

By: Representatives Crawford, Aldridge,
Baker, Chism, Staples

To: Education

HOUSE BILL NO. 394

1 AN ACT TO CREATE A PILOT PROGRAM FOR THE EQUAL OPPORTUNITY
2 FOR STUDENTS WITH SPECIAL NEEDS ACT FOR THE PURPOSE OF
3 ESTABLISHING EDUCATION SCHOLARSHIP ACCOUNTS (ESA) FOR PARENTS OF
4 ELIGIBLE STUDENTS WITH SPECIAL NEEDS ON A PHASED-IN BASIS; TO
5 PRESCRIBE THE CRITERIA FOR DETERMINING ELIGIBILITY FOR
6 PARTICIPATION IN THE PROGRAM AND RECEIPT OF PROGRAM FUNDS; TO
7 PROVIDE FOR THE FUNDING OF EACH STUDENT'S ESA; TO STIPULATE THE
8 OBLIGATIONS OF PARENTS OR LEGAL GUARDIANS, STUDENTS AND SCHOOLS TO
9 BECOME AND REMAIN ELIGIBLE FOR PARTICIPATION; TO PRESCRIBE THE
10 DUTIES OF THE DEPARTMENT OF EDUCATION REGARDING THE ADMINISTRATION
11 OF THE FUNDS; TO PROVIDE FOR THE ISSUANCE OF ESA PROCUREMENT
12 CARDS; TO REQUIRE PEER TO PREPARE A BIENNIAL REPORT ON THE
13 SUFFICIENCY OF FUNDING FOR ESAS AND STUDENT PERFORMANCE AND
14 ASSESSMENT EVALUATION BEGINNING IN 2018 AND EVERY TWO YEARS
15 THEREAFTER; TO PROVIDE FOR THE ADMINISTRATIVE, FINANCIAL AND
16 ACADEMIC ACCOUNTABILITY STANDARDS TO BE ADHERED TO BY
17 PARTICIPATING SCHOOLS; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** This act shall be known and may be cited as "The
20 Equal Opportunity for Students with Special Needs Act."

21 **SECTION 2.** The terms used in this act shall have the
22 meanings ascribed herein, unless the context clearly indicates
23 otherwise:



24 (a) "Program" means a five-year pilot program to
25 implement the Education Scholarship Account (ESA) program created
26 in this act.

27 (b) "Eligible student" means any student who has had an
28 active Individualized Education Program (IEP) within the past
29 eighteen (18) months.

30 (c) "Parent" means a resident of this state who is a
31 parent, legal guardian, custodian or other person with the
32 authority to act on behalf of the eligible student.

33 (d) "Department" means the State Department of
34 Education.

35 (e) "Home school district" means the public school
36 district in which the student resides.

37 (f) "Eligible school" means a nonpublic school that has
38 enrolled a participating student. An eligible school must be
39 accredited by a state or regional accrediting agency or possess a
40 provisional letter of accreditation from a state or regional
41 accrediting agency or be approved/licensed by the State Department
42 of Education. An eligible school does not include a home
43 instruction program under Section 37-13-91, Mississippi Code of
44 1972.

45 (g) "Tutor" means a person who is certified or licensed
46 by a state, regional, or national certification or licensing
47 organization or who has earned a valid teacher's license or who
48 has experience teaching at an eligible postsecondary institution.



49 (h) "Postsecondary institution" means a community
50 college, college, or university accredited by a state, regional or
51 national accrediting organization.

