

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 765: The Equal Opportunity for All Students with Special Needs Act; create to establish IEFs for certain students.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

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

23 (a) "Program" means a pilot program to implement the
24 Individualized Education Fund (IEF) Program created in this act.

25 (b) "Eligible student" means any student who at the
26 time the request for participation in the program is received by
27 the State Department of Education has:

28 (i) An Individualized Education Program (IEP).

29 (ii) And who meets any of the following
30 requirements:



31 1. Attended a Mississippi public school for
32 at least four (4) months during the previous school year or the
33 school year in which the application for participation is
34 submitted to the department; or.

35 2. Will be eligible in the following school
36 year to attend a Mississippi elementary school for the first time.

37 No student with a Section 504 accommodation under the
38 Rehabilitation Act of 1973 shall be eligible to enroll in the
39 program, unless he has an Individualized Education Program.

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

43 (d) "Department" means the Mississippi Department of
44 Education.

45 (e) "Resident school district" means the public school
46 district in which the student resides.

47 (f) "Participating school" means a nonpublic school
48 that has enrolled a participating student and that has agreed to
49 comply with the requirements of the program as specified in
50 Section 8 of this act. A participating school must be accredited
51 by a state or regional accrediting agency or possess a provisional
52 letter of accreditation from a state or regional accrediting
53 agency or be approved/licensed by the State Department of
54 Education. A participating school does not include a home



55 instruction program under Section 37-13-91, Mississippi Code of
56 1972.

57 (g) "Tutor" means a person who is certified or licensed
58 by a state, regional or national certification or licensing
59 organization or who holds a valid teacher's license or who serves
60 on the faculty of an eligible postsecondary institution.

61 (h) "Eligible postsecondary institution" means a
62 community college, college or university accredited by a state,
63 regional or national accrediting organization.

64 (i) "Education service provider" means a school, tutor,
65 or other person or organization which is permitted under this act
66 to provide products and services to eligible students.

67 **SECTION 3.** (1) An eligible student shall qualify to
68 participate in the program if the parent signs an agreement
69 promising:

70 (a) To provide an organized, appropriate educational
71 program with measurable annual goals to their eligible student
72 and, to the extent appropriate as determined by the parent, to
73 provide an education for the qualified student in at least the
74 subjects of reading, grammar, mathematics, social studies and
75 science;

76 (b) Not to enroll their eligible student in a public
77 school and to release the resident school district from all
78 obligations to educate the student as long as the student is not
79 enrolled in a public school. Participation in the program shall



80 have the same effect as a parental refusal to receipt of consent
81 to service under 20 USC Sections 614(a)(1), 1414(a)(1)(D) and
82 1414(C) of the IDEA;

83 (c) Not to file for their eligible student a
84 certificate of enrollment indicating participation in a home
85 instruction program under Section 37-13-91, Mississippi Code of
86 1972; and

87 (d) To document their child's disability at intervals
88 and in a manner required under subsection (8) of this section.

89 Participating parents shall be allowed to return their
90 students to the resident public school at any time after enrolling
91 in the program, in compliance with regulations adopted by the
92 department providing for the least disruptive process.

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

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

97 (b) Textbooks required by a participating school;

98 (c) Payment to a tutor;

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

101 (e) Fees for transportation to and from a participating
102 school or education service provider paid to a fee-for-service
103 transportation provider;



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

106 (g) Fees for nationally standardized norm-referenced
107 achievement tests, including alternate assessments; and fees for
108 Advanced Placement examinations or similar courses and any
109 examinations related to college or university admission;

110 (h) Educational therapies or services from a licensed
111 or certified practitioner or provider, including licensed or
112 certified paraprofessionals or educational aides;

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

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

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

119 (l) Surety bond payments if required by the department;

120 (m) No more than Fifty Dollars (\$50.00) in annual
121 consumable school supplies necessary for educational services and
122 therapies, daily classroom activities and tutoring; or

123 (n) Computer hardware and software and other
124 technological devices if a participating school, licensed or
125 certified tutor, licensed or accredited educational services
126 practitioner or provider, or licensed medical professional
127 verifies in writing that these items are essential for the student
128 to meet annual, measurable goals. Once a student is no longer



129 eligible for the program, computer hardware and software and other
130 technological devices purchased with IEF funds shall be donated to
131 a nonprofit organization with expertise and training in working
132 with parents to educate children with disabilities.

