To: Education; Appropriations

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Senator(s) Johnson (19th)

SENATE BILL NO. 2598

AN ACT ENTITLED THE "MISSISSIPPI SCHOOL OPPORTUNITY ACT OF 2003"; TO ESTABLISH AN OPPORTUNITY SCHOLARSHIP PROGRAM UNDER WHICH A PUBLIC SCHOOL STUDENT'S PARENT OR GUARDIAN MAY RECEIVE FROM THE STATE AN OPPORTUNITY SCHOLARSHIP TO ENROLL IN AND ATTEND A PRIVATE SCHOOL IF THE STUDENT HAS SPENT THE PRIOR SCHOOL YEAR IN A PUBLIC SCHOOL THAT HAS FAILED TO MEET MINIMUM ACCREDITATION STANDARDS FOR TWO YEARS IN A FOUR-YEAR PERIOD; TO PROVIDE ELIGIBILITY STANDARDS FOR SUCH OPPORTUNITY SCHOLARSHIP; TO PRESCRIBE THE OBLIGATIONS OF THE SCHOOL DISTRICT IN THESE SITUATIONS AND TO PROVIDE THAT THE SCHOOL DISTRICT SHALL OFFER TO TRANSFER THE STUDENT TO ANOTHER SCHOOL WITH A SATISFACTORY ACCREDITATION RATING IN THE SAME OR ADJOINING DISTRICT; TO PRESCRIBE ELIGIBILITY STANDARDS FOR PRIVATE SCHOOLS TO PARTICIPATE IN THE OPPORTUNITY SCHOLARSHIP PROGRAM; TO PROVIDE FOR OPPORTUNITY SCHOLARSHIP FUNDING AND PAYMENT; TO CLARIFY THE LIABILITY OF THE STATE REGARDING THE PROGRAM; TO AUTHORIZE THE STATE DEPARTMENT OF EDUCATION TO ISSUE RULES TO IMPLEMENT THE PROGRAM; TO AMEND SECTIONS 37-15-13, 37-15-15, 37-15-17, 37-15-21, 37-15-29, 37-15-31 AND 37-15-33, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known as and may be cited as the "Mississippi School Opportunity Act of 2003."

SECTION 2. (1) The Legislature finds that a student should not be compelled, against the wishes of the student's parent or guardian, to remain in a school found by the state to be failing to meet minimum accreditation standards for two (2) years in a four-year period. The Legislature shall make available opportunity scholarships in order to give parents and guardians the opportunity for their children to attend a public school that is performing satisfactorily or to attend an eligible private school when the parent or guardian chooses to apply the equivalent of the public education funds generated by his or her child to the cost of tuition in the eligible private school as provided in subsection 6(a). Eligibility of a private school shall include the control and accountability requirements that, coupled with the
exercise of parental choice, are reasonably necessary to secure
the educational public purpose, as delineated in subsection 4.

(2) OPPORTUNITY SCHOLARSHIP ELIGIBILITY. A public school
student's parent or guardian may request and receive from the
state an opportunity scholarship for the child to enroll in and
attend a private school in accordance with the provisions of this
section if:

(a) By assigned school attendance area or by special
assignment, the student has spent the prior school year in
attendance at a public school that has failed to meet minimum
accreditation standards pursuant to Section 37-17-6, Mississippi
Code of 1972, is failing to make adequate progress, and that has
had two (2) school years in a four-year period of such low
performance, and the student's attendance occurred during a school
year in which such designation was in effect; or the parent or
guardian of a student who has been in attendance elsewhere in the
public school district or who is entering kindergarten or first
grade has been notified that the student has been assigned to such
school for the next school year;

(b) The parent or guardian has obtained acceptance for
admission of the student to a private school eligible for the
program pursuant to subsection (4), and has notified the
Department of Education and the school district of the request for
an opportunity scholarship no later than July 1 of the first year
in which the student intends to use the scholarship. For purposes
of continuity of educational choice, the opportunity scholarship
shall remain in force until the student returns to a public school
or, if the student chooses to attend a private school the highest
grade of which is Grade 8, until the student matriculates to high
school and the public high school to which the student is assigned
is an accredited school with a performance grade category
designation of Level III or better. However, at any time upon
reasonable notice to the Department of Education and the school
district, the student's parent or guardian may remove the student
from the private school and place the student in a public school,
as provided in subparagraph 3(a)(2).