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

55 **SECTION 3.** (1) An eligible student shall qualify to
56 participate in the program if the parent signs an agreement
57 promising:

58 (a) To provide an organized, appropriate educational
59 program with measurable annual goals to their participating
60 student and, to the extent reasonably deemed appropriate by the
61 parent, to provide an education for the qualified student in at
62 least the subjects of reading, grammar, mathematics, social
63 studies and science;

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

67 (c) Not to enroll their participating student in a
68 public school and to acknowledge as part of the agreement that the
69 home school district has provided clear notice to the parent that
70 the participating student has no individual entitlement to a free
71 appropriate public education (FAPE) from their home school
72 district, including special education and related services, for as
73 long as the student is participating in the program;



74 (d) Not to file for their participating student a
75 certificate of enrollment indicating participation in a home
76 instruction program under Section 37-13-91, Mississippi Code of
77 1972; and

78 (e) Not to participate in the Mississippi Dyslexia
79 Therapy Scholarship for Students with Dyslexia Program or the
80 Mississippi Speech-Language Therapy Scholarship for Students with
81 Speech-Language Impairments Program while participating in the ESA
82 program.

83 (2) Parents shall use the funds deposited in a participating
84 student's ESA for any of the following qualifying expenses to
85 educate the student using any of the below methods or combination
86 of methods that meet the requirement in subsection 1(a) of this
87 section:

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

89 (b) Textbooks;

90 (c) Payment to a tutor;

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

93 (e) Fees for transportation to and from an educational
94 service provider paid to a fee-for-service transportation
95 provider;

96 (f) Tuition and/or fees for online learning programs or
97 courses;



98 (g) Fees for nationally standardized norm-referenced
99 achievement tests, including alternate assessments; and fees for
100 Advanced Placement examinations or similar courses and any
101 examinations related to college or university admission;

102 (h) Educational services or therapies from a licensed
103 or certified practitioner or provider, including licensed or
104 certified paraprofessionals or educational aides;

105 (i) Services provided by a public school, including
106 individual classes and extracurricular programs;

107 (j) Tuition and fees at a postsecondary institution;

108 (k) Textbooks related to coursework at a postsecondary
109 institution;

110 (l) Surety bond payments if required by the department;

111 (m) No more than Fifty Dollars (\$50.00) in annual
112 consumable school supplies necessary for educational services and
113 therapies, daily classroom activities, and tutoring;

114 (n) Computer hardware and software and other
115 technological devices if an eligible school, licensed or certified
116 tutor, licensed or certified educational service practitioner or
117 provider, or licensed medical professional verifies in writing
118 that these items are essential for the student to meet annual,
119 measurable goals. Once a student is no longer eligible for the
120 program, computer hardware and software and other technological
121 devices purchased with ESA funds may be donated to a library or a
122 nonprofit organization with expertise and training in working with



123 parents to educate children with disabilities or a nonprofit
124 organization with expertise and training in working with disabled
125 adults.

126 (3) Neither a participating student, nor anyone on the
127 student's behalf, may receive cash or cash-equivalent items, such
128 as gift cards or store credit, from any refunds or rebates from
129 any provider of services or products in this program. Any refunds
130 or rebates shall be credited directly to the participating
131 student's ESA. The funds in an ESA may only be used for
132 education-related purposes. Eligible schools, postsecondary
133 institutions and educational service providers that serve
134 participating students shall provide parents with a receipt for
135 all qualifying expenses.

136 (4) Payment for educational services through an ESA shall
137 not preclude parents from paying for educational services using
138 non-ESA funds.

139 (5) ESA funds may not be used to attend an eligible school
140 that maintains its primary location in a state other than
141 Mississippi unless that school is approved for the Educable Child
142 Program; or unless the parent verifies in writing that their child
143 cannot reasonably obtain appropriate special education and related
144 services in Mississippi at a location within thirty (30) miles of
145 their legal residence.

146 (6) For purposes of continuity of educational attainment,
147 students who enroll in the program shall remain eligible to



148 receive quarterly ESA payments until the participating student
149 returns to a public school, completes high school, completes the
150 school year in which the student reaches the age of twenty-one
151 (21), or does not have eligibility verified by a parent as
152 required under subsection (9) of this section, whichever occurs
153 first.

154 (7) Any funds remaining in a student's Education Scholarship
155 Account upon completion of high school may be used to attend or
156 take courses from a postsecondary institution, with qualifying
157 expenses subject to the applicable conditions stipulated in
158 Section 3(2) of this act.