133 (3) Neither a participating student, nor anyone on the
134 student's behalf, may receive cash or cash-equivalent items, such
135 as gift cards or store credit, from any refunds or rebates from
136 any provider of products or services in this program. Any refunds
137 or rebates shall be credited directly to the participating
138 student's IEF. The funds in an IEF may only be used for
139 educational purposes. Participating schools, postsecondary
140 institutions and education providers that enroll participating
141 students shall provide parents with a receipt for all qualifying
142 expenses at the school or institution.

143 (4) Payment for educational services through an IEF shall
144 not preclude parents from paying for educational services using
145 non-IEF funds.

146 (5) For purposes of continuity of educational attainment,
147 students who enroll in the program shall remain eligible to
148 receive quarterly IEF payments until the participating student
149 returns to a public school, graduates from high school, receives a
150 certificate of completion or occupational diploma, completes the
151 school year in which the student reaches the age of twenty-one
152 (21), or does not have eligibility verified by a parent as



153 required under subsection (8) of this section, whichever occurs
154 first.

155 (6) Any funds remaining in a student's Individualized
156 Education Fund upon graduation from high school, or receipt of a
157 certificate of completion or occupational diploma, may be used to
158 attend or take courses from an eligible postsecondary institution,
159 with qualifying expenses subject to the applicable conditions
160 stipulated in Section 3(2) of this act.

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

168 (8) Every five (5) years after enrollment in the program, a
169 parent of a participating student, except a student who is
170 diagnosed by a licensed physician as being a person with a
171 permanent disability, shall document that the student continues to
172 be identified by the school district, federal or state agency, or
173 licensed physician as a child with a disability. The parent may
174 contract with an independent third party for the purpose of
175 determining continued eligibility of the student.



176 (9) The department shall begin accepting applications for
177 the program on June 1, 2014, with funding to be available
178 beginning in the 2014-2015 school year.

179 **SECTION 4.** (1) The IEF program created in this act shall be
180 limited to five hundred (500) IEP students in the school years
181 2014-2015 and 2015-2016, limited to six hundred (600) IEP students
182 in the school years 2016-2017 and 2017-2018, and limited to seven
183 hundred (700) students in the school year 2018-2019 and school
184 years thereafter. Subject to appropriation from the General Fund
185 each student's IEF shall be funded at Six Thousand Dollars
186 (\$6,000.00) for school year 2014-2015. For each subsequent year,
187 this amount shall increase or decrease by the same proportion as
188 the base student cost under Section 37-151-7(1)(b) is increased or
189 decreased.

190 (2) Subject to appropriation, students shall be approved for
191 participation in the program as follows:

192 (a) Until participation in the program reaches fifty
193 percent (50%) of the enrollment limits in subsection (1) of this
194 section, students shall be approved on a first-come, first-served
195 basis, with the department reviewing applications on a rolling
196 basis.

197 (b) After participation reaches fifty percent (50%) of
198 the enrollment limits in subsection (1) of this section, the
199 department shall set annual application deadlines for the
200 remaining number of available IEFs. If the number of eligible



201 students who apply for the program exceeds the remaining number of
202 IEFs available, the department shall fill the available spaces
203 using a random selection process.

204 (c) Participating students who remain eligible for the
205 program are automatically approved for participation for the
206 following year and are not subject to the lottery.

207 (3) No funds for an IEF may be expended from the Mississippi
208 Adequate Education Program, nor shall any school district be
209 required to provide funding for an IEF.

210 **SECTION 5. Administration of Individualized Education Funds.**

211 (1) The department shall create a standard form that parents of
212 eligible students submit to establish their student's eligibility
213 for an Individualized Education Fund. The department shall ensure
214 that the application is readily available to interested families
215 through various sources, including the department's website.

