

By: Senator(s) DeBar

To: Education

SENATE BILL NO. 2686

1 AN ACT TO REENACT SECTIONS 37-181-1, 37-181-3, 37-181-5,
 2 37-181-7, 37-181-9, 37-181-11, 37-181-13, 37-181-15, 37-181-17,
 3 37-181-19 AND 37-181-21, MISSISSIPPI CODE OF 1972, WHICH IS THE
 4 EQUAL OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT; TO AMEND
 5 REENACTED SECTION 37-181-23, MISSISSIPPI CODE OF 1972, TO EXTEND
 6 THE DATE OF REPEAL OF THE EQUAL OPPORTUNITY FOR STUDENTS WITH
 7 SPECIAL NEEDS ACT; AND FOR RELATED PURPOSES.

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

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

11 37-181-1. This chapter shall be known and may be cited as
 12 "The Equal Opportunity for Students with Special Needs Act."

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

15 37-181-3. The terms used in this chapter shall have the
 16 meanings ascribed herein, unless the context clearly indicates
 17 otherwise:

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



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

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

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

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

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

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

42 (h) "Tutor" means a person who is certified or licensed
43 by a state, regional, or national certification, licensing, or
44 accreditation organization or who has earned a valid teacher's



45 license or who has experience teaching at an eligible
46 postsecondary institution.

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

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

53 (k) "Awarded ESA school year" means the duration of the
54 school year in which ESA program funds are deposited in a
55 student's ESA.

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

61 (m) An eligible school shall provide notice to a
62 participating student's home school district when the eligible
63 student enrolls in the eligible school with an ESA. Furthermore,
64 a public school district providing special education services to a
65 participating student enrolled in an eligible school shall be
66 reimbursed by the eligible school, or parent or guardian who
67 submitted the ESA application, fair market value for any special
68 education services rendered to the eligible student in an amount



69 not to exceed the amount of ESA funds reimbursed to the eligible
70 student during the awarded ESA school year.

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

73 37-181-5. (1) An eligible student shall qualify to
74 participate in the ESA program if the parent signs an agreement
75 promising:

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

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

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

91 (d) Not to file for their participating student a
92 certificate of enrollment indicating participation in a home



93 instruction program under Section 37-13-91, Mississippi Code of
94 1972; and

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

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

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

107 (b) Textbooks related to academic coursework;

108 (c) Payment to a tutor, as defined in Section
109 37-181-3(h);

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

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



116 (f) Educational services or therapies from a licensed
117 or certified practitioner or provider, including licensed or
118 certified paraprofessionals or educational aides;

119 (g) Tuition and fees related to dual enrollment at a
120 postsecondary institution;

121 (h) Textbooks related to academic coursework at a
122 postsecondary institution;

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

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

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

139 (3) Neither a participating student, nor anyone on the
140 student's behalf, may receive cash or cash-equivalent items, such



141 as gift cards or store credit, from any refunds or rebates from
142 any provider of services or products in the ESA program. Any
143 refunds or rebates shall be credited directly to the participating
144 student's ESA. The funds in an ESA may only be used for
145 education-related purposes as defined in this chapter.

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

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

160 (5) Payment for educational services through an ESA shall
161 not preclude parents from paying for educational services using
162 non-ESA funds.

163 (6) For purposes of continuity of educational attainment,
164 students who enroll in the ESA program shall remain eligible to
165 receive quarterly ESA payments until the participating student



166 returns to a public school, completes high school, completes the
167 school year in which the student reaches the age of twenty-one
168 (21), or does not have eligibility verified by a parent as
169 required under subsection (8) of this section, whichever occurs
170 first.

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

174 (8) Every three (3) years after initial enrollment in the
175 ESA program, a parent of a participating student, except a student
176 diagnosed as being a person with a permanent disability, shall
177 document that the student continues to be identified by the school
178 district, a federal or state government agency, or a licensed
179 physician or psychometrist as a child with a disability, as
180 defined by the federal Individuals with Disabilities Education Act
181 (20 USCS Section 1401(3)).

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



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

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

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

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

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

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



215 chronological order in which applications are received. The
216 department shall award ESA program applications in chronological
217 order according to the waitlist; and

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

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

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

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

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



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

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

247 (5) (a) The department shall make a determination of
248 eligibility, and shall approve the application, within twenty-one
249 (21) business days of receiving an application for participation
250 in the ESA program, subject to the provisions of Section
251 37-181-3(b).

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

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



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

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

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

274 (2) (a) The department shall develop a system for payment
275 of benefits, including, but not limited to, allowing educational
276 service providers to invoice the department for qualified expenses
277 consistent with Section 37-181-5(2), or allowing the parent or
278 guardian who submitted the ESA program application to seek
279 reimbursement for qualified expenses consistent with Section
280 37-181-5(2).

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

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



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

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

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

295 (5) The department shall establish or contract for the
296 establishment of an anonymous telephone hotline for fraud
297 reporting.

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

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

307 (2) The report shall assess:

308 (a) The degree to which eligible schools are meeting
309 the needs of participating students as defined by the
310 participating students' IEPs;

311 (b) The level of participating students' satisfaction
312 with the ESA program;



313 (c) The level of parental satisfaction with the ESA
314 program;

315 (d) Participating students' performance, both
316 pre-assessment and post-assessment, on the eligible school's
317 current assessment used to demonstrate academic progress, a
318 nationally standardized norm-referenced achievement test, or a
319 current state board-approved screener, as required in Section
320 37-181-15(f);

321 (e) Participating students' performance on Advanced
322 Placement examinations or similar courses and any examinations
323 related to college or university admission;

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

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

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

334 (3) The report shall:

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



337 (b) Protect the identity of participating students and
338 schools by, among other things, keeping anonymous all
339 disaggregated data.

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

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

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

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

350 37-181-15. To ensure that students are treated fairly and
351 kept safe, all eligible schools shall:

352 (a) Comply with the nondiscrimination policies set
353 forth in 42 USCS 1981;

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

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



361 (d) Hold a valid occupancy permit if required by their
362 municipality;

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

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

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

377 (h) Conduct criminal background checks on employees
378 and:

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

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

383 (i) An eligible school shall certify to the department
384 upon enrollment of a participating student that the eligible
385 school shall provide services for the participating student's



386 disability or special education needs, or shall provide services
387 addressing a participating student's IEP.

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

390 37-181-17. (1) An eligible nonpublic school is autonomous
391 and not an agent of the state or federal government and therefore:

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

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

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



411 (2) Eligible schools, or the parent or guardian who
412 submitted the ESA application, must submit student performance
413 data to the State Department of Education at the end of the school
414 year, including the individual results of the pre-assessment and
415 post-assessment required in Section 37-181-15(f).

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

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

424 37-181-19. The State Department of Education may receive and
425 expend contributions from any public or private source to fund
426 ESAs for participating students.

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

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

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



436 37-181-23. Sections 37-181-1 through 37-181-23, Mississippi
437 Code of 1972, shall stand repealed on July 1, * * * 2028.

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