159 (8) Upon the participating student's graduation from a
160 postsecondary institution or after any period of four (4)
161 consecutive years after the completion of high school in which the
162 student is not enrolled in a postsecondary institution, the
163 participating student's Education Scholarship Account shall be
164 closed and any remaining funds shall be returned to the state's
165 General Fund.

166 (9) Every three (3) years after initial enrollment in the
167 program, a parent of a participating student, except a student
168 diagnosed as being a person with a permanent disability, shall
169 document that the student continues to be identified by the school
170 district, a federal or state government agency, or a licensed
171 physician or psychometrist as a child with a disability, as



172 defined by the federal Individuals with Disabilities Education Act
173 (20 USCS Section 1401(3)).

174 (10) A participating student shall be allowed to return to
175 his home school district at any time after enrolling in the
176 program, in compliance with regulations adopted by the department
177 providing for the least disruptive process for doing so. Upon a
178 participating student's return to his home school district, that
179 student's Education Scholarship Account shall be closed and any
180 remaining funds shall be returned to the state's General Fund.

181 (11) The department shall begin accepting applications for
182 the program on July 1, 2015.

183 **SECTION 4.** (1) The ESA program created in this act shall be
184 limited to five hundred (500) students in the school year
185 2015-2016, with new enrollment limited to five hundred (500)
186 additional students each year thereafter. Subject to
187 appropriation from the General Fund, each student's ESA shall be
188 funded at Six Thousand Five Hundred Dollars (\$6,500.00) for school
189 year 2015-2016. For each subsequent year, this amount shall
190 increase or decrease by the same proportion as the base student
191 cost under Section 37-151-7(1)(b) is increased or decreased.

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

194 (a) Until participation in the program reaches fifty
195 percent (50%) of the annual enrollment limits in subsection (1) of
196 this section, students shall be approved on a first-come,



197 first-served basis, with applications being reviewed on a rolling
198 basis.

199 (b) After participation reaches fifty percent (50%) of
200 the annual enrollment limits in subsection (1) of this section,
201 the department shall set annual application deadlines for the
202 remaining number of available ESAs and begin to maintain a waiting
203 list of eligible students. If the number of eligible students who
204 apply for the program exceeds the remaining number of ESAs
205 available, the department shall fill the available spaces using a
206 random selection process that gives preference to students with an
207 active Individualized Education Program (IEP); and

208 (c) Participating students who remain eligible for the
209 program are automatically approved for participation for the
210 following year and are not subject to the random selection
211 process.

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

215 **SECTION 5.** (1) The department shall create a standard form
216 that parents of students submit to establish their student's
217 eligibility for an Education Scholarship Account. The department
218 shall ensure that the application is readily available to
219 interested families through various sources, including the
220 department's website and the copy of procedural safeguards
221 annually given to parents.



222 (2) The department shall provide parents of participating
223 students with a written explanation of the allowable uses of
224 Education Scholarship Accounts, the responsibilities of parents
225 and the duties of the department. This information shall also be
226 made available on the department's website.

227 (3) The department shall annually notify all students with
228 an IEP of the existence of the program and shall ensure that
229 lower-income families are made aware of their potential
230 eligibility.

231 (4) The department may deduct an amount up to a limit of six
232 percent (6%) from appropriations used to fund Education
233 Scholarship Accounts to cover the costs of overseeing the funds
234 and administering the program.

235 (5) The department shall make payments to participating
236 students' Education Scholarship Accounts on a quarterly basis,
237 unless there is evidence of misuse of the fund pursuant to Section
238 6 of this act.

239 (6) The department shall make a determination of
240 eligibility, and shall approve the application, within twenty-one
241 (21) business days of receiving an application for participation
242 in the program, subject to the provisions of Section 2(b) of this
243 act.

