

By: Representatives Crawford, Aldridge

To: Education

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 765

1 AN ACT TO CREATE THE EQUAL OPPORTUNITY FOR ALL STUDENTS WITH  
2 SPECIALS NEEDS ACT FOR THE PURPOSE OF ESTABLISHING INDIVIDUALIZED  
3 EDUCATION FUNDS(IEFS) FOR PARENTS OF ELIGIBLE STUDENTS WITH  
4 SPECIAL NEEDS; TO PRESCRIBE THE CRITERIA FOR DETERMINING  
5 ELIGIBILITY FOR PARTICIPATION IN THE PROGRAM AND RECEIPT OF  
6 PROGRAM FUNDS; TO REQUIRE EACH STUDENTS IEF TO BE FUNDED AT AN  
7 AMOUNT EQUIVALENT TO THE MAEP BASE STUDENT COST PLUS THE  
8 PROPORTIONATE SHARE OF FUNDS FOR CATEGORICAL AID PROGRAMS; TO  
9 STIPULATE THE OBLIGATIONS OF PARENTS OR LEGAL GUARDIANS, STUDENTS  
10 AND SCHOOLS TO BECOME AND REMAIN ELIGIBLE FOR PARTICIPATION; TO  
11 PRESCRIBE THE DUTIES OF THE DEPARTMENT OF EDUCATION REGARDING THE  
12 ADMINISTRATION OF THE FUNDS; TO REQUIRE PEER TO PREPARE A BIENNIAL  
13 REPORT ON THE SUFFICIENCY OF FUNDING FOR IEFS AND STUDENT  
14 PERFORMANCE AND ASSESSMENT EVALUATION BEGINNING IN 2018 AND EVERY  
15 TWO YEARS THEREAFTER; TO PROVIDE FOR THE ADMINISTRATIVE, FINANCIAL  
16 AND ACADEMIC ACCOUNTABILITY STANDARDS TO BE ADHERED TO BY  
17 PARTICIPATING SCHOOLS; AND FOR RELATED PURPOSES.

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

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

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

24 (a) "Program" means the Individualized Education Fund  
25 (IEF) Program created in this act.



26                   (b) "Eligible student" means any student who has:

27                   (i) An Individualized Education Program (IEP) in

28 effect at the time the request for participation in the program is

29 received by the State Department of Education; or

30                   (ii) A 504 accommodation issued under Section 504

31 of the Rehabilitation Act of 1973. No more than five hundred

32 (500) students with a 504 accommodation may annually enroll in the

33 program;

34                   (iii) And who meets any of the following

35 requirements:

36                   1. Has attended a Mississippi public school

37 during the previous school year.

38                   2. Is attending a primary or secondary school

39 in Mississippi for the first time.

40                   3. Is not enrolled in the Mississippi School

41 for the Deaf and the Blind or any other public school.

42                   (c) "Parent" means a resident of this state who is a

43 parent, legal guardian, custodian or other person with the

44 authority to act on behalf of the eligible student.

45                   (d) "Department" means the Mississippi Department of

46 Education.

47                   (e) "Resident school district" means the public school

48 district in which the student resides.

49                   (f) "Participating school" means a nonpublic school

50 that has notified the department that it has enrolled a



participating student and that has agreed to comply with the requirements of the program.

(g) "Private tutoring" means tutoring services provided by a tutor accredited by a regional or national accrediting organization.

(h) "Eligible postsecondary institution" means a community college, an accredited university or an accredited private postsecondary institution.

**SECTION 3.** (1) A parent of 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 eligible student; and

(b) Not to enroll their eligible student in a public school and to release the resident school district from all obligations to educate the student. Participation in the program shall have the same effect as a parental refusal to receipt of consent to service under 20 USCS Sections 614(a)(1), 1414(a)(1)(D) and 1414(C) of the IDEA.

(2) Subject to appropriation from the General Fund each student's IEF shall be funded at an amount equivalent to the Mississippi Adequate Education Program base cost plus the per pupil average of the proportionate share of monies generated under state categorical aid programs.



