

By: Representative Byrd

To: Education;
Appropriations A

HOUSE BILL NO. 1178

1 AN ACT TO BRING FORWARD SECTIONS 37-181-1, 37-181-7,
 2 37-181-9, 37-181-11, 37-181-13, 37-181-15, 37-181-17, 37-181-19,
 3 AND 37-181-21, MISSISSIPPI CODE OF 1972, WHICH COMPRISE "THE EQUAL
 4 OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT," FOR PURPOSES OF
 5 POSSIBLE AMENDMENT; TO AMEND SECTIONS 37-181-3 AND 37-181-5,
 6 MISSISSIPPI CODE OF 1972, TO A PROVIDE THAT A DIAGNOSIS OF
 7 DYSLEXIA SHALL BE A CRITERIA USED TO QUALIFY A STUDENT FOR
 8 ELIGIBILITY TO PARTICIPATE IN THE PROGRAM; AND FOR RELATED
 9 PURPOSES.

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

11 **SECTION 1.** Section 37-181-1, Mississippi Code of 1972, is
 12 brought forward as follows:

13 37-181-1. This chapter shall be known and may be cited as
 14 "The Equal Opportunity for Students with Special Needs Act."

15 **SECTION 2.** Section 37-181-3, Mississippi Code of 1972, is
 16 amended as follows:

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

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



22 (b) "Eligible student" means any student who has had an
23 active Individualized Education Program (IEP) within the past
24 three (3) years and has maintained eligibility or any student who
25 has received a diagnosis of dyslexia as determined by eligibility
26 for participation in the Mississippi Dyslexia Therapy Scholarship
27 for Students with Dyslexia Program as prescribed in Section
28 37-173-1, et seq.

29 (c) "Participating student" means any student who meets
30 the qualifications of an eligible student as defined in paragraph
31 (b) of this section and is participating in an ESA program at an
32 eligible school.

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

36 (e) "Department" means the State Department of
37 Education.

38 (f) "Home school district" means the public school
39 district in which the student resides.

40 (g) "Eligible school" means a state-accredited special
41 purpose school, a state-accredited nonpublic school, or a
42 nonpublic school located in the state that has enrolled a
43 participating student and is providing services for the
44 participating student's disability or special education needs, or
45 is providing services addressing a participating student's IEP.



46 An eligible school does not include a home instruction program
47 under Section 37-13-91, Mississippi Code of 1972.

48 (h) "Tutor" means a person who is certified or licensed
49 by a state, regional, or national certification, licensing, or
50 accreditation organization or who has earned a valid teacher's
51 license or who has experience teaching at an eligible
52 postsecondary institution.

53 (i) "Postsecondary institution" means a community
54 college, college, or university accredited by a state, regional or
55 national accrediting organization.

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

59 (k) "Awarded ESA school year" means the duration of the
60 school year in which ESA program funds are deposited in a
61 student's ESA.

62 (l) Nothing in this section shall negate federal law
63 requiring public school districts to identify and provide services
64 to students with disabilities who live within the public school
65 district, including those enrolled in nonpublic schools or home
66 instruction programs.

67 (m) An eligible school shall provide notice to a
68 participating student's home school district when the eligible
69 student enrolls in the eligible school with an ESA. Furthermore,
70 a public school district providing special education services to a



71 participating student enrolled in an eligible school shall be
72 reimbursed by the eligible school, or parent or guardian who
73 submitted the ESA application, fair market value for any special
74 education services rendered to the eligible student in an amount
75 not to exceed the amount of ESA funds reimbursed to the eligible
76 student during the awarded ESA school year.