244 (7) The home school district shall provide the parent of a
245 participating student with a complete copy of the student's school
246 records, while complying with the Family Educational Rights and



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

250 (8) The State Board of Education may contract with a
251 qualified nonprofit organization with expertise and training in
252 working with parents to educate children with disabilities to
253 administer the program.

254 **SECTION 6.** (1) To ensure that funds are spent
255 appropriately, the State Department of Education shall adopt rules
256 and policies necessary for the administration of the program,
257 including the auditing of Education Scholarship Accounts, and
258 shall conduct or contract for random audits throughout the year.

259 (2) Effective with the 2015-2016 school year, the State
260 Department of Education shall issue ESA cards provided by the
261 Department of Finance and Administration for the use of parents
262 making expenditures under this act on behalf of a participating
263 student. ESA cards shall be issued to parents upon entry to the
264 program and shall expire when the participating student's
265 Education Scholarship Account is closed, except for the periodic
266 expiration and replacement of cards in the normal course of
267 business. All unexpended amounts shall remain in the student's
268 ESA, combined with the following year's allocation of ESA funds,
269 subject to Section 3(6) and (8).

270 (3) The Department of Finance and Administration may deduct
271 an amount up to a limit of one percent (1%) from appropriations



272 used to fund Education Scholarship Accounts to cover the costs of
273 providing ESA cards.

274 (4) The Department of Finance and Administration, taking
275 into consideration requests from the parents of participating
276 students, shall use Merchant Category Classification Codes (MCC
277 Codes), or a similar system as practicable and consistent with
278 current technology, to identify categories of providers that
279 provide services and products consistent with Section 3(2) of this
280 act. The Department of Finance and Administration shall make
281 publicly available a list of blocked and unblocked MCC codes, for
282 the purposes of the program.

283 (5) The department shall adopt a process for removing
284 educational service providers that defraud parents and for
285 referring cases of fraud to law enforcement.

286 (6) The department shall establish or contract for the
287 establishment of an online anonymous fraud reporting service.

288 (7) The department shall establish or contract for the
289 establishment of an anonymous telephone hotline for fraud
290 reporting.

291 (8) The department may require a surety bond or similar
292 financial instrument for parents of participating students, to the
293 extent such products are available for purchase at a minimal cost.

294 (9) The department shall promulgate regulations implementing
295 policies on misspending of ESA funds. Any amount not spent in the
296 allowable categories pursuant to the agreement will:



297 (a) Cause the ESA card to be temporarily suspended and
298 the parent contacted within five (5) business days through the
299 mail at his home address by a notification explaining the
300 suspension, detailing the violation, and requesting the parent to:

301 (i) Provide additional documentation within
302 fifteen (15) business days justifying the expenditure; or

303 (ii) Repay the misspent amount within fifteen (15)
304 business days.

305 (b) If the parent does not provide sufficient
306 documentation or refuses to repay the amount, the department shall
307 begin the removal process and shall seek to recover the misspent
308 funds using administrative measures or other appropriate measures,
309 including referral to collections, seeking a civil judgment or
310 referral to law enforcement.

311 (c) If the parent repays the amount within the
312 requested time frame then one (1) offense will be recorded and
313 held in the parent's file.

314 (d) Three (3) offenses within a consecutive three-year
315 period shall disqualify the parent's student from participating in
316 the program.

317 (e) If the department determines a parent has failed to
318 comply with the terms of the agreement as specified in Section 3
319 of this act, the department shall suspend the participating
320 student's ESA. The department shall notify the parent in writing
321 within five (5) business days that the Education Scholarship



322 Account has been suspended and that no further transactions will
323 be allowed or disbursements made. The notification shall specify
324 the reason for the suspension and state that the parent has
325 twenty-one (21) business days to respond and take corrective
326 action.

327 (f) If the parent fails to contact the department,
328 furnish reasonable and necessary information, or make a report
329 that may be required for reinstatement within the twenty-one-day
330 period, the department may remove the participating student from
331 the program.

332 (g) A parent may appeal the department's decision to
333 the circuit court in the county in which the participating student
334 resides.

