

By: Senator(s) DeBar

To: Education

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2686

1 AN ACT TO AMEND SECTIONS 37-181-5, 37-181-7, 37-181-9,
2 37-181-13, 37-181-15 AND 37-181-17, MISSISSIPPI CODE OF 1972,
3 WHICH PROVIDE FOR THE EDUCATION SCHOLARSHIP ACCOUNT PROGRAM TO
4 MAKE CERTAIN TECHNICAL REVISIONS THERETO; TO PROVIDE THAT IN ORDER
5 TO BE ELIGIBLE FOR THE PROGRAM, THE PARENT OR GUARDIAN OF AN
6 ELIGIBLE STUDENT TO CERTIFY TO THE DEPARTMENT OF EDUCATION THAT
7 THEY HAVE BEEN ACCEPTED INTO AN ELIGIBLE SCHOOL QUALIFIED TO
8 PROVIDE SERVICES FOR THE PARTICIPATING STUDENT'S DISABILITY OR
9 SPECIAL EDUCATION NEEDS, OR PROVIDE SERVICES ADDRESSING A
10 PARTICIPATING STUDENT'S IEP; TO SET CERTAIN REPORTING REQUIREMENTS
11 OF ELIGIBLE SCHOOLS, INCLUDING PARTICIPANTS' GRADUATION RATES AND
12 ADVANCE PLACEMENT EXAMINATION PERFORMANCE; TO PROVIDE THAT
13 ELIGIBLE SCHOOLS SHALL HAVE THE OPTION OF SELECTING A NATIONALLY
14 STANDARDIZED NORM-REFERENCED ACHIEVEMENT TEST, OR A CURRENT STATE
15 BOARD-APPROVED SCREENER FOR PARTICIPATING STUDENTS TO TAKE EACH
16 YEAR; TO PROVIDE THAT FAILURE TO COMPLY WITH THE REQUIREMENTS OF
17 THE CHAPTER SHALL DEEM THE ELIGIBLE SCHOOL INELIGIBLE TO
18 PARTICIPATE IN THE ESA PROGRAM THE FOLLOWING YEAR; TO REENACT
19 SECTIONS 37-181-1, 37-181-3, 37-181-11, 37-181-19 AND 37-181-21,
20 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR VARIOUS PROVISIONS OF
21 THE EQUAL OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT; TO
22 AMEND REENACTED SECTION 37-181-23, MISSISSIPPI CODE OF 1972, TO
23 EXTEND THE DATE OF REPEAL OF SUCH ACT; AND FOR RELATED PURPOSES.

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

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



27 37-181-5. (1) An eligible student shall qualify to
28 participate in the ESA program if the parent or guardian signs an
29 agreement promising:

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

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

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

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

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



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

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

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

62 (b) Textbooks related to academic coursework;

63 (c) Payment to a tutor, as defined in Section
64 37-181-3(h);

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

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

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

74 (g) Tuition and fees related to dual enrollment at a
75 postsecondary institution;



76 (h) Textbooks related to academic coursework at a
77 postsecondary institution;

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

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

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

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



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

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

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

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



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

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

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

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



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

153 * * *

154 **SECTION 2.** Section 37-181-7, Mississippi Code of 1972, is
155 amended as follows:

156 37-181-7. (1) * * * New enrollment in the ESA program
157 created in this chapter shall be limited to five hundred (500)
158 additional students each year * * *. Subject to appropriation
159 from the General Fund, each student's ESA shall be funded at Six
160 Thousand Five Hundred Dollars (\$6,500.00) for school year
161 2015-2016. For each subsequent year, this amount shall increase
162 or decrease by the same proportion as the base student cost under
163 Section 37-151-7(1) (b) is increased or decreased.

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

166 (a) * * * Students shall be approved on a first-come,
167 first-served basis, with applications being reviewed on a rolling
168 basis;

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



176 services for the participating student's disability or special
177 education needs, or provide services addressing a participating
178 student's IEP. The waitlist will be maintained in the
179 chronological order in which applications are received. The
180 department shall award ESA program applications in chronological
181 order according to the waitlist; and

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

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

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

191 37-181-9. (1) The department shall create a standard form
192 that parents or guardians of students submit to establish their
193 student's eligibility for an Education Scholarship Account. The
194 department shall ensure that the application is readily available
195 to interested families through various sources, including the
196 department's website and the copy of procedural safeguards
197 annually given to parents or guardians. To be considered, an
198 application must include certification that the student has been
199 accepted into an eligible school qualified to provide services for



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

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

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

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

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

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



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

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

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

238 37-181-13. (1) The Joint Legislative Committee on
239 Performance Evaluation and Expenditure Review (PEER) shall prepare
240 a biannual report, beginning in 2018 and every two (2) years
241 thereafter, assessing efficacy of Education Scholarship Accounts,
242 to include the sufficiency of funding, and recommending any
243 suggested changes in state law or policy necessary to improve the
244 ESA program.