(3) SCHOOL DISTRICT OBLIGATIONS.

(a) A school district shall, for each student enrolled
in or assigned to a school that has failed to meet minimum
accreditation standards for two (2) school years in a four-year
period:

(i) Timely notify the parent or guardian of the
student as soon as such designation is made of all options
available pursuant to this section; and

(ii) Offer that student's parent or guardian an
opportunity to enroll the student in the public school within the
district that has been designated by the state as a school
performing higher than that in which the student is currently
enrolled or to which the student has been assigned, but not less
than performance grade category Level III. The parent or guardian
is not required to accept this offer in lieu of requesting a state
opportunity scholarship to a private school. The opportunity to
continue attending the higher performing public school shall
remain in force until the student graduates from high school.

(b) The parent or guardian of a student enrolled in or
assigned to a school that has failed to meet minimum accreditation
standards for two (2) years in a four-year period may choose as an
alternative to enroll the student in and transport the student to
a higher-performing public school that has available space in an
adjacent school district, and that school district shall accept
the student and report the student for purposes of the district's
minimum program funding, or adequate education program funding.

(c) For students in the district who are participating
in the state Opportunity Scholarship Program, the district shall
provide locations and times to take all statewide assessments
required.
(d) Students with disabilities who are eligible to receive services from the school district under federal or state law, and who participate in this program, remain eligible to receive services from the school district as provided by federal or state law.

(e) If for any reason a qualified private school is not available for the student or if the parent or guardian chooses to request that the student be enrolled in the higher performing public school, rather than choosing to request the state opportunity scholarship, transportation costs to the higher performing public school shall be the responsibility of the school district. The district may utilize state transportation funds for this purpose.

(4) PRIVATE SCHOOL ELIGIBILITY. To be eligible to participate in the Opportunity Scholarship Program, a private school must be a Mississippi private school, may be sectarian or nonsectarian, and must:

(a) Demonstrate fiscal soundness by being in operation for one (1) school year or provide the Department of Education with a statement by a certified public accountant confirming that the private school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. In lieu of such a statement, a surety bond or letter of credit for the amount equal to the opportunity scholarship funds for any quarter may be filed with the department.

(b) Except for the first year of implementation, notify the Department of Education and the school district in whose service area the school is located of its intent to participate in the program under this section by May 1 of the school year preceding the school year in which it intends to participate. The
notice shall specify the grade levels and services that the
private school has available for the Opportunity Scholarship
Program.

(c) Comply with antidiscrimination provisions required
by state or federal law.

(d) Meet state and local health and safety laws and
codes.

(e) Accept scholarship students on an entirely random
and religious-neutral basis without regard to the student's past
academic history; however, the private school may give preference
in accepting application to siblings of students who have already
been accepted on a random and religious-neutral basis.

(f) Be subject to the instruction, curriculum and
attendance criteria adopted by an appropriate nonpublic school
accrediting body and be academically accountable to the parent or
guardian for meeting the educational needs of the student. The
private school must furnish a school profile which includes
student performance.

(g) Employ or contract with teachers who hold a
baccalaureate or higher degree, or have at least three (3) years
of teaching experience in public or private schools, or have
special skills, knowledge or expertise that qualifies them to
provide instruction in subjects taught.

(h) Comply with all state statutes relating to private
schools.

(i) Accept as full tuition and fees the amount provided
by the state for each student.

(j) Agree not to compel any student attending the
private school on an opportunity scholarship to profess a specific
ideological belief, to pray or to worship.

