

**OFFICE OF CHIEF ACADEMIC OFFICER**  
**Summary of State Board of Education Agenda Items**  
**Consent Agenda**  
**December 17, 2020**

**OFFICE OF SPECIAL EDUCATION**

- K. Approval to begin the Administrative Procedures Act process: To revise Miss. Admin Code 7-3: 74.21, State Board Policy 74, Chapter 74, Rule 74.21 – Education Scholarship Account (ESA)

Background Information: The Equal Opportunity for Students with Special Needs Act (Miss. Admin. Code §§ 37-181-1 through 37-181-21) was signed into law during the 2015 session of the Mississippi Legislature and established Education Scholarship Accounts. The Education Scholarship Account (ESA) provides an opportunity for parents of children with disabilities who wish to withdraw their child from the public-school system to use scholarship money to help defray the cost of private school tuition or other specific allowable activities to educate their child.

The purpose of this policy is to establish regulations that govern the overall application, approval, reimbursement, and cancellation process for the ESA.

Recommendation: Approval

Back-up material attached

## Chapter 74: Special Education

### Rule 74.21 Education Scholarship Account

- ~~1. To be eligible for the Education Scholarship Account (ESA) the student must have had an active Individualized Education Program (IEP) within the past five (5) years.~~
- ~~2. The number of ESAs awarded annually is determined based on State legislative appropriations.~~
- ~~3. In accordance with Miss. Code Ann. § 37-181-9(1), the Mississippi Department of Education (MDE) Office of Special Education (OSE) has created a standard form for parents to submit to establish the student's eligibility. The application is available online at <https://mdek12.org/OSE/ESA> or by contacting the OSE.~~
- ~~4. Along with the application form, parents must provide the following documentation:
  - ~~a. copy of parent/legal guardian's driver's license or state issued identification;~~
  - ~~b. copy of student's birth certificate;~~
  - ~~c. legal paperwork to act on behalf of student, if applicable;~~
  - ~~d. proof of residency (e.g., copy of utility bill);~~
  - ~~e. copy of student's most recent IEP that was active within the past five years;~~
  - ~~f. copy of student's most recent eligibility and/or evaluation; and~~
  - ~~g. original, signed "Responsibilities of Parents" document with all boxes properly initialed.~~~~
- ~~5. Signed applications must be submitted via the United States Postal Service to:

~~Mississippi Department of Education  
Attention: Educational Scholarship Account  
P. O. Box 771  
Jackson, MS 39205~~~~
- ~~6. Upon receipt, each ESA application is time and date stamped. The information is entered into the ESA database, a control number is assigned, and the applicant is placed on the waitlist (if applicable). Applicants are notified by email or telephone of receipt of the application. If the application contains missing or incorrect information, the parents will be notified and provided 21 days to submit complete and accurate documentation. After 21 days, the applicant's place in line will be forfeited.~~
- ~~7. The MDE, OSE shall notify the applicant by the third Monday in July of intent to award an ESA pending the receipt of a letter verifying the student's acceptance and enrollment. The letter must be on school letterhead and signed by a school official and must be~~

~~submitted by U. S. Postal Service by the third Monday in September. Failure to submit this documentation will result in termination of the ESA award. If additional awards are made during the year, awardees will have thirty (30) days from the date of the award to provide the letter of acceptance and enrollment provided by the eligible school which meets the requirements stipulated above. If the parent is able to provide verification of enrollment and attendance, invoices may be submitted for the current school year. The ESA account will be reimbursed accordingly.~~

~~The MDE will maintain a list of eligible schools based on prior application submissions. An eligible school is a school which is accredited by a state or regional accrediting agency or one that possesses a provisional letter of accreditation from a state or regional accrediting agency or a school which is approved/licensed by the Mississippi Department of Education. School that have been placed on probationary status may not be considered eligible. Eligible schools do not include home instruction programs.~~

