

By: Representative Roberson

To: Education

HOUSE BILL NO. 1229
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 37-181-5, 37-181-9, 37-181-13,
2 37-181-15, 37-181-17, MISSISSIPPI CODE OF 1972, AND SECTION
3 37-181-7, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO.
4 4130, 2024 REGULAR SESSION, WHICH PROVIDE FOR THE EDUCATION
5 SCHOLARSHIP ACCOUNT PROGRAM TO MAKE CERTAIN TECHNICAL REVISIONS
6 THERETO; TO PROVIDE THAT IN ORDER TO BE ELIGIBLE FOR THE PROGRAM,
7 THE PARENT OR GUARDIAN OF AN ELIGIBLE STUDENT MUST CERTIFY TO THE
8 DEPARTMENT OF EDUCATION THAT THEY HAVE BEEN ACCEPTED INTO AN
9 ELIGIBLE SCHOOL QUALIFIED TO PROVIDE SERVICES FOR THE
10 PARTICIPATING STUDENT'S DISABILITY OR SPECIAL EDUCATION NEEDS, OR
11 PROVIDE SERVICES ADDRESSING A PARTICIPATING STUDENT'S IEP; TO SET
12 CERTAIN REPORTING REQUIREMENTS OF ELIGIBLE SCHOOLS, INCLUDING
13 PARTICIPANTS' GRADUATION RATES AND ADVANCE PLACEMENT EXAMINATION
14 PERFORMANCE; TO PROVIDE THAT ELIGIBLE SCHOOLS SHALL HAVE THE
15 OPTION OF SELECTING A NATIONALLY STANDARDIZED NORM-REFERENCED
16 ACHIEVEMENT TEST, OR A CURRENT STATE BOARD-APPROVED SCREENER FOR
17 PARTICIPATING STUDENTS TO TAKE EACH YEAR; TO PROVIDE THAT FAILURE
18 TO COMPLY WITH THE REQUIREMENTS OF THE CHAPTER SHALL DEEM THE
19 ELIGIBLE SCHOOL INELIGIBLE TO PARTICIPATE IN THE ESA PROGRAM THE
20 FOLLOWING YEAR; TO REENACT SECTIONS 37-181-1, 37-181-3, 37-181-11,
21 37-181-19 AND 37-181-21, MISSISSIPPI CODE OF 1972, WHICH PROVIDE
22 FOR VARIOUS PROVISIONS OF THE EQUAL OPPORTUNITY FOR STUDENTS WITH
23 SPECIAL NEEDS ACT; TO AMEND REENACTED SECTION 37-181-23,
24 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL OF SUCH
25 ACT; AND FOR RELATED PURPOSES.

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

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



29 37-181-5. (1) An eligible student shall qualify to
30 participate in the ESA program if the parent or guardian signs an
31 agreement promising:

32 (a) To provide an organized, appropriate educational
33 program with measurable annual goals to their participating
34 student and to provide an education for the participating student
35 in at least the subjects of reading, grammar, mathematics, social
36 studies and science;

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

40 (c) Not to enroll their participating student in a
41 public school and to acknowledge as part of the agreement that the
42 eligible school has provided clear notice to the parent or
43 guardian that the participating student has no individual
44 entitlement to a free appropriate public education (FAPE) from
45 their home school district, including special education and
46 related services, for as long as the student is participating in
47 the ESA program;

48 (d) Not to file for their participating student a
49 certificate of enrollment indicating participation in a home
50 instruction program under Section 37-13-91, Mississippi Code of
51 1972; and

52 (e) Not to participate in the Mississippi Dyslexia
53 Therapy Scholarship for Students with Dyslexia Program or the



54 Mississippi Speech-Language Therapy Scholarship for Students with
55 Speech-Language Impairments Program while participating in the ESA
56 program.