216 (2) The department shall provide parents of participating
217 students with a written explanation of the allowable uses of
218 Individualized Education Funds, the responsibilities of parents,
219 procedural safeguards and the duties of the department. This
220 information shall also be made available on the department's
221 website.

222 (3) Beginning June 1, 2014, the department shall annually
223 notify all students with an IEP of the existence of the program
224 and shall ensure that lower-income families are made aware of



225 their potential eligibility, using the last-known address of the
226 parent.

227 (4) The Mississippi Department of Education shall promulgate
228 rules to:

229 (a) Provide and administer any available federal
230 funding to create IDEA training programs for parents, teachers,
231 students and school administrators in public schools.

232 (b) Provide to school districts any available federal
233 funding for appropriate evaluation and training programs for
234 students and teachers regarding assistive technology, durable
235 goods, software and other appropriate services and items
236 available.

237 (5) The department may deduct an amount up to a limit of
238 three and one-half percent (3-1/2%) from appropriations used to
239 fund Individualized Education Funds to cover the costs of
240 overseeing the funds and administering the program.

241 (6) The department shall make payments to participating
242 students' Individualized Education Funds on a quarterly basis,
243 unless there is evidence of misuse of the fund pursuant to Section
244 7 of this act.

245 (7) The department shall make a determination of
246 eligibility, and shall approve the application, within twenty-one
247 (21) business days of receiving an application for participation
248 in the program, subject to the provisions of Section 4(2) of this
249 act.



250 (8) The resident school district shall provide the parent of
251 a participating student with a complete copy of the student's
252 school records, while complying with the Family Educational Rights
253 and Privacy Act of 1974 (20 USC Section 1232(g)). The record
254 shall be provided no later than thirty (30) days after a parent
255 signs an agreement to participate in the program.

256 **SECTION 6. IEF procurement cards; misuse of funds.** (1) To
257 ensure that funds are spent appropriately, the State Department of
258 Education shall adopt rules and policies necessary for the
259 administration of the program, including the auditing of
260 Individualized Education Funds, and shall, at a minimum, conduct
261 or contract for audits of every IEF on an annual basis and random
262 audits throughout the year.

263 (2) Effective with the 2014-2015 school year, the State
264 Department of Education shall issue IEF procurement cards provided
265 by the Department of Finance and Administration similar to the
266 program authorized under Section 31-7-9(1)(c) for the use of
267 parents in making expenditures under this act. Procurement cards
268 shall be issued to parents upon entry to the program and shall
269 expire when the participating student's Individualized Education
270 Fund is closed, except for the periodic expiration and replacement
271 of cards in the normal course of business. All unexpended amounts
272 will remain in the student's IEF, combined with the following
273 year's allocation of IEF Funds, subject to Sections 3(5) and 3(7).



274 (3) The Department of Finance and Administration may deduct
275 an amount up to a limit of one-half percent (1/2%) from
276 appropriations used to fund Individualized Education Funds to
277 cover the costs of providing IEF procurement cards.

278 (4) The department shall use Merchant Category Codes (MCC
279 Codes), or a similar system as practicable and consistent with
280 current technology, to identify categories of education service
281 providers that provide products and services consistent with
282 Section 3(2) of this act. Classification Codes must first be
283 unlocked by the department before IEF funds may be spent with an
284 education service provider that has that Code. The department
285 shall adopt a process for removing education service providers
286 that defraud parents and referring cases of fraud to law
287 enforcement.

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

290 (6) The department shall establish or contract for the
291 establishment of an anonymous telephone hotline for fraud
292 reporting.

293 (7) The department shall use qualified private financial
294 management firms authorized by the Department of Finance and
295 Administration to manage Individualized Education Funds.

296 (8) The department may require a surety bond or similar
297 financial instrument for parents who participate in the program,



298 to the extent such products are available for purchase at a
299 minimal cost.

300 (9) The department shall promulgate regulations implementing
301 a policy on misspending of IEF funds. Any amount not spent in the
302 allowable categories pursuant to the agreement will:

303 (a) Cause the IEF card to be temporarily suspended and
304 the holder contacted through the mail explaining the suspension,
305 detailing the violation and requesting the holder to:

306 (i) Repay the misspent amount within fifteen (15)
307 business days; or

308 (ii) Provide additional documentation justifying
309 the expenditure.