- ~~8. Until program participation reaches 50% of annual enrollment as established in Miss. Code Ann. § 37-181-7(2)(b), students are approved on a first come, first served basis, with applications being reviewed throughout the year. An ongoing waitlist will be maintained based on the applicant's original control number. As ESAs become available, applicants will be awarded in chronological order from the waitlist. After program participation reaches 50% of the annual enrollment, the MDE OSE will randomly select students from its waiting list (i.e., conduct a lottery).~~
- ~~9. 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 can provide, in writing, documentation from the district (e.g., due process decision) that their child cannot reasonably obtain appropriate special education and related services in Mississippi within thirty (30) miles of their legal residence. Effective July 1, 2020, upon written request from the parent, the district will have no more than 30 calendar days to provide the parent with the requested documentation concerning the obtainment of special education and related services.~~
- ~~10. Mississippi Code Ann. § 37-181-5(2) lists the types of expenses eligible for reimbursement (i.e., allowable expenses).
  - ~~a. Payment to a tutor. A tutor is "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," which is defined in § 37-181-3(h) as "a community college, college, or university accredited by a state, regional or national~~~~

accrediting organization.” Parents may not be reimbursed as a tutor for their own child.

- b. ~~Tuition, fees, and textbooks at a postsecondary institution. These expenses are allowable for a high school student taking a class or classes at a postsecondary institution, but they are not allowable for a student who has graduated from high school and is enrolled at a postsecondary institution.~~
- c. ~~Fees for transportation to and from an educational service provider paid to a licensed fee-for-service transportation provider;~~
- d. ~~Computer hardware and software and other technological devices if an eligible school, licensed and 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.~~

11. ~~The MDE reimburses quarterly. Each quarter in the fiscal year parents must submit a completed *Educational Scholarship Account (ESA) Reimbursement Request Form* along with required documentation (e.g., receipts) to the MDE OSE by mail. If not received by the OSE by the third Monday in November, the student account will not remain active and eligible for the disbursement of funds and ESA will be cancelled. If additional awards are made during the year, awardees will be required to submit a completed *Educational Scholarship Account (ESA) Reimbursement Request Form* along with required documentation by the third Monday in April. Failure to submit this documentation will result in termination of the ESA award.~~

12. ~~Parents are notified via the award letter of the various ways they may receive funds.~~

- a. ~~They may register as a vendor to receive quarterly reimbursement for eligible expenditures and choose to receive electronic reimbursement based on the MDE’s receipt of qualified invoices; or submit receipts and receive a paper check mailed;~~  
~~or~~
- b. ~~Choose for the school to be a direct recipient of funds. The school must register as a vendor by setting up a PayMode account, or by completing a W9. In addition, the parents must have a signed agreement on file with the MDE OSE indicating that the school is to be directly reimbursed.~~

13. ~~If the parent chooses to register as a vendor to receive quarterly reimbursements, the MDE will reimburse the parent who applied on behalf of the child.~~

~~14. The MDE OSE shall mail out *Recertification Forms* in April requesting an affirmation of the participant's intent for continued participation in the ESA program. Forms are due back to the MDE OSE by the second Friday in May. If the *Recertification Form* is not received by the aforementioned date, the MDE will use the contact information provided by the applicant to make 2 additional attempts (phone, via e-mail) to contact the applicant. If no response is received by the last working day of May, the ESA account associated with the participant name will be cancelled due to lack of response.~~

~~15. Mississippi Code Ann. § 37-181-5(2) requires that the MDE adopt rules and policies necessary for the administration of the program to ensure that funds are spent appropriately. The MDE OSE shall conduct or contract for random audits annually.~~

**16. ESAs awarded annually are determined based on State legislative appropriations**

- a. Until program participation reaches 50% of annual enrollment as established in Mississippi Code Ann. § 37-181-7(2)(b), students are approved on a first-come, first-served basis, with applications being reviewed throughout the year. An ongoing waitlist shall be maintained based on the applicant's original control number. As ESAs become available, applicants shall be awarded in chronological order from the waitlist. After program participation reaches 50% of the annual enrollment, the MDE OSE shall randomly select students from its waitlist (i.e., conduct a lottery).
- b. In accordance with the Mississippi Code. Ann. § 37-181-9(4), the department will retain six percent (6%) from appropriations used to fund Education Scholarship Accounts to cover the costs of overseeing the funds and administering the ESA program, even in the event the annual legislative appropriations is insufficient to fund all established ESA's rolling over from the previous year.
- c. In the event the annual legislative appropriations are insufficient to fund all established ESA's rolling over from the previous year:
  - i. the amount appropriated (minus the allowable administrative costs provided in Mississippi Code. Ann. § 37-181-9(4) will be divided equally among the eligible ESAs to fund all ESAs to the maximum of the appropriated; and,
  - ii. a lottery will not be conducted as established ESAs have a claim on funds appropriated and must be funded first.