57 (2) Parents or guardians shall use the funds deposited in a
58 participating student's ESA for any of the following qualifying
59 expenses, which shall be incurred within the awarded ESA school
60 year, to educate the student using any of the below methods or
61 combination of methods that meet the requirement in subsection
62 (1) (a) of this section:

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

64 (b) Textbooks related to academic coursework;

65 (c) Payment to a tutor, as defined in Section
66 37-181-3(h);

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

69 (e) Fees for nationally standardized norm-referenced
70 achievement tests, including alternate assessments; and fees for
71 Advanced Placement examinations or similar courses and any
72 examinations related to college or university admission;

73 (f) Educational services or therapies from a licensed
74 or certified practitioner or provider, including licensed or
75 certified paraprofessionals or educational aides;

76 (g) Tuition and fees related to dual enrollment at a
77 postsecondary institution;



78 (h) Textbooks related to academic coursework at a
79 postsecondary institution;

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

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

84 (k) Computer hardware and software and other
85 technological devices if an eligible school, licensed or certified
86 tutor, licensed or certified educational service practitioner or
87 provider, or licensed medical professional verifies in writing
88 that these items are essential for the student to meet annual,
89 measurable educational and academic goals or goals within the
90 scope of the eligible student's IEP. Once a student is no longer
91 participating in the ESA program, computer hardware and software
92 and other technological devices purchased with ESA funds shall be
93 donated to a public school or public library. Qualifying expenses
94 for computer hardware and software include only those expenses
95 incurred within the awarded ESA school year.

96 (3) To qualify to participate in the program, the parent or
97 guardian of an eligible student shall also certify to the
98 department that they have been accepted into an eligible school
99 qualified to provide services for the participating student's
100 disability or special education needs, or provide services
101 addressing a participating student's IEP, as required under this
102 act.



103 (* * *4) Neither a participating student, nor anyone on the
104 student's behalf, may receive cash or cash-equivalent items, such
105 as gift cards or store credit, from any refunds or rebates from
106 any provider of services or products in the ESA program. Any
107 refunds or rebates shall be credited directly to the participating
108 student's ESA. The funds in an ESA may only be used for
109 education-related purposes as defined in this chapter.

110 (* * *5) (a) Eligible schools, postsecondary institutions
111 and educational service providers that serve participating
112 students shall provide the parent or guardian who submitted the
113 ESA program application with an original itemized receipt,
114 including the service provider's name and address, for all
115 qualifying expenses. The parent or guardian who submitted the ESA
116 application shall provide the original itemized receipt to the
117 department.

118 (b) In lieu of providing the parent or guardian who
119 submitted the ESA program application with an original itemized
120 receipt, the eligible schools, postsecondary institutions and
121 educational service providers may provide to the department an
122 original itemized receipt approved and signed off on by the parent
123 or guardian who submitted the ESA application, including the
124 service provider's name and address, for all qualifying expenses.

125 (* * *6) Payment for educational services through an ESA
126 shall not preclude parents or guardians from paying for
127 educational services using non-ESA funds.



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

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

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

147 (* * *10) An eligible student shall be allowed to return to
148 his home school district at any time after enrolling in the ESA
149 program, in compliance with regulations adopted by the department
150 providing for the least disruptive process for doing so. Upon the
151 participating student's return to his or her home school district,
152 the student's Education Scholarship Account shall be closed and



153 any remaining funds shall be distributed to the student's home
154 school district at the end of the awarded ESA school year.

155 * * *

156 **SECTION 2.** Section 37-181-7, Mississippi Code of 1972, as
157 amended by House Bill No. 4130, 2024 Regular Session, is amended
158 as follows:

159 37-181-7. (1) * * * New enrollment in the ESA program
160 created in this chapter shall be limited to five hundred (500)
161 additional students each year * * *. Subject to appropriation
162 from the General Fund, each student's ESA shall be funded at Six
163 Thousand Five Hundred Dollars (\$6,500.00) for school year
164 2015-2016. For each subsequent year, this amount shall increase
165 or decrease by the same proportion as the * * * student base
166 amount under Section * * * 37-151-203 is increased or decreased.

