

MISSISSIPPI LEGISLATURE
2024 Regular Session
To: Education
By: Representative Roberson

House Bill 1229

AN ACT TO BRING FORWARD SECTIONS 37-181-1 THROUGH 37-181-23, MISSISSIPPI CODE OF 1972, WHICH ARE THE EQUAL OPPORTUNITY FOR STUDENTS WITH SPECIAL NEEDS ACT, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF

MISSISSIPPI:

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

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

SECTION 2. Section 37-181-3, Mississippi Code of 1972, is brought forward as follows:

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

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

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

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

(d) "Parent" means a resident of this state who is a parent, legal guardian, custodian or other person with the

authority to act on behalf of the eligible student.

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

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

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

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

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

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

(k) "Awarded ESA school year" means the duration of the school year in which ESA program funds are deposited in a

student's ESA.

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

(m) An eligible school shall provide notice to a participating student's home school district when the eligible student enrolls in the eligible school with an ESA. Furthermore, a public school district providing special education services to a participating student enrolled in an eligible school shall be reimbursed by the eligible school, or parent or guardian who submitted the ESA application, fair market value for any special education services rendered to the eligible student in an amount not to exceed the amount of ESA funds reimbursed to the eligible student during the awarded ESA school year.

SECTION 3. Section 37-181-5, Mississippi Code of 1972, is brought forward as follows:

37-181-5. (1) An eligible student shall qualify to participate in the ESA 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 provide an education for the participating 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 acknowledge as part of the agreement that the eligible school has provided clear notice to the parent that the participating student has no individual entitlement to a free appropriate public education (FAPE) from their home school district, including special education and related services, for as long as the student is participating in the ESA program;

(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, which shall be incurred within the awarded ESA school year, 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 academic fees at an eligible school;

- (b) Textbooks related to academic coursework;
- (c) Payment to a tutor, as defined in Section 37-181-3(h);
- (d) Payment for purchase of curriculum, including any supplemental materials required by the curriculum;
- (e) 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;
- (f) Educational services or therapies from a licensed or certified practitioner or provider, including licensed or certified paraprofessionals or educational aides;
- (g) Tuition and fees related to dual enrollment at a postsecondary institution;
- (h) Textbooks related to academic coursework at a postsecondary institution;
- (i) Surety bond payments if required by the department;
- (j) No more than Fifty Dollars (\$50.00) in annual consumable school supplies necessary for educational services and therapies, daily classroom activities, and tutoring;
- (k) 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 educational and academic

goals or goals within the scope of the eligible student's IEP. Once a student is no longer participating in the ESA program, computer hardware and software and other technological devices purchased with ESA funds shall be donated to a public school or public library. Qualifying expenses for computer hardware and software include only those expenses incurred within the awarded ESA school year.

(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 the ESA 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 as defined in this chapter.

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

(b) In lieu of providing the parent or guardian who submitted the ESA program application with an original itemized receipt, the eligible schools, postsecondary institutions and educational service providers may provide to the department an original itemized receipt approved and signed off on by the

parent or guardian who submitted the ESA application, including the service provider's name and address, for all qualifying expenses.

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

(6) For purposes of continuity of educational attainment, students who enroll in the ESA program shall remain eligible to receive quarterly ESA payments until the participating student returns to a public school, completes high school, completes the school year in which the student reaches the age of twenty-one (21), or does not have eligibility verified by a parent as required under subsection (8) of this section, whichever occurs first.

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

(8) Every three (3) years after initial enrollment in the ESA program, a parent of a participating student, except a student diagnosed 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 or psychometrist as a child with a disability, as defined by the federal Individuals with Disabilities Education Act (20 USCS Section 1401(3)).

(9) An eligible student shall be allowed to return to his home school district at any time after enrolling in the ESA

program, in compliance with regulations adopted by the department providing for the least disruptive process for doing so. Upon the participating student's return to his or her home school district, the student's Education Scholarship Account shall be closed and any remaining funds shall be distributed to the student's home school district at the end of the awarded ESA school year.

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

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

37-181-7. (1) The ESA program created in this chapter shall be limited to five hundred (500) students in the school year 2015-2016, with new enrollment limited to five hundred (500) additional students each year thereafter. Subject to appropriation from the General Fund, each student's ESA shall be funded at Six Thousand Five Hundred Dollars (\$6,500.00) 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 ESA program as follows:

(a) Until participation in the ESA program reaches fifty percent (50%) of the annual 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 annual enrollment limits in subsection (1) of this section, the department shall set annual application deadlines for the remaining number of available ESAs and begin to maintain a waiting list of eligible students. The waitlist will be maintained in the chronological order in which applications are received. The department shall award ESA program applications in chronological order according to the waitlist; and

(c) Participating students who remain eligible for the ESA 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. Section 37-181-9, Mississippi Code of 1972, is brought forward as follows:

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

(2) The department 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 department. This information shall also be made available on the department's website.

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

(4) The department 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 ESA program.

(5) (a) The department 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 ESA program, subject to the provisions of Section 37-181-3(b).

(b) The department shall provide for a procedure that children with a ruling of hearing impairment or children suspected of a hearing loss shall receive a comprehensive educational assessment which may include the areas of cognitive development, language/speech, audiological and academic achievement from the state-funded Mississippi Assistance Center for Hearing Loss. Children with a ruling of visual impairment or children suspected of a visual impairment shall receive a

comprehensive low vision evaluation from the state-funded Low Vision Clinic.

(6) The home school 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 USCS Section 1232(g)). The record shall be provided no later than thirty (30) days after a parent signs an agreement to participate in the ESA program.

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

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

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

(b) The department may make payments to educational service providers or reimbursement to the parent or guardian who submitted the ESA program application via check or warrant or

electronic funds transfer or any other means of payment deemed to be commercially viable or cost-effective.

(c) The department may also establish by rule that some payments to educational service providers will be made on a quarterly basis, rather than an annual basis, if the educational services will be rendered over an extended period of time.

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

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

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

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

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

(2) The report shall assess:

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

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

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

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

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

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

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

(h) The fiscal impact to the state and home school districts of the ESA 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 report of the ESA program before December 31 each year the report is due. 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 USCS Section 1232(g)).

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

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

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

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

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

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

(h) Conduct criminal background checks on employees and:

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

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

(i) An eligible school shall certify to the department upon enrollment of a participating student that the eligible school shall provide services for the participating student's disability or special education needs, or shall provide services addressing a participating student's IEP.

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

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

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

(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 ESA 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) Eligible schools, or the parent or guardian who submitted the ESA application, must submit student performance data to the State Department of Education at the end of the

school year, including the individual results of the pre-assessment and post-assessment required in Section 37-181-15(f).

(3) In any legal proceeding challenging the application of this chapter to an eligible school, postsecondary 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, postsecondary institution or educational service provider.

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

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

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

37-181-21. 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. Section 37-181-23, Mississippi Code of 1972, is brought forward as follows:

37-181-23. Sections 37-181-1 through 37-181-23, Mississippi Code of 1972, shall stand repealed on July 1, 2024.

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