**17. Eligibility**

- a. To be eligible for the Education Scholarship Account (ESA) the student must have had an active Individualized Education Program (IEP) within the past three (3) years. In accordance with Mississippi Code Ann. § 37-181-9(1), the Mississippi Department of Education (MDE) Office of Special Education (OSE) has created a standard form for parents to submit to establish the student’s eligibility. The application is available online at <https://mdek12.org/OSE/ESA> or by contacting the OSE.
- b. Along with the application form, parents shall provide the following documentation:
  - i. copy of parent/legal guardian’s driver’s license or state-issued identification;
  - ii. copy of student’s birth certificate;
  - iii. legal paperwork to act on behalf of student, if applicable;
  - iv. proof of residency (e.g., copy of utility bill);
  - v. copy of student’s most recent IEP that was developed by a public school and was active within the past three (3) years;
  - vi. copy of student’s most recent eligibility and/or evaluation; and
  - vii. original, signed “*Responsibilities of Parents*” document with all boxes properly initialed.
- c. The MDE OSE considers ESA recipients with the following eligibility rulings as having a permanent disability and, therefore, in accordance with Mississippi Code Ann. § 37-181-5(8), will be exempt from submitting updated eligibility every three (3) years:
  - i. Autism
  - ii. Deaf-Blindness
  - iii. Emotional Disturbance
  - iv. Intellectual Disability
  - v. Multiple Disability
  - vi. Visual Impairment

**18. Program Administration**

- a. Mississippi Code Ann. § 37-181-5(2) requires the MDE adopt rules and policies necessary for the administration of the program to ensure that funds are spent appropriately. Therefore, the school the ESA recipient is attending shall submit the *Participating School Assurance Form* to ensure compliance with Miss. Code Ann. § 37-181-1, *et. seq.*
- b. Signed applications shall be submitted via the United States Postal Service to:

Mississippi Department of Education  
 Attention: Educational Scholarship Account  
 P. O. Box 771



required documents have been submitted.

2. If there are no reimbursement request received by the third Monday in November, the student account will not remain active and eligible for the disbursement of funds and the student's ESA will be cancelled for the current school year. The student will not be permitted to reapply for ESA reimbursement for the remainder of the current school year and will lose the presumption of continuance of the scholarship moving forward.

- d. The MDE OSE shall mail out *Recertification Forms* in April requesting an affirmation of the participant's intent for continued participation in the ESA program. Forms are due back to the MDE OSE by the second Friday in May. If the *Recertification Form* is not received by the aforementioned date, the MDE will use the contact information provided by the applicant to make 2 additional attempts (phone, via-e-mail) to contact the applicant. If no response is received by the last working day of May, the ESA account associated with the participant name will be cancelled due to lack of response.

19. **Allowable Expenses.** Mississippi Code Ann. § 37-181-5(2) lists the types of expenses eligible for reimbursement (i.e., allowable expenses).

- a. Payment to a tutor. Parents may not be reimbursed as a tutor for their own child.
- b. Tuition, fees, and textbooks at a postsecondary institution expenses are allowable for a high school student taking a class or classes at a postsecondary institution, but they are not allowable for a student who has graduated from high school and is enrolled at a postsecondary institution.
- c. Computer hardware and software and other technological devices: Parents are responsible for submitting documentation from the organization receiving the donation.

20. **Assurances.**

- a. Mississippi Code Ann. § 37-181-5(2) requires that the MDE adopt rules and policies necessary for the administration of the program to ensure that funds are spent appropriately. The MDE OSE shall conduct or contract for random audits annually.

21. **Appeals Process.** Parents/guardians or a school may request an appeal to the MDE OSE Executive Director if they disagree with the final written decision of the ESA OSE Coordinator concerning eligibility or reimbursement.

- a. The parent/guardian shall submit a written explanation of the alleged inequity or disputed action within ten (10) calendar days from the date of the notice concerning eligibility or reimbursement to the MDE OSE Executive Director.