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

169 (a) * * * Students shall be approved on a first-come,
170 first-served basis, with applications being reviewed on a rolling
171 basis;

172 (b) After participation reaches fifty percent (50%) of
173 the annual enrollment limits in subsection (1) of this section,
174 the department shall set annual application deadlines for the
175 remaining number of available ESAs and begin to maintain a waiting
176 list of eligible students. The waitlist shall only include
177 eligible students who have certified to the department that they



178 have been accepted into an eligible school qualified to provide
179 services for the participating student's disability or special
180 education needs, or provide services addressing a participating
181 student's IEP. The waitlist will be maintained in the
182 chronological order in which applications are received. The
183 department shall award ESA program applications in chronological
184 order according to the waitlist; and

185 (c) Participating students who remain eligible for the
186 ESA program are automatically approved for participation for the
187 following year and are not subject to the random selection
188 process.

189 (3) No funds for an ESA may be expended from the * * * total
190 funding formula funds provided in this act, nor shall any school
191 district be required to provide funding for an ESA.

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

194 37-181-9. (1) The department shall create a standard form
195 that parents or guardians of students submit to establish their
196 student's eligibility for an Education Scholarship Account. The
197 department shall ensure that the application is readily available
198 to interested families through various sources, including the
199 department's website and the copy of procedural safeguards
200 annually given to parents or guardians. To be considered, an
201 application must include certification that the student has been
202 accepted into an eligible school qualified to provide services for



203 the student's disability or special education needs, or provide
204 services addressing a participating student's IEP.

205 (2) The department shall provide parents or guardians of
206 participating students with a written explanation of the allowable
207 uses of Education Scholarship Accounts, the responsibilities of
208 parents and the duties of the department. This information shall
209 also be made available on the department's website.

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

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

218 (5) (a) The department shall make a determination of
219 eligibility, and shall approve the application, within twenty-one
220 (21) business days of receiving an application for participation
221 in the ESA program, subject to the provisions of Section
222 37-181-3(b).

223 (b) The department shall provide for a procedure that
224 children with a ruling of hearing impairment or children suspected
225 of a hearing loss shall receive a comprehensive educational
226 assessment which may include the areas of cognitive development,
227 language/speech, audiological and academic achievement from the



228 state-funded Mississippi Assistance Center for Hearing Loss.
229 Children with a ruling of visual impairment or children suspected
230 of a visual impairment shall receive a comprehensive low vision
231 evaluation from the state-funded Low Vision Clinic.

232 (6) The home school district shall provide the parent or
233 guardian of a participating student with a complete copy of the
234 student's school records, while complying with the Family
235 Educational Rights and Privacy Act of 1974 (20 USCS Section
236 1232(g)). The record shall be provided no later than thirty (30)
237 days after a parent signs an agreement to participate in the ESA
238 program.

239 **SECTION 4.** Section 37-181-13, Mississippi Code of 1972, is
240 amended as follows:

241 37-181-13. (1) The Joint Legislative Committee on
242 Performance Evaluation and Expenditure Review (PEER) shall prepare
243 a biannual report, beginning in 2018 and every two (2) years
244 thereafter, assessing efficacy of Education Scholarship Accounts,
245 to include the sufficiency of funding, and recommending any
246 suggested changes in state law or policy necessary to improve the
247 ESA program.

248 (2) The report shall assess:

249 (a) The degree to which eligible schools are meeting
250 the needs of participating students as defined by the
251 participating students' IEPs;



252 (b) The level of participating students' satisfaction
253 with the ESA program;

254 (c) The level of parental or guardian satisfaction with
255 the ESA program;

256 (d) Participating students' performance, both
257 pre-assessment and post-assessment, on the eligible school's
258 current assessment used to demonstrate academic progress, a
259 nationally standardized norm-referenced achievement test, or a
260 current state board-approved screener, as required in Section
261 37-181-15(f);

262 (e) Participating students' performance on Advanced
263 Placement examinations or similar courses and any examinations
264 related to college or university admission; provided that eligible
265 schools must report participating students' performance on Advance
266 Placement examinations and any examinations related to college or
267 university admission;

268 (f) The four-year high school graduation rates and
269 college acceptance rates of participating students; provided that
270 eligible schools must report participating students' high school
271 graduation rates and, if known, college acceptance rates;

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

274 (h) The fiscal impact to the state and home school
275 districts of the ESA program, which must consider both the impact
276 on revenue and the impact on expenses. Furthermore, the fiscal



277 savings associated with students departing public schools must be
278 explicitly quantified, even if the public school losing the
279 student(s) does not reduce its spending accordingly.

