

By: Representative Crawford

To: Education

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 THE LEGISLATURE TO APPROPRIATE
7 SUFFICIENT FUNDS FROM THE STATE GENERAL FUND TO THE INDIVIDUALIZED
8 EDUCATION FUNDS; TO REQUIRE EACH STUDENTS IEF TO BE FUNDED AT AN
9 AMOUNT EQUIVALENT TO THE MAEP BASE STUDENT COST PLUS THE
10 PROPORTIONATE SHARE OF FUNDS FOR CATEGORICAL AID PROGRAMS; TO
11 STIPULATE THE OBLIGATIONS OF PARENTS OR LEGAL GUARDIANS, STUDENTS
12 AND SCHOOLS TO BECOME AND REMAIN ELIGIBLE FOR PARTICIPATION; TO
13 PRESCRIBE THE DUTIES OF THE DEPARTMENT OF EDUCATION REGARDING THE
14 ADMINISTRATION OF THE FUNDS; TO REQUIRE PEER TO PREPARE A BIENNIAL
15 REPORT ON THE SUFFICIENCY OF FUNDING FOR IEFS AND STUDENT
16 PERFORMANCE AND ASSESSMENT EVALUATION BEGINNING IN 2018 AND EVERY
17 TWO YEARS THEREAFTER; TO PROVIDE FOR THE ADMINISTRATIVE, FINANCIAL
18 AND ACADEMIC ACCOUNTABILITY STANDARDS TO BE ADHERED TO BY
19 PARTICIPATING SCHOOLS; AND FOR RELATED PURPOSES.

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

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

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



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

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

29 (i) An Individualized Education Program (IEP) in
30 effect at the time the request for participation in the program is
31 received by the State Department of Education; or

32 (ii) A 504 accommodation issued under Section 504
33 of the Rehabilitation Act of 1973. No more than five hundred
34 (500) students with a 504 accommodation may annually enroll in the
35 program;

36 (iii) And who meets any of the following
37 requirements:

38 1. Has attended a Mississippi public school
39 during the previous school year.

40 2. Is attending a primary or secondary school
41 in Mississippi for the first time.

42 3. Is not enrolled in the Mississippi School
43 for the Deaf and the Blind or any other public school.

44 (c) "Parent" means a resident of this state who is a
45 parent, legal guardian, custodian or other person with the
46 authority to act on behalf of the eligible student.

47 (d) "Department" means the Mississippi Department of
48 Education.

49 (e) "Resident school district" means the public school
50 district in which the student resides.



51 (f) "Participating school" means a nonpublic school
52 that has notified the department that it has enrolled a
53 participating student and that has agreed to comply with the
54 requirements of the program.

55 (g) "Private tutoring" means tutoring services provided
56 by tutors accredited by a regional or national accrediting
57 organization.

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

61 **SECTION 3.** (1) A parent of an eligible student shall
62 qualify to participate in the program if the parent signs an
63 agreement promising:

64 (a) To provide an organized, appropriate educational
65 program with measurable annual goals to their eligible student;
66 and

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

73 (2) The Legislature shall appropriate from the General Fund
74 sufficient funds to fund Individualized Education Funds (IEFs) for
75 participating students. Each student's IEF shall be funded at an



76 amount equivalent to the Mississippi Adequate Education Program
77 base cost plus the per pupil average of the proportionate share of
78 monies generated under state categorical aid programs.

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

82 (a) Tuition or fees at a participating school;

83 (b) Textbooks required by a participating school;

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

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

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

90 (e) Tuition or fees for a nonpublic online learning
91 program or course;

92 (f) Fees for nationally standardized norm-referenced
93 achievement tests, including alternate assessments; and fees for
94 Advanced Placement examinations or similar courses and any
95 examinations related to college or university admission;

96 (g) Educational services for students with disabilities
97 from a licensed or accredited practitioner or provider, including
98 licensed or accredited paraprofessionals or educational aides;

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



101 (i) Tuition or fees at an eligible postsecondary
102 institution;

103 (j) Textbooks required for courses at an eligible
104 postsecondary institution;

105 (k) Fees for account management by private financial
106 management firms;

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

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

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

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



125 with a receipt for all qualifying expenses at the school or
126 institution.

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

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

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

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

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



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

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

153 (1) The department shall create a standard form that parents
154 of eligible students can submit to establish their student's
155 eligibility for an Individualized Education Fund. The department
156 shall ensure that the application is readily available to
157 interested families through various sources, including the
158 Internet.

159 (2) The department shall provide parents of participating
160 students with a written explanation of the allowable uses of
161 Individualized Education Funds, the responsibilities of parents
162 and the duties of the department.

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

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

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

171 (6) If more than five hundred (500) students for whom a 504
172 accommodation plan has been issued apply for the program in any



173 one (1) year, students will be admitted on a first come-first
174 serve basis.

175 (7) The resident school district shall provide the parent of
176 a participating student with a complete copy of the student's
177 school records, while complying with the Family Educational Rights
178 and Privacy Act of 1974 (20 USCS Section 1232(g)). The record
179 shall be provided no later than thirty (30) days after a parent
180 signs an agreement to participate in the program.

181 **SECTION 5.** (1) To ensure that funds are spent
182 appropriately, the department shall adopt rules and policies
183 necessary for the administration of the program, including the
184 authority to conduct or contract for the auditing of funds, and
185 shall, at a minimum, conduct or contract for random audits of
186 Individualized Education Funds on both a quarterly and an annual
187 basis.

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

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

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

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



197 (6) The department shall remove any parent and their
198 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 any information or make any report that may be
211 required for reinstatement within the twenty-one-day period, the
212 department may remove the parent and their participating student
213 from the program, pursuant to this subsection.

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

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

219 **SECTION 6. Student Performance Standards and Program**

220 **Evaluation.** (1) The Joint Legislative Committee on Performance
221 Evaluation and Expenditure Review (PEER) shall prepare a biannual



222 report, beginning in 2018 and every two (2) years thereafter,
223 assessing the sufficiency of funding for Individualized Education
224 Funds and any suggested changes in state law or policy necessary
225 to improve the program.

226 (2) The report shall assess:

227 (a) The level of participating students' satisfaction
228 with the program;

229 (b) The level of parental satisfaction with the
230 program;

231 (c) The percentage of participating students who were
232 victimized because of their special needs status at their resident
233 school district compared with the percentage so victimized at
234 their participating school;

235 (d) The percentage of participating students who
236 exhibited behavioral problems at their resident school district
237 compared with the percentage exhibiting behavioral problems at
238 their participating school;

239 (e) The class size experienced by participating
240 students at their resident school district and at their
241 participating school;

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



245 (g) Student performance on Advanced Placement
246 examinations or similar courses and any examinations related to
247 college or university admission;

248 (h) The high school graduation rates and college
249 acceptance rates of participating students;

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

252 (j) The fiscal impact to the state and resident school
253 districts of the program;

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

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

259 (4) The study shall:

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

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

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



269 (5) PEER must make its data and methodology available for
270 public review while complying with the requirements of the Family
271 Educational Rights and Privacy Act (20 USCS Section 1232(g)).

272 **SECTION 7. Responsibilities of Participating Schools.**

273 (1) To ensure that students are treated fairly and kept
274 safe, all participating schools shall:

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

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

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

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

283 (e) Conduct criminal background checks on employees.

284 The participating school then shall:

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

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

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

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

292 (a) The Department or any other state agency may not in
293 any way regulate the educational program of a participating



294 nonpublic school or education provider that accepts funds from the
295 parent of a participating student;

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

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

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

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

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