(k) Adhere to the tenets of its published disciplinary
procedures prior to the expulsion of any opportunity scholarship
student.
(5) OBLIGATION OF PROGRAM PARTICIPATION.

(a) Any student participating in the Opportunity Scholarship Program must remain in attendance throughout the school year, unless excused by the school for illness or other good cause, and must comply fully with the school’s code of conduct.

(b) The parent or guardian of each student participating in the Opportunity Scholarship Program must comply fully with the private school’s parental involvement requirements, unless excused by the school for illness or other good cause.

(c) The parent or guardian shall ensure that the student participating in the Opportunity Scholarship Program takes all statewide assessments required pursuant to state law or department regulation.

(d) A participant who fails to comply with this subsection shall forfeit the opportunity scholarship.

(6) OPPORTUNITY SCHOLARSHIP FUNDING AND PAYMENT.

(a) (i) The maximum opportunity scholarship granted for an eligible student shall be a calculated amount equivalent to the current base student cost adequate to provide the cost components of educating a pupil in an average school district meeting Level III accreditation standards, as used for determining allocations under the adequate education program in Section 37-151-7(1)(b). The amount of the opportunity scholarship shall be the calculated amount or the amount of the private school’s tuition and fees, whichever is less. Fees eligible shall include textbooks fees, lab fees and other fees related to instruction, including transportation. The district shall report all students who are attending a private school under this program. The students attending private schools on opportunity scholarships shall be reported separately from those students reported for purposes of the minimum education or adequate education program.

The public or private school that provides services to students...
with disabilities shall receive the weighted funding for such services at the appropriate funding level consistent with the provisions of Section 37-23-133 et seq.

(ii) Following annual notification on July 1 of the number of participants, the Department of Education shall transfer from each school district's appropriated funds the calculated amount from the minimum or adequate education program and authorized categorical accounts to a separate account for the Opportunity Scholarship Program for quarterly disbursement to the parents or guardians of participating students.

(b) Upon proper documentation reviewed and approved by the Department of Education, the Department of Finance and Administration shall make opportunity scholarship payments in four (4) equal amounts no later than September 1, November 1, February 1 and April 1 of each academic year in which the opportunity scholarship is in force. The initial payment shall be made after Department of Education verification of admission acceptance and subsequent payments shall be made upon verification of continued enrollment and attendance at the private school. Payment must be by individual warrant made payable to the student's parent or guardian and mailed by the Department of Education to the private school of the parent's or guardian's choice and the parent or guardian shall restrictively endorse the warrant to the private school.

(7) LIABILITY. No liability shall arise on the part of the state based on any grant or use of an opportunity scholarship.

(8) RULES. The State Board of Education may adopt rules to implement the provisions of this section. Rules shall include penalties for noncompliance with subsections (3) and (5).

However, the inclusion of eligible private schools within options available to Mississippi public school students does not expand the regulatory authority of the state, its officers, or any school
district to impose any additional regulation of private schools
beyond those reasonably necessary to enforce this act.

SECTION 3. Section 37-15-13, Mississippi Code of 1972, is
amended as follows:

37-15-13. The provisions of this section shall not apply to
any school, student or parent of a student residing in a school
district or county which has exercised student school choice as
provided under Senate Bill No. ____, 2003 Regular Session.

When any child qualified under the requirements of Section
37-15-9 shall apply or present himself for enrollment in or
admission to the public schools of any school district of this
state, the school board of such school district shall have the
power and authority to designate the particular school or
attendance center of the district in which such child shall be
enrolled and which he shall attend; no enrollment of a child in a
school shall be final or permanent until such designation shall be
made by said school board. No child shall be entitled to attend
any school or attendance center except that to which he has been
assigned by the school board; however, the principal of a school
or superintendent of the district may, in proper cases, permit a
child to attend a school temporarily until a permanent assignment
is made by the school board.

SECTION 4. Section 37-15-15, Mississippi Code of 1972, is
amended as follows:

37-15-15. The provisions of this section shall not apply to
any school, student or parent of a student residing in a school
district or county which has exercised student school choice as
provided under Senate Bill No. ____, 2003 Regular Session.

