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SENATE BILL NO. 2695

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2695

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

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

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

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

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

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

(c) "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.

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

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

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

(g) "Tutor" means a person who is certified or licensed by a state, regional, or national certification or licensing organization or who has earned a valid teacher's license or who 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 acknowledge as part of the agreement that the home school district 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 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 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 online learning programs or courses;

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

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

(j) Tuition and fees at a postsecondary institution;

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

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

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

(n) 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 may be donated to a library or 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 attend an eligible school that maintains its primary 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 in Mississippi at a location within thirty (30) miles of their legal residence.

(6) For purposes of continuity of educational attainment, students who enroll in the 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 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) A participating student shall be allowed to return to his home school 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 home school district, that student's Education Scholarship Account shall be closed and any remaining funds shall be returned to the state's General Fund.

(10) The department 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 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 program as follows:

(a) Until participation in the 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. If the number of eligible students who apply for the program exceeds the remaining number of ESAs available, the department shall fill the available spaces using a

random selection process that gives preference to students with an active Individualized Education Program (IEP); and

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

(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 program.

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

SECTION 6. (1) To ensure that funds are spent appropriately, the State Department of Education 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) (a) The department or qualified nonprofit shall develop a system for payment of benefits, including, but not limited to, allowing educational service providers to invoice the department or designated nonprofit for qualified expenses consistent with Section 3(2) of this act, or allowing parents to seek reimbursement for qualified expenses consistent with Section 3(2) of this act.

(b) The department or qualified nonprofit may make payments to educational service providers or reimbursement to parents 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. (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 the sufficiency of funding for Education Scholarship Accounts and recommending any suggested changes in 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 home school 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, 2018. 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. 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, qualifications, experience, and capacities to serve students with special needs;

(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 who 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 State Department of Education 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, 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. The State Department of Education 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.

PASSED BY THE SENATE
March 26, 2015

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 26, 2015.

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

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