245 (2) The report shall assess:

246 (a) The degree to which eligible schools are meeting
247 the needs of participating students as defined by the
248 participating students' IEPs;



249 (b) The level of participating students' satisfaction
250 with the ESA program;

251 (c) The level of parental or guardian satisfaction with
252 the ESA program;

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

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

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

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

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



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

277 (3) The report shall:

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

280 (b) Protect the identity of participating students and
281 schools by, among other things, keeping anonymous all
282 disaggregated data.

283 * * *

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

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

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

294 37-181-15. (1) To ensure that students are treated fairly
295 and kept safe, all eligible schools shall:

296 (a) Comply with the nondiscrimination policies set
297 forth in 42 USCS 1981;



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

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

306 (d) Hold a valid occupancy permit if required by their
307 municipality;

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

309 (f) Require participating students to take a
310 pre-assessment at the beginning of the school year and a
311 post-assessment at the end of the school year. The eligible
312 school shall have the option * * * of selecting a nationally
313 standardized norm-referenced achievement test, or a current state
314 board-approved screener;

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

321 (h) Conduct criminal background checks on employees
322 and:



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

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

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

334 (2) Failure to comply with these requirements shall deem the
335 eligible school ineligible to participate in the ESA program the
336 following year.

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

339 37-181-17. (1) An eligible nonpublic school is autonomous
340 and not an agent of the state or federal government and therefore:

341 (a) The State Department of Education or any other
342 government agency shall not regulate the educational program of a
343 nonpublic school, postsecondary institution or educational service
344 provider that accepts funds from the parent or guardian of a
345 participating student beyond the requirements of the ESA program
346 as promulgated in this chapter;



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

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

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

367 (3) In any legal proceeding challenging the application of
368 this chapter to an eligible school, postsecondary institution or
369 educational service provider the state bears the burden of
370 establishing that the law is necessary and does not impose any



371 undue burden on the eligible school, postsecondary institution or
372 educational service provider.

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

375 37-181-1. This chapter shall be known and may be cited as
376 "The Equal Opportunity for Students with Special Needs Act."

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

379 37-181-3. The terms used in this chapter shall have the
380 meanings ascribed herein, unless the context clearly indicates
381 otherwise:

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

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

387 (c) "Participating student" means any student who meets
388 the qualifications of an eligible student as defined in paragraph
389 (b) of this section and is participating in an ESA program at an
390 eligible school.

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

394 (e) "Department" means the State Department of
395 Education.



396 (f) "Home school district" means the public school
397 district in which the student resides.

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

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

411 (i) "Postsecondary institution" means a community
412 college, college, or university accredited by a state, regional or
413 national accrediting organization.

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

417 (k) "Awarded ESA school year" means the duration of the
418 school year in which ESA program funds are deposited in a
419 student's ESA.



420 (1) Nothing in this section shall negate federal law
421 requiring public school districts to identify and provide services
422 to students with disabilities who live within the public school
423 district, including those enrolled in nonpublic schools or home
424 instruction programs.

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

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

437 37-181-11. (1) To ensure that funds are spent
438 appropriately, the State Department of Education shall adopt rules
439 and policies necessary for the administration of the ESA program,
440 including the auditing of Education Scholarship Accounts, and
441 shall conduct or contract for random audits throughout the year.

442 (2) (a) The department shall develop a system for payment
443 of benefits, including, but not limited to, allowing educational
444 service providers to invoice the department for qualified expenses



445 consistent with Section 37-181-5(2), or allowing the parent or
446 guardian who submitted the ESA program application to seek
447 reimbursement for qualified expenses consistent with Section
448 37-181-5(2).

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

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

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

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

463 (5) The department shall establish or contract for the
464 establishment of an anonymous telephone hotline for fraud
465 reporting.

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



468 37-181-19. The State Department of Education may receive and
469 expend contributions from any public or private source to fund
470 ESAs for participating students.

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

473 37-181-21. If any provision of this law or its application
474 is held invalid, the invalidity does not affect other provisions
475 or applications of this law which can be given effect without the
476 invalid provision or application and to this end the provisions of
477 this law are severable.

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

480 37-181-23. Sections 37-181-1 through 37-181-23, Mississippi
481 Code of 1972, shall stand repealed on July 1, * * * 2028.

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

