

By: Senator(s) Collins, Ward, Watson

To: Education

SENATE BILL NO. 2695
(As Passed the Senate)

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.



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

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

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

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

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

(c) Not to enroll their participating student in a public school and to release the homeschool district from all obligations to educate the student as long as the student is not enrolled in a public school. Participation in the program shall have the same effect as a parental refusal to receipt of consent to service under 20 USC Sections 614(a)(1), 1414(a)(1)(D) and 1414(C) of the IDEA;



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

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

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

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

(b) Textbooks;

(c) Payment to a tutor;

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

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

(f) Tuition and/or fees for an online learning program or course;



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

(h) Diagnostic fees or costs charged by a licensed physician or psychometrist for the purpose of determining or re-determining that a student is a child with a disability and eligible to participate in the program;

(i) Educational therapies or services from a licensed or certified practitioner or provider, including licensed or certified paraprofessionals or educational aides;

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

(k) Tuition and/or fees at a postsecondary institution;

(l) Textbooks related to coursework at a postsecondary institution;

(m) Surety bond payments if required by the department;

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

(o) Computer hardware and software and other technological devices if an eligible school, licensed or certified tutor, licensed or certified educational service practitioner or provider, or licensed medical professional verifies in writing that these items are essential for the student to meet annual,



measurable goals. Once a student is no longer eligible for the program, computer hardware and software and other technological devices purchased with ESA funds shall be donated to a nonprofit organization with expertise and training in working with parents to educate children with disabilities or a nonprofit organization with expertise and training in working with disabled adults.

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

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

(5) ESA funds may not be used to physically attend an eligible school that maintains its primary physical location in a state other than Mississippi unless that school is approved for the Educable Child Program; or unless the parent verifies in writing that their child cannot reasonably obtain appropriate special education and related services at a Mississippi nonpublic



148 school physically located within thirty (30) miles of their legal
149 residence.

150 (6) For purposes of continuity of educational attainment,
151 students who enroll in the program shall remain eligible to
152 receive quarterly ESA payments until the participating student
153 returns to a public school, completes high school, completes the
154 school year in which the student reaches the age of twenty-one
155 (21), or does not have eligibility verified by a parent as
156 required under subsection (9) of this section, whichever occurs
157 first.

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

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

170 (9) Every three (3) years after initial enrollment in the
171 program, a parent of a participating student, except a student
172 diagnosed by a licensed physician or psychometrist as being a



person with a permanent disability, shall document that the student continues to be identified by the school district, a federal or state government agency, or a licensed physician as a child with a disability.

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

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

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

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

(a) Until participation in the program reaches fifty percent (50%) of the enrollment limits in subsection (1) of this



section, students shall be approved on a first-come, first-served basis, with applications being reviewed on a rolling basis.

(b) After participation reaches fifty percent (50%) of the enrollment limits in subsection (1) of this section, the designated nonprofit administering the program shall set annual application deadlines for the remaining number of available ESAs and begin to maintain a waiting list of eligible students. If the number of eligible students who apply for the program exceeds the remaining number of ESAs available, the designated nonprofit administering the program shall fill the available spaces using a weighted random selection process, with preference given to students with an active Individualized Education Program (IEP).

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

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

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

(2) The designated nonprofit shall create a standard form that parents of students submit to establish their student's



eligibility for an Education Scholarship Account. The designated nonprofit shall ensure that the application is readily available to interested families through various sources, including the department's website.

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

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

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

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

(7) The designated nonprofit shall make a determination of eligibility, and shall approve the application, within twenty-one (21) business days of receiving an application for participation



in the program, subject to the provisions of Section 4(2) of this act.

(8) The homeschool district shall provide the parent of a participating student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232(g)). The record shall be provided no later than thirty (30) days after a parent signs an agreement to participate in the program.

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

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



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

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

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

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

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

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



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

300 (a) Cause the ESA card to be temporarily suspended and
301 the parent contacted through the mail at his home address by a
302 notification explaining the suspension, detailing the violation
303 and requesting the parent to:

304 (i) Provide additional documentation justifying
305 the expenditure; or

306 (ii) Repay the misspent amount within fifteen (15)
307 business days.

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

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

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

320 (e) If the designated nonprofit determines a parent has
321 failed to comply with the terms of the agreement as specified in



322 Section 3(1) of this act, the designated nonprofit shall suspend
323 the participating student's ESA and shall notify the parent in
324 writing that the Education Scholarship Account has been suspended
325 and that no further transactions will be allowed or disbursements
326 made. The notification shall specify the reason for the
327 suspension and state that the parent has twenty-one (21) business
328 days to respond and take corrective action.

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

334 (g) A parent may appeal the designated nonprofit's
335 decision to the circuit court in the county in which the
336 participating student resides.

337 (h) The designated nonprofit shall refer cases of
338 substantial misuse of funds to law enforcement agencies for
339 investigation if evidence of fraudulent intent and use of an ESA
340 is obtained.

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



(2) The report shall assess:

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

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

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

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

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

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

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

(3) The report shall:

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



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

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

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

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

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

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

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

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

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

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



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

(g) Conduct criminal background checks on employees.
The eligible school then shall:

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

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

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

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

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

(c) Eligible schools, postsecondary institutions and educational service providers shall be given the maximum freedom to provide for the educational needs of their students without governmental control. No eligible school, postsecondary institution or educational service provider shall be required to



alter its creed, practices, admission policies or curriculum in order to accept participating students.

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

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

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

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