In making assignments of children to schools or attendance
centers, the school board shall take into consideration the
educational needs and welfare of the child involved, the welfare
and best interest of all the pupils attending the school or
schools involved, the availability of school facilities, sanitary
conditions and facilities at the school or schools involved,
health and moral factors at the school or schools, and in the
community involved, and all other factors which the school board
may consider pertinent, relevant or material in their effect on
the welfare and best interest of the school district and the
particular school or schools involved. All such assignments shall
be on an individual basis as to the particular child involved and,
in making such assignment, the school board shall not be limited
or circumscribed by the boundaries of any attendance areas which
may have been established by such board.

SECTION 5. Section 37-15-17, Mississippi Code of 1972, is
amended as follows:

37-15-17. The provisions of this section shall not apply to
any school, student or parent of a student residing in a school
district or county which has exercised student school choice as
provided under Senate Bill No. ____, 2003 Regular Session.

If the parent, guardian or other person having custody of any
child shall feel aggrieved by the assignment of such child to a
school or attendance center by the school board, then such parent,
guardian or other person may, at any time within thirty (30) days
after such assignment, make application in writing to the school
board for a review or reconsideration of such assignment. Upon
receiving any such application, the school board shall set a time
and place for the hearing thereof which time shall be not more
than fifteen (15) days after the regular meeting of said board
next succeeding the date of the filing of said application. At
the time and place so fixed, the person filing such application
shall have the right to appear and present evidence in support of
said application. After hearing said evidence, the school board
shall determine whether said application is well taken and
supported by the evidence and shall enter an order either
affirming its previous action or modifying or changing same as
said school board shall find proper.
SECTION 6. Section 37-15-21, Mississippi Code of 1972, is amended as follows:

37-15-21. The provisions of this section shall not apply to any school, student or parent of a student residing in a school district or county which has exercised student school choice as provided under Senate Bill No. _____, 2003 Regular Session.

If any parent, guardian or other person having custody of any child affected by the assignment of such child to a school or attendance center by the school board shall feel aggrieved at the order of the school board provided for in Section 37-15-17, such person may, at any time within thirty (30) days from the date of such order, appeal therefrom by filing a petition for appeal in the circuit court of the county in which the school district involved is located. Upon the filing of such petition for an appeal, process shall be issued for and served upon the president of the school board of the school district involved. Upon being served with process, it shall be the duty of the school board to transmit promptly to the court a certified copy of the entire record of the proceedings as shown by the file of the school board. From the judgment of the circuit court, an appeal may be taken to the Supreme Court in the same manner as other appeals are taken from other judgments of such court.

SECTION 7. Section 37-15-29, Mississippi Code of 1972, is amended as follows:

37-15-29. The provisions of this section shall not apply to any school, student or parent of a student residing in a school district or county which has exercised student school choice as provided under Senate Bill No. _____, 2003 Regular Session.

(1) Except as provided in subsections (2), (3) and (4) of this section, no minor child may enroll in or attend any school except in the school district of his residence, unless such child be lawfully transferred from the school district of his residence
to a school in another school district in accord with the statutes
of this state now in effect or which may be hereafter enacted.

(2) Those children whose parent(s) or legal guardian(s) are
instructional personnel or certificated employees of a school
district may at such employee's discretion enroll and attend the
school or schools of their parent's or legal guardian's employment
regardless of the residence of the child.

(3) No child shall be required to be transported in excess
of thirty (30) miles on a school bus from his or her home to
school, or in excess of thirty (30) miles from school to his or
her home, if there is another school in an adjacent school
district located on a shorter school bus transportation route by
the nearest traveled road. Those children residing in such
geographical situations may, at the discretion of their parent(s)
or legal guardian(s), enroll and attend the nearer school,
regardless of the residence of the child. In the event the parent
or legal guardian of such child and the school board are unable to
agree on the school bus mileage required to transport the child
from his or her home to school, an appeal shall lie to the State
Board of Education, or its designee, whose decision shall be
final.

