

By: Senator(s) Collins, Ward, Watson

To: Education

SENATE BILL NO. 2695

1 AN ACT ENTITLED "THE EQUAL OPPORTUNITY FOR STUDENTS WITH  
2 SPECIALS NEEDS ACT"; TO CREATE A FIVE-YEAR PILOT PROGRAM FOR THE  
3 PURPOSE OF ESTABLISHING EDUCATION SCHOLARSHIP ACCOUNTS (ESAS) FOR  
4 PARENTS OF ELIGIBLE STUDENTS WITH SPECIAL NEEDS ON A PHASED-IN  
5 BASIS; TO 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 BOARD OF EDUCATION REGARDING THE ADMINISTRATION OF  
11 THE FUNDS; TO PROVIDE FOR THE ISSUANCE OF ESA PROCUREMENT CARDS;  
12 TO REQUIRE THE PEER COMMITTEE TO PREPARE A BIENNIAL REPORT ON THE  
13 SUFFICIENCY OF FUNDING FOR ESAS AND STUDENT PERFORMANCE AND  
14 ASSESSMENT EVALUATION BEGINNING IN 2019 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 Mississippi Department of  
34 Education.

35 (e) "Homeschool 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 Mississippi  
42 Department of Education. An eligible school does not include a  
43 home instruction program under Section 37-13-91, Mississippi Code  
44 of 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 release the homeschool district from all  
69 obligations to educate the student as long as the student is not  
70 enrolled in a public school. Participation in the program shall  
71 have the same effect as a parental refusal to receipt of consent  
72 to service under 20 USC Sections 614(a)(1), 1414(a)(1)(D) and  
73 1414(C) of the IDEA;



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 an online learning program  
97 or course;



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 therapies or services 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/or 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 shall be donated to a nonprofit  
122 organization with expertise and training in working with parents



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

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

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

138 (5) ESA funds may not be used to physically attend an  
139 eligible school that maintains its primary physical location in a  
140 state other than Mississippi unless that school is approved for  
141 the Educable Child Program; or unless the parent verifies in  
142 writing that their child cannot reasonably obtain appropriate  
143 special education and related services at a Mississippi nonpublic  
144 school physically located within thirty (30) miles of their legal  
145 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 by a licensed physician or psychometrist as being a  
169 person with a permanent disability, shall document that the  
170 student continues to be identified by the school district, a  
171 federal or state government agency, or a licensed physician as a  
172 child with a disability.



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

180 (11) The department or designated nonprofit shall begin  
181 accepting applications for the program on July 1, 2015.

182 **SECTION 4.** (1) The ESA Program created in this act shall be  
183 limited to participation of five hundred (500) new students each  
184 year beginning with the school year 2015-2016. Subject to  
185 appropriation from the General Fund, each student's ESA shall be  
186 funded at Seven Thousand Dollars (\$7,000.00) for school year  
187 2015-2016. For each subsequent year, this amount shall increase  
188 or decrease by the same proportion as the base student cost under  
189 Section 37-151-7(1)(b) is increased or decreased.

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

192 (a) Until participation in the program reaches fifty  
193 percent (50%) of the enrollment limits in subsection (1) of this  
194 section, students shall be approved on a first-come, first-served  
195 basis, with applications being reviewed on a rolling basis.

196 (b) After participation reaches fifty percent (50%) of  
197 the enrollment limits in subsection (1) of this section, the





198 designated nonprofit administering the program shall set annual  
199 application deadlines for the remaining number of available ESAs  
200 and begin to maintain a waiting list of eligible students. If the  
201 number of eligible students who apply for the program exceeds the  
202 remaining number of ESAs available, the designated nonprofit  
203 administering the program shall fill the available spaces using a  
204 weighted random selection process, with preference given to  
205 students with an active Individualized Education Program (IEP).

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

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

213 **SECTION 5.** (1) The Mississippi Board of Education shall  
214 contract with a qualified nonprofit organization with expertise  
215 and training in working with parents to educate children with  
216 disabilities to administer the program.

