



MISSISSIPPI CENTER FOR PUBLIC POLICY

EDUCATION FREEDOM IN MISSISSIPPI: Why the state constitution does allow it.

What are Education Freedom Accounts?

Several states have recently passed legislation that makes school choice available to all parents and students. In our view, the best program is the Arkansas LEARNS Act, which creates an Education Freedom Account program. Participating families will receive a deposit equal to 90 percent of the prior year's average net public school aid per student.

Parents who enroll their children in free public or charter schools can use the funds to pay for tutoring, school supplies, extracurricular fees, and more. Alternatively, parents can use them to pay for tuition at private schools or even home schooling expenses. In fact, parents are free to use the funds for any combination of these educational options.

Would such a program be constitutional in Mississippi?

Yes, it would be. Some, however, have suggested that an Arkansas-type program might not be permissible under our constitution in Mississippi. Why?

They claim that under Section 208 of Mississippi's constitution, the legislature cannot help students who attend private schools. This is a misreading of the state constitution.

What does the Mississippi Constitution actually say?

Section 208 of the Mississippi Constitution states that: *"No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school."*

This does not mean that Mississippi could not adopt an Arkansas-type system of school choice. Arkansas does not "appropriate" money to private schools. It gives control to parents who decide how to invest in their child's education – be it through tutoring, private schools, or homeschooling.

Claiming that education freedom "appropriates" government funds to private schools is like saying your weekly grocery spree "appropriates" your wages to Target. Just as you choose where to spend your hard-earned income, education freedom lets parents make the best educational choices for their children. When we are free to choose, no grocery store or private school is guaranteed a dime. It's about empowering families, not funnelling money.

Isn't there a case about this before the Mississippi Supreme Court?

Some opposed to more parent power have pointed to a case currently before the Mississippi Supreme Court regarding the use of Covid-relief funds.

During Covid, the Mississippi legislature authorized a state agency to distribute about \$10 million of those federal funds to private schools for infrastructure improvements. **This prompted a legal challenge from activists who argued that Section 208 prohibits such payments. A Hinds County chancellor agreed.** The Mississippi Supreme Court is now reviewing the case on appeal.

Even if the Mississippi **Supreme Court rules that it was unconstitutional to give pandemic relief funds to private schools, it would not preclude education freedom. Here's why.**

Funding individuals is constitutional, even if funding private institutions is not.

Our legal division, the Mississippi Justice Institute, recently filed a “friend of the court” brief in the pandemic litigation seeking to ensure that the Court’s ruling does not inadvertently cast doubt on the legislature’s authority to pursue education freedom.

In our brief, we asked the Court to make clear that, regardless of how it rules on the constitutionality of providing *institutional* aid directly to private schools for disaster relief, its ruling would *not* prevent the state from providing *individual* aid to students who choose to attend private schools. Not only is this view supported by the plain text of Section 208, the Court’s own precedent dictates it.

In *Chance v. Mississippi State Textbook Rating & Purchasing Board*, the Court upheld a law that appropriated funds to purchase textbooks and distribute them to students, including those in private schools. 200 So. 706 (Miss., 1941). If Section 208 really prevents the state from assisting students who attend private schools, why wasn’t the program struck down?

Because, as the Court made clear, Section 208 does no such thing. Rather, the Court held that “furnishing aid to such children, in order to allow them” to attend “a private, denominational or parochial day school” is perfectly consistent with Section 208.

The textbook program properly accomplished that goal because the private schools were “not the beneficiaries of [the] appropriations.” Rather, “[t]he school children and the state alone [were] the beneficiaries.” Nor did the program constitute “direct or indirect aid to the respective schools[.]” Instead, any benefit to private schools came to them “only incidentally” from students who were “free to attend a proper public or private school[.]”

Additionally, the program was not funded by “educational funds” within the meaning of Section 208. It did not rely on “public school funds” or “trust funds available for particular schools[.]” Rather, it received “money in the state treasury not otherwise appropriated.”

All of this is also true for Education Freedom Accounts. They benefit individual students, not any particular schools. Moreover, they can be financed from the state’s general funds.

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Some might cite constitutional issues as an excuse not to implement Education Freedom Accounts for Mississippi families. The facts show that it is an excuse, not a valid reason.