280 (3) The report shall:

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

283 (b) Protect the identity of participating students and
284 schools by, among other things, keeping anonymous all
285 disaggregated data.

286 * * *

287 (* * *4) PEER shall provide the Legislature with a final
288 copy of the report of the ESA program before December 31 each year
289 the report is due. At the same time, the study shall also be
290 placed in a prominent location on the PEER website.

291 (* * *5) PEER must make its data and methodology available
292 for public review while complying with the requirements of the
293 Family Educational Rights and Privacy Act (20 USCS Section
294 1232(g)).

295 **SECTION 5.** Section 37-181-15, Mississippi Code of 1972, is
296 amended as follows:

297 37-181-15. (1) To ensure that students are treated fairly
298 and kept safe, all eligible schools shall:

299 (a) Comply with the nondiscrimination policies set
300 forth in 42 USCS 1981;



301 (b) Prior to a participating student's application for
302 enrollment, provide parents or guardians with details of the
303 school's programs, record of student achievement, qualifications,
304 experience, capacities to serve students with special needs, and
305 capacity to serve the participating student within the scope of
306 their IEP;

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

309 (d) Hold a valid occupancy permit if required by their
310 municipality;

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

312 (f) Require participating students to take a
313 pre-assessment at the beginning of the school year and a
314 post-assessment at the end of the school year. The eligible
315 school shall have the option to select their current assessment
316 used to demonstrate academic progress, a nationally standardized
317 norm-referenced achievement test, or a current state
318 board-approved screener;

319 (g) Notify a parent or guardian applying for the ESA
320 program that the parent or guardian waives the right of the
321 participating student to an individual entitlement to a free and
322 appropriate public education (FAPE) from their home school
323 district, including special education and related services, for as
324 long as the student is participating in the ESA program;



325 (h) Conduct criminal background checks on employees
326 and:

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

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

331 (i) An eligible school shall certify to the department
332 upon enrollment of a participating student that the eligible
333 school shall provide services for the participating student's
334 disability or special education needs, or shall provide services
335 addressing a participating student's IEP. Such certification must
336 be received by the department before the ESA is reimbursed to an
337 eligible student.

338 (2) Failure to comply with these requirements shall deem the
339 eligible school ineligible to participate in the ESA program the
340 following year.

341 **SECTION 6.** Section 37-181-17, Mississippi Code of 1972, is
342 amended as follows:

343 37-181-17. (1) An eligible nonpublic school is autonomous
344 and not an agent of the state or federal government and therefore:

345 (a) The State Department of Education or any other
346 government agency shall not regulate the educational program of a
347 nonpublic school, postsecondary institution or educational service
348 provider that accepts funds from the parent or guardian of a



349 participating student beyond the requirements of the ESA program
350 as promulgated in this chapter;

351 (b) The creation of the Education Scholarship Account
352 program does not expand the regulatory authority of the state, its
353 officers, or any school district to impose any additional
354 regulation of nonpublic schools, postsecondary institutions or
355 educational service providers beyond those necessary to enforce
356 the requirements of the ESA program; and

357 (c) Eligible schools, postsecondary institutions and
358 educational service providers shall be given the maximum freedom
359 to provide for the educational needs of their students without
360 governmental control. No eligible school, postsecondary
361 institution or educational service provider shall be required to
362 alter its creed, practices, admission policies or curriculum in
363 order to accept participating students.

364 (2) Eligible schools, or the parent or guardian who
365 submitted the ESA application, must submit student performance
366 data to the State Department of Education at the end of the school
367 year, including the individual results of the pre-assessment and
368 post-assessment required in Section 37-181-15(f). The department
369 shall develop a uniformed reporting format for eligible schools to
370 use when submitting assessment results.