335 (h) The department shall refer cases of substantial
336 misuse of funds to law enforcement agencies for investigation if
337 evidence of fraudulent intent and use of an ESA is obtained.

338 **SECTION 7.** (1) The Joint Legislative Committee on
339 Performance Evaluation and Expenditure Review (PEER) shall prepare
340 a biannual report, beginning in 2018 and every two (2) years
341 thereafter, assessing the sufficiency of funding for Education
342 Scholarship Accounts and recommending any suggested changes in
343 state law or policy necessary to improve the program.

344 (2) The report shall assess:

345 (a) The level of participating students' satisfaction
346 with the program;



347 (b) The level of parental satisfaction with the
348 program;

349 (c) Student performance on nationally standardized
350 norm-referenced achievement tests for those participating students
351 whose parents have requested participation in such tests;

352 (d) Student performance on Advanced Placement
353 examinations or similar courses and any examinations related to
354 college or university admission;

355 (e) The high school graduation rates and college
356 acceptance rates of participating students;

357 (f) The percentage of funds used for each qualifying
358 expense identified in Section 3(2) of this act;

359 (g) The fiscal impact to the state and home school
360 districts of the program, which must consider both the impact on
361 revenue and the impact on expenses. Furthermore, the fiscal
362 savings associated with students departing public schools must be
363 explicitly quantified, even if the public school losing the
364 student(s) does not reduce its spending accordingly.

365 (3) The report shall:

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

368 (b) Protect the identity of participating students and
369 schools by, among other things, keeping anonymous all
370 disaggregated data.

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



372 (5) PEER shall provide the Legislature with a final copy of
373 the evaluation of the program before December 31, 2018. At the
374 same time, the study shall also be placed in a prominent location
375 on the PEER website.

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

379 **SECTION 8.** To ensure that students are treated fairly and
380 kept safe, all eligible schools shall:

381 (a) Comply with the nondiscrimination policies set
382 forth in 42 USCS 1981;

383 (b) Prior to a participating student's application for
384 enrollment, provide parents with details of the school's programs,
385 qualifications, experience, and capacities to serve students with
386 special needs;

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

389 (d) Hold a valid occupancy permit if required by their
390 municipality;

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

392 (f) Offer participating students the option of taking a
393 nationally standardized norm-referenced achievement test;

394 (g) Conduct criminal background checks on employees.

395 The eligible school then shall:



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

398 (ii) Exclude from employment any person that might
399 reasonably pose a threat to the safety of students.

400 **SECTION 9.** (1) An eligible nonpublic school is autonomous
401 and not an agent of the state or federal government and therefore:

402 (a) The State Department of Education or any other
403 government agency shall not in any way regulate the educational
404 program of a nonpublic school, postsecondary institution or
405 educational service provider that accepts funds from the parent of
406 a participating student;

407 (b) The creation of the Education Scholarship Account
408 program does not expand the regulatory authority of the state, its
409 officers, or any school district to impose any additional
410 regulation of nonpublic schools, postsecondary institutions or
411 educational service providers beyond those necessary to enforce
412 the requirements of the program; and

413 (c) Eligible schools, postsecondary institutions and
414 educational service providers shall be given the maximum freedom
415 to provide for the educational needs of their students without
416 governmental control. No eligible school, postsecondary
417 institution or educational service provider shall be required to
418 alter its creed, practices, admission policies or curriculum in
419 order to accept participating students.



420 (2) In any legal proceeding challenging the application of
421 this act to an eligible school, postsecondary institution or
422 educational service provider the state bears the burden of
423 establishing that the law is necessary and does not impose any
424 undue burden on the eligible school, postsecondary institution or
425 educational service provider.

426 **SECTION 10.** The State Department of Education may receive
427 and expend contributions from any public or private source to fund
428 ESAs for participating students.

429 **SECTION 11.** 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.** This act shall take effect and be in force from
435 and after its passage and shall stand repealed as of June 30,
436 2020.