77 **SECTION 3.** Section 37-181-5, Mississippi Code of 1972, is
78 amended as follows:

79 37-181-5. (1) An eligible student shall qualify to
80 participate in the ESA program if the parent signs an agreement
81 promising:

82 (a) To provide an organized, appropriate educational
83 program with measurable annual goals to their participating
84 student and to provide an education for the participating student
85 in at least the subjects of reading, grammar, mathematics, social
86 studies and science;

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

90 (c) Not to enroll their participating student in a
91 public school and to acknowledge as part of the agreement that the
92 eligible school has provided clear notice to the parent that the
93 participating student has no individual entitlement to a free
94 appropriate public education (FAPE) from their home school



95 district, including special education and related services, for as
96 long as the student is participating in the ESA program; and

97 (d) Not to file for their participating student a
98 certificate of enrollment indicating participation in a home
99 instruction program under Section 37-13-91, Mississippi Code of
100 1972 * * *.

101 * * *

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

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

109 (b) Textbooks related to academic coursework;

110 (c) Payment to a tutor, as defined in Section
111 37-181-3(h);

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

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



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

121 (g) Tuition and fees related to dual enrollment at a
122 postsecondary institution;

123 (h) Textbooks related to academic coursework at a
124 postsecondary institution;

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

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

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

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



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

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

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

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

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



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

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

176 (8) Every three (3) years after initial enrollment in the
177 ESA program, a parent of a participating student, except a student
178 diagnosed as being a person with a permanent disability, shall
179 document that the student continues to be identified by the school
180 district, a federal or state government agency, or a licensed
181 physician or psychometrist as a child with a disability, as
182 defined by the federal Individuals with Disabilities Education Act
183 (20 USCS Section 1401(3)).

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



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

194 **SECTION 4.** Section 37-181-7, Mississippi Code of 1972, is
195 brought forward as follows:

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

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

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

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



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

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

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

227 **SECTION 5.** Section 37-181-9, Mississippi Code of 1972, is
228 brought forward as follows:

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

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



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

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

249 (5) (a) The department shall make a determination of
250 eligibility, and shall approve the application, within twenty-one
251 (21) business days of receiving an application for participation
252 in the ESA program, subject to the provisions of Section
253 37-181-3(b).

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

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



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

269 **SECTION 6.** Section 37-181-11, Mississippi Code of 1972, is
270 brought forward as follows:

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

276 (2) (a) The department shall develop a system for payment
277 of benefits, including, but not limited to, allowing educational
278 service providers to invoice the department for qualified expenses
279 consistent with Section 37-181-5(2), or allowing the parent or
280 guardian who submitted the ESA program application to seek
281 reimbursement for qualified expenses consistent with Section
282 37-181-5(2).

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

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



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

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

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

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

300 **SECTION 7.** Section 37-181-13, Mississippi Code of 1972, is
301 brought forward as follows:

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

309 (2) The report shall assess:

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

313 (b) The level of participating students' satisfaction
314 with the ESA program;



315 (c) The level of parental satisfaction with the ESA
316 program;

317 (d) Participating students' performance, both
318 pre-assessment and post-assessment, on the eligible school's
319 current assessment used to demonstrate academic progress, a
320 nationally standardized norm-referenced achievement test, or a
321 current state board-approved screener, as required in Section
322 37-181-15(f);

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

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

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

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

336 (3) The report shall:

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



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

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

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

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

350 **SECTION 8.** Section 37-181-15, Mississippi Code of 1972, is
351 brought forward as follows:

352 37-181-15. To ensure that students are treated fairly and
353 kept safe, all eligible schools shall:

354 (a) Comply with the nondiscrimination policies set
355 forth in 42 USCS 1981;

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

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



363 (d) Hold a valid occupancy permit if required by their
364 municipality;

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

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

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

379 (h) Conduct criminal background checks on employees
380 and:

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

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

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



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

390 **SECTION 9.** Section 37-181-17, Mississippi Code of 1972, is
391 brought forward as follows:

392 37-181-17. (1) An eligible nonpublic school is autonomous
393 and not an agent of the state or federal government and therefore:

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

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

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



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

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

424 **SECTION 10.** Section 37-181-19, Mississippi Code of 1972, is
425 brought forward as follows:

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

429 **SECTION 11.** Section 37-181-21, Mississippi Code of 1972, is
430 brought forward as follows:

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

436 **SECTION 12.** This act shall take effect and be in force from
437 and after July 1, 2024.