(3) Parents shall agree to use the funds deposited in a participating student's IEF for the following qualifying expenses to educate the student:

(a) Tuition or fees at a participating school;

(b) Textbooks required by a participating school;

(c) Payment to a tutor accredited by a state, regional or national accrediting organization;

(d) Payment for purchase of curriculum, including any supplemental materials required by the curriculum;

(e) Fees for transportation paid to a fee-for-service transportation provider;

(f) Tuition or fees for a nonpublic online learning program or course;

(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 for students with disabilities from a licensed or accredited practitioner or provider, including licensed or accredited paraprofessionals or educational aides;

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

(j) Tuition or fees at an eligible postsecondary institution;



(k) Textbooks required for courses at an eligible postsecondary institution;

(l) Insurance or surety bond payments as required by the department;

(m) Funds in an IEF may be used for the purchase of no more than Fifty Dollars (\$50.00) in annual consumable school supplies necessary for daily classroom activities;

(n) Funds in an IEF may only be used to purchase computer hardware and software and other technological devices if a participating school, licensed or accredited tutor, licensed or accredited educational services practitioner or provider, or licensed medical professional verifies in writing that these items are essential for the student to meet annual, measurable goals.

(4) A school, private tutor, eligible postsecondary institution or other educational provider that serves a participating student may not refund, rebate, or share money from an IEF with a parent or participating student in any manner. The funds in an IEF may only be used for educational purposes. Participating schools, postsecondary institutions and education providers that enroll participating students shall provide parents with a receipt for all qualifying expenses at the school or institution.

(5) Parents shall be allowed to make payments for the costs of educational programs and services not covered by the funds in their IEF.



(6) For purposes of continuity of educational attainment, students who enroll in the program shall remain eligible until the participating student returns to a public school, graduates from high school or reaches the age of twenty-one (21), whichever occurs first.

(7) Subject to appropriation, students shall be admitted on a first come-first serve basis.

(8) Any funds remaining in a student's Individualized Education Fund upon graduation from high school may be used to attend or take courses from an eligible postsecondary institution, with qualifying expenses subject to the applicable conditions stipulated in Section 3(3) of this act.

(9) Upon the participating student's graduation from a postsecondary institution or after any period of four (4) consecutive years after high school graduation in which the student is not enrolled in an eligible postsecondary institution, the participating student's Individualized Education Fund shall be closed and any remaining funds shall be returned to the state's General Fund.

(10) Monies received pursuant to this act do not constitute taxable income to the parent of the participating student or to the student.

**SECTION 4. Administration of Individualized Education Funds.**

(1) The department shall create a standard form that parents of eligible students submit to establish their student's



150 eligibility for an Individualized Education Fund. The department  
151 shall ensure that the application is readily available to  
152 interested families through various sources, including the  
153 Internet.

154 (2) The department shall provide parents of participating  
155 students with a written explanation of the allowable uses of  
156 Individualized Education Funds, the responsibilities of parents  
157 and the duties of the department.

158 (3) The department shall ensure that lower-income families  
159 are made aware of the program and their potential eligibility.

160 (4) The department may deduct an amount up to a limit of  
161 three percent (3%) from appropriations used to fund Individualized  
162 Education Funds to cover the costs of overseeing the funds and  
163 administering the program.

164 (5) The department shall make payments to participating  
165 students' Individualized Education Funds on a quarterly basis.

166 (6) If the number of eligible students who apply for the  
167 program exceed the number of spaces available, the department  
168 shall fill the available spaces using a random selection process,  
169 except the department shall give preference to previously enrolled  
170 students and the siblings of enrolled students.

171 (7) If more than five hundred (500) eligible students for  
172 whom a 504 accommodation plan has been issued apply for the  
173 program in any one (1) year, the department shall use a random



selection process to determine which student may enroll in the program that year.

(8) The resident 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.

**SECTION 5.** (1) To ensure that funds are spent appropriately, the department shall adopt rules and policies necessary for the administration of the program, including the auditing of Individualized Education Funds, and shall, at a minimum, conduct or contract for audits on an annual basis and random audits throughout the year.

(2) The department shall qualify private financial management firms to manage Individualized Education Funds.

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

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

(5) The department may require a surety bond or insurance for parents who participate in the program.

(6) The department shall remove any parent and their participating student from the program if the parent fails to





199 comply with the terms of the agreement, applicable laws, rules or  
200 orders or for knowingly misusing funds or knowingly failing to  
201 comply with the terms of the agreement with intent to defraud.