(4) Those children lawfully transferred from the school
district of his residence to a school in another school district
prior to July 1, 1992, may, at the discretion of their parent(s)
or legal guardian(s), continue to enroll and attend school in the
transferee school district. Provided further, that the brother(s)
and sister(s) of said children lawfully transferred prior to July
1, 1992, may also, at the discretion of their parent(s) or legal
 guardian(s), enroll and attend school in the transferee school
district.

SECTION 8. Section 37-15-31, Mississippi Code of 1972, is
amended as follows:
37-15-31. The provisions of this section shall not apply to any school, student or parent of a student residing in a school district or county which has exercised student school choice as provided under Senate Bill No. ____, 2003 Regular Session.

(1) (a) Except as provided in subsections (2) through (5) of this section, upon the petition in writing of a parent or guardian resident of the school district of an individual student filed or lodged with the president or secretary of the school board of a school district in which the pupil has been enrolled or is qualified to be enrolled as a student under Section 37-15-9, or upon the aforesaid petition or the initiative of the school board of a school district as to the transfer of a grade or grades, individual students living in one school district or a grade or grades of a school within the districts may be legally transferred to another school district, by the mutual consent of the school boards of all school districts concerned, which consent must be given in writing and spread upon the minutes of such boards.

(b) The school board of the transferring school district to which such petition may be addressed shall act thereon not later than its next regular meeting subsequent to the filing or lodging of the petition, and a failure to act within that time shall constitute a rejection of such request. The school board of the other school district involved (the transferee board) shall act on such request for transfer as soon as possible after the transferor board shall have approved or rejected such transfer and no later than the next regular meeting of the transferee board, and a failure of such transferee board to act within such time shall constitute a rejection of such request. If such a transfer is approved by the transferee board, then such decision shall be final. If such a transfer should be refused by the school board of either school district, then such decision shall be final.
(c) Any legal guardianship formed for the purpose of establishing residency for school district attendance purposes shall not be recognized by the affected school board.

(2) (a) Upon the petition in writing of any parent or guardian who is a resident of Mississippi and is an instructional or licensed employee of a school district, but not a resident of such district, the school board of the employer school district shall consent to the transfer of such employee's dependent school-age children to its district and shall spread the same upon the minutes of the board. Upon the petition in writing of any parent or guardian who is not a resident of Mississippi and who is an instructional or licensed employee of a school district in Mississippi, the school board of the employer school district shall consent to the transfer of such employee's dependent school-age children to its district and shall spread the same upon the minutes of the board.

(b) The school board of any school district, in its discretion, may adopt a uniform policy to allow the enrollment and attendance of the dependent children of noninstructional and nonlicensed employees, who are residents of Mississippi but are not residents of their district. Such policy shall be based upon the employment needs of the district, implemented according to job classification groups and renewed each school year.

(c) The employer transferee school district shall notify in writing the school district from which the pupil or pupils are transferring, and the school board of the transferor school district shall spread the same upon its minutes.

(d) Any such agreement by school boards for the legal transfer of a student shall include a provision providing for the transportation of the student. In the absence of such a provision the responsibility for transporting the student to the transferee school district shall be that of the parent or guardian.
(e) Any school district which accepts a student under the provisions of this subsection shall not assess any tuition fees upon such transferring student in accordance with the provisions of Section 37-19-27.

(3) Upon the petition in writing of any parent or legal guardian of a school-age child who is a resident of an adjacent school district residing in the geographical situation described in Section 37-15-29(3), the school board of the school district operating the school located in closer proximity to the residence of the child shall consent to the transfer of the child to its district, and shall spread the same upon the minutes of the board. Any such agreement by school boards for the legal transfer of a student under this subsection shall include a provision for the transportation of the student by either the transferor or the transferee school district. In the event that either the school board of the transferee or the transferor school district shall object to the transfer, it shall have the right to appeal to the State Board of Education whose decision shall be final. However, if the school boards agreeing on the legal transfer of any student shall fail to agree on which district shall provide transportation, the responsibility for transporting the student to the transferee school district shall be that of the parent or guardian.