Any pertinent information to the appeal should be attached.

- b. Upon receipt of the written request for an appeal, the MDE OSE Executive Director shall investigate the alleged inequity or disputed action to determine its merit.
- c. The MDE OSE Executive Director shall notify the State Superintendent or his/her designee and a final review of the appeal shall be conducted. One of the following determinations shall be made:
  - i. The MDE OSE Executive Director will send a letter to the parent/guardian or school denying the appeal.
  - ii. The MDE OSE Executive Director will send a letter to the parent/guardian or school approving the appeal and the action that shall be taken.
  - iii. The MDE OSE Executive may request additional information needed to make a final determination.

## **22. Reporting Fraud.**

- a) Mississippi Code Ann. § 37-181-11(3) requires the department to adopt a process for removing educational service providers that defraud parents and for referring cases of fraud to law enforcement. In the event that fraudulent activity is reported or suspected by an educational service provider the OSE shall:
  - i. Provide written notification to the educational service provider of the suspected fraud. The provider has 30 calendar days to provide to the MDE OSE Executive Director a written response to the allegation.
  - ii. Upon receipt of the written response the MDE OSE Executive Director shall notify the State Superintendent or his/her designee and a final review of the response to the allegation appeal shall be conducted. One of the following determinations shall be made:
    - 1. The MDE OSE Executive Director will send a letter to the educational service provider that they are immediately removed from the program and will be referred to law enforcement.
    - 2. The MDE OSE Executive Director will send a letter to the educational service provider suspected of fraudulent activity that they have been cleared from a suspicion of fraudulent activity.
- b) Mississippi Code Ann. § 37-181-11(4) (5) requires the department to establish an online anonymous fraud reporting service and to establish a telephone hotline for fraud. In the event that an individual suspects fraudulent activity they may report the suspected activity to the MDE OSE via:
  - i. e-mail at [esafraud@mdek12.org](mailto:esafraud@mdek12.org)
  - ii. phone at 601-359-2586 (OSE Office)
  - iii. phone 1-866-993-7335 (Fraud Hotline)
- c) The MDE ESA Coordinator shall notify the MDE OSE Executive Director and

the MDE OSE Executive Director shall notify the State Superintendent or his/her designee.

- i. The ESA Coordinator, the OSE Executive Director, and the State Superintendent or his/her designee will schedule a meeting with the individual that reported the fraudulent activity to conduct an investigation. One of the following determinations will be made:
  1. The OSE Executive Director will send a letter to the individual suspected of fraudulent activity that they are immediately removed from the program and that they will be referred to the appropriate law enforcement.
  2. The OSE Executive Director will send a letter to the to the individual suspected of fraudulent activity that they have been cleared from a suspicion of fraudulent activity.

Source: Miss. Code Ann. § 37-181-1 (Adopted 01/2020)

## Chapter 74: Special Education

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- a. Until program participation reaches 50% of annual enrollment as established in Miss. Code Ann. § 37-181-7(2)(b), students are approved on a first-come, first-served basis, with applications being reviewed throughout the year. An ongoing waitlist will be maintained based on the applicant's original control number. As ESAs become available, applicants will be awarded in chronological order from the waitlist. After program participation reaches 50% of the annual enrollment, the MDE OSE will randomly select students from its waitlist (i.e., conduct a lottery).
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  - 3. If the parent chooses to register as a vendor to receive quarterly reimbursements, the MDE will reimburse the parent who applied on behalf of the child.
- ii. The MDE shall reimburse properly submitted expenses quarterly. Each quarter in the fiscal year, parents must submit a completed *Educational Scholarship Account (ESA) Reimbursement Request Form* along with required documentation (e.g., receipts) to the MDE OSE by mail.
  - 1. Reimbursement request that are not received by the date established for each quarter, will be disbursed the next quarter if all required documents have been submitted.
  - 2. If there are no reimbursement request received by the third Monday in November, the student account will not remain active and eligible for the disbursement of funds and the student's ESA will be cancelled for the current school year. The student will not be permitted to reapply for ESA reimbursement for the remainder of the current school year and will lose the presumption of continuance of the scholarship moving forward.

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