

By: Senator(s) Collins, Gollott, McDaniel,
Watson

To: Education;
Appropriations

SENATE BILL NO. 2325
(As Passed the Senate)

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 STUDENT'S 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 two thousand five
34 hundred (2,500) students with a 504 accommodation may annually
35 enroll in the 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 (f) Tuition or fees for a nonpublic online learning
91 program or course;

92 (g) 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 (h) Contributions to a Coverdell Education Savings
97 Account established pursuant to 26 USCS Section 530 for the
98 benefit of the participating student, except that money used for
99 elementary or secondary education expenses must be for expenses
100 otherwise allowed under this section;



101 (i) Educational services for students with disabilities
102 from a licensed or accredited practitioner or provider, including
103 licensed or accredited paraprofessionals or educational aides;

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

106 (k) Tuition or fees at an eligible postsecondary
107 institution;

108 (l) Textbooks required for courses at an eligible
109 postsecondary institution;

110 (m) Fees for account management by private financial
111 management firms;

112 (n) Insurance or surety bond payments as required by
113 the department;

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

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

123 (4) A school, private tutor, eligible postsecondary
124 institution or other educational provider that serves a
125 participating student may not refund, rebate, or share money from



126 an IEF with a parent or participating student in any manner. The
127 funds in an IEF may only be used for educational purposes.
128 Participating schools, postsecondary institutions and education
129 providers that enroll participating students shall provide parents
130 with a receipt for all qualifying expenses at the school or
131 institution.

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

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

140 (7) A participating student shall immediately be removed
141 from the count in the enrollment figures for his or her resident
142 school district for the purposes of calculating state aid to the
143 resident school district.

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

149 (9) Upon the participating student's graduation from a
150 postsecondary institution or after any period of four (4)



151 consecutive years after high school graduation in which the
152 student is not enrolled in an eligible postsecondary institution,
153 the participating student's Individualized Education Fund shall be
154 closed and any remaining funds shall be returned to the state's
155 General Fund.

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

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

160 (1) The department shall create a standard form that parents of
161 eligible students can submit to establish their student's
162 eligibility for an Individualized Education Fund. The department
163 shall ensure that the application is readily available to
164 interested families through various sources, including the
165 Internet.

166 (2) The department shall provide parents of participating
167 students with a written explanation of the allowable uses of
168 Individualized Education Funds, the responsibilities of parents
169 and the duties of the department.

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

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



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

178 (6) If more than two thousand five hundred (2,500) students
179 for whom a 504 accommodation plan has been issued apply for the
180 program in any one (1) year, the department shall conduct a
181 lottery to determine which students may enroll in the program that
182 year.

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

189 **SECTION 5.** (1) To ensure that funds are spent
190 appropriately, the department shall adopt rules and policies
191 necessary for the administration of the program, including the
192 authority to conduct or contract for the auditing of accounts, and
193 shall, at a minimum, conduct or contract for random audits of
194 Individualized Education Funds on both a quarterly and an annual
195 basis.

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

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



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

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

205 (6) The department shall remove any parent and their
206 participating student from the program if the parent fails to
207 comply with the terms of the agreement, applicable laws, rules or
208 orders or for knowingly misusing funds or knowingly failing to
209 comply with the terms of the agreement with intent to defraud.

210 (a) If the department determines a parent has failed to
211 comply with the terms of the agreement, the department shall
212 notify the parent in writing that the Individualized Education
213 Fund has been suspended and that no further transactions will be
214 allowed or disbursements made. The notification shall specify the
215 reason for the suspension and state that the parent has (10) ten
216 business days to respond and take corrective action.

217 (b) If the parent refuses or fails to contact the
218 department, furnish any information or make any report that may be
219 required for reinstatement within the ten-day period, the
220 department may remove the parent and their participating student
221 from the program, pursuant to this subsection.

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



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

227 **SECTION 6. Student performance standards and program**

228 **evaluation.** (1) The Joint Legislative Committee on Performance
229 Evaluation and Expenditure Review (PEER) shall prepare a biannual
230 report, beginning in 2018 and every two (2) years thereafter,
231 assessing the sufficiency of funding for Individualized Education
232 Funds and any suggested changes in state law or policy necessary
233 to improve the program.

234 (2) The report shall assess:

235 (a) The level of participating students' satisfaction
236 with the program;

237 (b) The level of parental satisfaction with the
238 program;

239 (c) The percentage of participating students who were
240 victimized because of their special needs status at their resident
241 school district compared with the percentage so victimized at
242 their participating school;

243 (d) The percentage of participating students who
244 exhibited behavioral problems at their resident school district
245 compared with the percentage exhibiting behavioral problems at
246 their participating school;



247 (e) The class size experienced by participating
248 students at their resident school district and at their
249 participating school;

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

253 (g) Student performance on Advanced Placement
254 examinations or similar courses and any examinations related to
255 college or university admission;

256 (h) The high school graduation rates and college
257 acceptance rates of participating students;

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

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

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

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

267 (4) The study shall:

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

270 (b) Protect the identity of participating students and
271 schools by, among other things, keeping anonymous all



272 disaggregated data other than that for the categories of grade
273 level, gender, and race and ethnicity; and

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

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

280 **SECTION 7. Responsibilities of Participating Schools.** (1)

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

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

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

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

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

291 (e) Conduct criminal background checks on employees.

292 The participating school then shall:

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

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



297 **SECTION 8. Autonomy of Participating Schools.** (1) A
298 participating nonpublic school is autonomous and not an agent of
299 the state or federal government and therefore:

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

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

309 (c) Participating nonpublic schools and education
310 providers shall be given the maximum freedom to provide for the
311 educational needs of their students without governmental control.
312 No participating nonpublic school and education provider shall be
313 required to alter its creed, practices, admissions policies or
314 curriculum in order to accept participating students; and

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

319 **SECTION 9.** If any provision of this law or its application
320 is held invalid, the invalidity does not affect other provisions
321 or applications of this law which can be given effect without the



322 invalid provision or application and to this end the provisions of
323 this law are severable.

324 **SECTION 10.** This act shall take effect and be in force from
325 and after July 1, 2014, and stand repealed from and after June 30,
326 2014.