371 (3) In any legal proceeding challenging the application of
372 this chapter to an eligible school, postsecondary institution or
373 educational service provider the state bears the burden of



374 establishing that the law is necessary and does not impose any
375 undue burden on the eligible school, postsecondary institution or
376 educational service provider.

377 **SECTION 7.** Section 37-181-1, Mississippi Code of 1972, is
378 reenacted as follows:

379 37-181-1. This chapter shall be known and may be cited as
380 "The Equal Opportunity for Students with Special Needs Act."

381 **SECTION 8.** Section 37-181-3, Mississippi Code of 1972, is
382 reenacted as follows:

383 37-181-3. The terms used in this chapter shall have the
384 meanings ascribed herein, unless the context clearly indicates
385 otherwise:

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

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

391 (c) "Participating student" means any student who meets
392 the qualifications of an eligible student as defined in paragraph
393 (b) of this section and is participating in an ESA program at an
394 eligible school.

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



398 (e) "Department" means the State Department of
399 Education.

400 (f) "Home school district" means the public school
401 district in which the student resides.

402 (g) "Eligible school" means a state-accredited special
403 purpose school, a state-accredited nonpublic school, or a
404 nonpublic school located in the state that has enrolled a
405 participating student and is providing services for the
406 participating student's disability or special education needs, or
407 is providing services addressing a participating student's IEP.
408 An eligible school does not include a home instruction program
409 under Section 37-13-91, Mississippi Code of 1972.

410 (h) "Tutor" means a person who is certified or licensed
411 by a state, regional, or national certification, licensing, or
412 accreditation organization or who has earned a valid teacher's
413 license or who has experience teaching at an eligible
414 postsecondary institution.

415 (i) "Postsecondary institution" means a community
416 college, college, or university accredited by a state, regional or
417 national accrediting organization.

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



421 (k) "Awarded ESA school year" means the duration of the
422 school year in which ESA program funds are deposited in a
423 student's ESA.

424 (l) Nothing in this section shall negate federal law
425 requiring public school districts to identify and provide services
426 to students with disabilities who live within the public school
427 district, including those enrolled in nonpublic schools or home
428 instruction programs.

429 (m) An eligible school shall provide notice to a
430 participating student's home school district when the eligible
431 student enrolls in the eligible school with an ESA. Furthermore,
432 a public school district providing special education services to a
433 participating student enrolled in an eligible school shall be
434 reimbursed by the eligible school, or parent or guardian who
435 submitted the ESA application, fair market value for any special
436 education services rendered to the eligible student in an amount
437 not to exceed the amount of ESA funds reimbursed to the eligible
438 student during the awarded ESA school year.

439 **SECTION 9.** Section 37-181-11, Mississippi Code of 1972, is
440 reenacted as follows:

441 37-181-11. (1) To ensure that funds are spent
442 appropriately, the State Department of Education shall adopt rules
443 and policies necessary for the administration of the ESA program,
444 including the auditing of Education Scholarship Accounts, and
445 shall conduct or contract for random audits throughout the year.



446 (2) (a) The department shall develop a system for payment
447 of benefits, including, but not limited to, allowing educational
448 service providers to invoice the department for qualified expenses
449 consistent with Section 37-181-5(2), or allowing the parent or
450 guardian who submitted the ESA program application to seek
451 reimbursement for qualified expenses consistent with Section
452 37-181-5(2).

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

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

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

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

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



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

472 37-181-19. The State Department of Education may receive and
473 expend contributions from any public or private source to fund
474 ESAs for participating students.

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

477 37-181-21. If any provision of this law or its application
478 is held invalid, the invalidity does not affect other provisions
479 or applications of this law which can be given effect without the
480 invalid provision or application and to this end the provisions of
481 this law are severable.

482 **SECTION 12.** Section 37-181-23, Mississippi Code of 1972, is
483 reenacted and amended as follows:

484 37-181-23. Sections 37-181-1 through 37-181-23, Mississippi
485 Code of 1972, shall stand repealed on July 1, * * * 2028.

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