202 (a) If the department determines a parent has failed to  
203 comply with the terms of the agreement, the department shall  
204 notify the parent in writing that the Individualized Education  
205 Fund has been suspended and that no further transactions will be  
206 allowed or disbursements made. The notification shall specify the  
207 reason for the suspension and state that the parent has twenty-one  
208 (21) business days to respond and take corrective action.

209 (b) If the parent refuses or fails to contact the  
210 department, furnish reasonable and necessary information or make a  
211 report that may be required for reinstatement within the twenty-  
212 one-day period, the department may remove the parent and their  
213 participating student from the program, pursuant to this  
214 subsection.

215 (c) A parent may appeal the department's decision to  
216 the circuit court.

217 (d) The department shall refer cases of substantial  
218 misuse of funds to law enforcement agencies for investigation if  
219 evidence of fraudulent use of an IEF is obtained.

## 220 **SECTION 6. Student Performance Standards and Program**

221 **Evaluation.** (1) The Joint Legislative Committee on Performance  
222 Evaluation and Expenditure Review (PEER) shall prepare a biannual  
223 report, beginning in 2018 and every two (2) years thereafter,



assessing the sufficiency of funding for Individualized Education Funds and 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) The percentage of participating students who exhibited behavioral problems at their resident school district compared with the percentage exhibiting behavioral problems at their participating school;

(d) The class size experienced by participating students at their resident school district and at their participating school;

(e) Student performance on nationally standardized norm-referenced achievement tests for those participating students whose parents have requested participation in such tests;

(f) Student performance on Advanced Placement examinations or similar courses and any examinations related to college or university admission;

(g) The high school graduation rates and college acceptance rates of participating students;

(h) The percentage of funds used for each qualifying expense identified in Section 3(3) of this act;



(i) The fiscal impact to the state and resident school districts of the program;

(j) The public schools from which students transfer to participate in the program shall cooperate with the research effort by providing student assessment results and any other data necessary to complete this study.

(3) PEER may accept grants to assist in funding the study.

(4) The study shall:

(a) Apply appropriate analytical and behavioral science methodologies to ensure public confidence in the study;

(b) Protect the identity of participating students and schools by, among other things, keeping anonymous all disaggregated data other than that for the categories of grade level, gender, and race and ethnicity; and

(c) Provide the Legislature with a final copy of the evaluation of the program. This study shall also be placed in a prominent location on the PEER website.

(5) 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 7. Responsibilities of Participating Schools.**

To ensure that students are treated fairly and kept safe, all participating schools shall:

(a) Comply with all health and safety laws or codes that apply to nonpublic schools;



(b) Hold a valid occupancy permit if required by their municipality;

(c) Offer participating students the option of taking a nationally standardized norm-referenced achievement test;

(d) Certify compliance with the nondiscrimination policies set forth in 42 USCS 1981; and

(e) Conduct criminal background checks on employees.  
The participating school then shall:

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

(ii) Exclude from employment any people that might reasonably pose a threat to the safety of students.

**SECTION 8. Autonomy of Participating Schools.**

(1) A participating nonpublic school is autonomous and not an agent of the state or federal government and therefore:

(a) The Department or any other state agency may not in any way regulate the educational program of a participating nonpublic school or education provider that accepts funds from the parent of a participating student;

(b) The creation of The Individualized Education Fund Program does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of nonpublic schools or education providers beyond those necessary to enforce the requirements of the program;



298           (c) Participating nonpublic schools and education  
299 providers shall be given the maximum freedom to provide for the  
300 educational needs of their students without governmental control.  
301 No participating nonpublic school and education provider shall be  
302 required to alter its creed, practices, admissions policies or  
303 curriculum in order to accept participating students; and

304           (2) In any legal proceeding challenging the application of  
305 this act to a participating school, the state bears the burden of  
306 establishing that the law is necessary and does not impose any  
307 undue burden on participating schools.

308           **SECTION 9.** If any provision of this law or its application  
309 is held invalid, the invalidity does not affect other provisions  
310 or applications of this law which can be given effect without the  
311 invalid provision or application and to this end the provisions of  
312 this law are severable.

313           **SECTION 10.** This act shall take effect and be in force from  
314 and after its passage.