(4) Upon the petition in writing of any parent or legal guardian of a school-age child who was lawfully transferred to another school district prior to July 1, 1992, as described in Section 37-15-29(4), the school board of the transferee school district shall consent to the transfer of such child and the transfer of any school-age brother and sister of such child to its district, and shall spread the same upon the minutes of the board.

(5) (a) If the board of trustees of a municipal separate school district with added territory does not have a member who is a resident of the added territory outside the corporate limits,
upon the petition in writing of any parent or legal guardian of a
school-age child who is a resident of the added territory outside
the corporate limits, the board of trustees of the municipal
separate school district and the school board of the school
district adjacent to the added territory shall consent to the
transfer of the child from the municipal separate school district
to the adjacent school district. The agreement must be spread
upon the minutes of the board of trustees of the municipal
separate school district and the school board of the adjacent
school district. The agreement must provide for the
transportation of the student. In the absence of such a
provision, the parent or legal guardian shall be responsible for
transporting the student to the adjacent school district. Any
school district that accepts a student under this subsection may
not assess any tuition fees against the transferring student.

(b) Before September 1 of each year, the board of
trustees of the municipal separate school district shall certify
to the State Department of Education the number of students in the
added territory of the municipal separate school district who are
transferred to the adjacent school district under this subsection.
The municipal separate school district also shall certify the
total number of students in the school district residing in the
added territory plus the number of those students who are
transferred to the adjacent school district. Based upon these
figures, the department shall calculate the percentage of the
total number of students in the added territory who are
transferred to the adjacent school district and shall certify this
percentage to the levying authority for the municipal separate
school district. The levying authority shall remit to the school
board of the adjacent school district, from the proceeds of the ad
valorem taxes collected for the support of the municipal separate
school district from the added territory of the municipal separate
school district, an amount equal to the percentage of the total
number of students in the added territory who are transferred to
the adjacent school district.

SECTION 9. Section 37-15-33, Mississippi Code of 1972, is
amended as follows:

37-15-33. The provisions of this section shall not apply to
any school, student or parent of a student residing in a school
district or county which has exercised student school choice as
provided under Senate Bill No. ____, 2003 Regular Session.

All students seeking to transfer from any school, public or
private, within or outside of the boundaries of the State of
Mississippi, to a public school within the state may be required
to take a test to determine the grade and class to which the pupil
shall be assigned at the time of pupil transfer.

The administrative head of each public school shall
administer the test or tests to such pupil or pupils as shall
apply for transfer to such public school. Such test or tests
shall be administered within thirty (30) days after the filing of
each such application for transfer. Notice of the giving of such
test shall be given the applicant not less than five (5) days
prior to the date of the administration of such test.

No transfer of a pupil shall be effected until the test has
been given and the pupil is assigned according to the grade and
class for which the test shows he is best suited. No pupil shall
be assigned to a grade and class more than three (3) grades above
or below the grade or class that the pupil would have been
assigned to had the pupil remained in the school from which the
transfer is being made. Pending the administration of the test
herein provided for and its grading and an assignment based
thereon the superintendent of the school district or the
attendance center principal to which the pupil seeks admission may
assign the pupil temporarily to a grade and class comparable to
that in which the pupil would have been had the pupil continued in
the school from which the transfer was being made.
If any student is transferred or reassigned within the school district by order of the board of trustees of that school district as designated by law of the State of Mississippi and not at his own request, the requirement of that pupil’s taking the standardized test shall be waived. Likewise, if a pupil shall transfer from one school district to another school district in the manner provided and required by the laws of the State of Mississippi, the requirement of such pupil taking the standardized test shall be waived.

SECTION 10. This act shall take effect and be in force from and after July 1, 2003.