

By: Representatives Crawford, Aldridge

To: Education

HOUSE BILL NO. 765  
(As Passed the House)

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



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

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

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

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

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

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

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



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

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

80 (b) Textbooks required by a participating school;

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

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

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

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

89 (g) Fees for nationally standardized norm-referenced  
90 achievement tests, including alternate assessments; and fees for  
91 Advanced Placement examinations or similar courses and any  
92 examinations related to college or university admission;

93 (h) Educational services for students with disabilities  
94 from a licensed or accredited practitioner or provider, including  
95 licensed or accredited paraprofessionals or educational aides;

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

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



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

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

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

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

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

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



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

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

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

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

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

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

148 (1) The department shall create a standard form that parents  
149 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



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

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

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

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 may 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 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,



224 assessing the sufficiency of funding for Individualized Education  
225 Funds and any suggested changes in state law or policy necessary  
226 to improve the program.

227 (2) The report shall assess:

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

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

232 (c) The percentage of participating students who  
233 exhibited behavioral problems at their resident school district  
234 compared with the percentage exhibiting behavioral problems at  
235 their participating school;

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

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

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

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

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



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

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

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

256 (4) The study shall:

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

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

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

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

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

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

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



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

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

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

280 (e) Conduct criminal background checks on employees.

281 The participating school then shall:

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

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

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

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

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

293 (b) The creation of The Individualized Education Fund  
294 Program does not expand the regulatory authority of the state, its  
295 officers, or any school district to impose any additional  
296 regulation of nonpublic schools or education providers beyond  
297 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 June 30, 2014, and shall stand repealed on July 1, 2014.

