institution or
418 educational service provider.

419 **SECTION 10.** Section 37-181-19, Mississippi Code of 1972, is
420 brought forward as follows:

421 37-181-19. The State Department of Education may receive and
422 expend contributions from any public or private source to fund
423 ESAs for participating students.

424 **SECTION 11.** Section 37-181-21, Mississippi Code of 1972, is
425 brought forward as follows:

426 37-181-21. If any provision of this law or its application
427 is held invalid, the invalidity does not affect other provisions
428 or applications of this law which can be given effect without the
429 invalid provision or application and to this end the provisions of
430 this law are severable.

431 **SECTION 12.** Section 37-181-23, Mississippi Code of 1972, is
432 brought forward as follows:

433 37-181-23. Sections 37-181-1 through 37-181-23, Mississippi
434 Code of 1972, shall stand repealed on July 1, 2024.



435 **SECTION 13.** This act shall take effect and be in force from
436 and after July 1, 2024.