217 (2) The designated nonprofit shall create a standard form  
218 that parents of students submit to establish their student's  
219 eligibility for an Education Scholarship Account. The designated  
220 nonprofit shall ensure that the application is readily available  
221 to interested families through various sources, including the  
222 department's website.



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

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

233 (5) The designated nonprofit may deduct an amount up to a  
234 limit of six percent (6%) from appropriations used to fund  
235 Education Scholarship Accounts to cover the costs of overseeing  
236 the funds and administering the program.

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

241 (7) The designated nonprofit shall make a determination of  
242 eligibility, and shall approve the application, within twenty-one  
243 (21) business days of receiving an application for participation  
244 in the program, subject to the provisions of Section 4(2) of this  
245 act.

246 (8) The homeschool district shall provide the parent of a  
247 participating student with a complete copy of the student's school



248 records, while complying with the Family Educational Rights and  
249 Privacy Act of 1974 (20 USC Section 1232(g)). The record shall be  
250 provided no later than thirty (30) days after a parent signs an  
251 agreement to participate in the program.

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

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

268 (3) The Department of Finance and Administration may deduct  
269 an amount up to a limit of one percent (1%) from appropriations  
270 used to fund Education Scholarship Accounts to cover the costs of  
271 providing ESA cards.



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

281 (5) The designated nonprofit shall adopt a process for  
282 removing educational service providers that defraud parents and  
283 for referring cases of fraud to law enforcement.

284 (6) The designated nonprofit shall establish or contract for  
285 the establishment of an online anonymous fraud reporting service.

286 (7) The designated nonprofit shall establish or contract for  
287 the establishment of an anonymous telephone hotline for fraud  
288 reporting.

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

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



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

300 (i) Provide additional documentation justifying  
301 the expenditure; or

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

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

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

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

316 (e) If the designated nonprofit determines a parent has  
317 failed to comply with the terms of the agreement as specified in  
318 Section 3(1) of this act, the designated nonprofit shall suspend  
319 the participating student's ESA and shall notify the parent in  
320 writing that the Education Scholarship Account has been suspended



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

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

330 (g) A parent may appeal the designated nonprofit's  
331 decision to the circuit court in the county in which the  
332 participating student resides.

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

337 **SECTION 7.** (1) The Joint Legislative Committee on  
338 Performance Evaluation and Expenditure Review (PEER) shall prepare  
339 a biannual report, beginning in 2019 and every two (2) years  
340 thereafter, assessing the sufficiency of funding for Education  
341 Scholarship Accounts and recommending any suggested changes in  
342 state law or policy necessary to improve the program.

343 (2) The report shall assess:

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



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

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

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

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

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

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

364 (3) The report shall:

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

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

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



371 (5) PEER shall provide the Legislature with a final copy of  
372 the evaluation of the program before December 31, 2019. At the  
373 same time, the study shall also be placed in a prominent location  
374 on the PEER website.

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

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

380 (a) Comply with the nondiscrimination policies set  
381 forth in 42 USC 1981;

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

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

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

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

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

393 (g) Conduct criminal background checks on employees.

394 The eligible school then shall:





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

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

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

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

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

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

418 (2) In any legal proceeding challenging the application of  
419 this act to an eligible school, institution or educational service



420 provider, the state bears the burden of establishing that the law  
421 is necessary and does not impose any undue burden on the eligible  
422 school, institution or provider.

423        **SECTION 10.** The designated nonprofit may receive and expend  
424 contributions from any public or private source to fund ESAs for  
425 participating students.

426        **SECTION 11.** If any provision of this law or its application  
427 is held invalid, the invalidity does not affect other provisions  
428 or applications of this law which can be given effect without the  
429 invalid provision or application and to this end the provisions of  
430 this law are severable.

431        **SECTION 12.** This act shall take effect and be in force from  
432 and after its passage and shall stand repealed as of June 30,  
433 2020.