310 (b) If the parent does not provide sufficient
311 documentation or refuses to repay the amount, the department shall
312 begin the removal process and shall seek administrative measures
313 to recover the misspent funds which may include referral to
314 collections, seeking a civil judgment or referral to the District
315 Attorney's office.

316 (c) If the holder repays the amount within the
317 requested timeframe then "one (1) offense" will be recorded and
318 held in the holder's file.

319 (d) Three (3) offenses shall disqualify the parent from
320 participation in the program.

321 (e) If the department determines a parent has failed to
322 comply with other terms of the agreement, the department shall



323 suspend that student's IEF. The department shall notify the
324 parent in writing that the Individualized Education Fund has been
325 suspended and that no further transactions will be allowed or
326 disbursements made. The notification shall specify the reason for
327 the suspension and state that the parent has twenty-one (21)
328 business days to respond and take corrective action.

329 (f) If the parent refuses or fails to contact the
330 department, furnish reasonable and necessary information or make a
331 report that may be required for reinstatement within the
332 twenty-one-day period, the department may remove the parent and
333 their participating student(s) from the program.

334 (g) A parent may appeal the department's decision to
335 the circuit court in the county in which the student resides.

336 (h) The department shall refer cases of substantial
337 misuse of funds to law enforcement agencies for investigation if
338 evidence of fraudulent use of an IEF is obtained.

339 **SECTION 7. Student performance standards and program**

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

346 (2) The report shall assess:



347 (a) The level of participating students' satisfaction
348 with the program;

349 (b) The level of parental satisfaction with the
350 program;

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

354 (d) Student performance on Advanced Placement
355 examinations or similar courses and any examinations related to
356 college or university admission;

357 (e) The high school graduation rates and college
358 acceptance rates of participating students;

359 (f) The percentage of funds used for each qualifying
360 expense identified in Section 3(2) of this act;

361 (g) The fiscal impact to the state and resident school
362 districts of the program, which must consider both the impact on
363 revenue and the impact on expenses. Furthermore, the fiscal
364 savings associated with students departing public schools must be
365 explicitly quantified, even if the public school losing the
366 student(s) does not reduce its spending accordingly; and

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

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



372 (4) The study shall:

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

375 (b) Protect the identity of participating students and
376 schools by, among other things, keeping anonymous all
377 disaggregated data; and

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

381 (5) PEER must make its data and methodology available for
382 public review while complying with the requirements of the Family
383 Educational Rights and Privacy Act (20 USC Section 1232(g)).

384 **SECTION 8. Responsibilities of participating schools.** To
385 ensure that students are treated fairly and kept safe, all
386 participating schools shall:

387 (a) Comply with the nondiscrimination policies set
388 forth in 42 USC 1981;

389 (b) Prior to the parent's application for enrollment in
390 a participating school, provide parents with details of the
391 school's programs, qualifications, experience, and capacities to
392 serve children with special needs;

393 (c) Enroll any participating student who otherwise
394 meets the school's admission requirements, subject to space
395 limitations, who has disabilities for which the school has the
396 programs, qualifications, experience, and capacities to serve;



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

399 (e) Hold a valid occupancy permit if required by their
400 municipality;

401 (f) Have a satisfactory audit and have no public record
402 of fraud or malfeasance;

403 (g) Offer participating students the option of taking a
404 nationally standardized norm referenced achievement test;

405 (h) Conduct criminal background checks on employees.

406 The participating school then shall:

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

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

411 **SECTION 9. Autonomy of participating schools.** (1) A

412 participating nonpublic school is autonomous and not an agent of
413 the state or federal government and therefore:

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

418 (b) The creation of the Individualized Education Fund
419 Program does not expand the regulatory authority of the state, its
420 officers, or any school district to impose any additional



421 regulation of nonpublic schools or education providers beyond
422 those necessary to enforce the requirements of the program;

423 (c) Participating nonpublic schools and education
424 providers shall be given the maximum freedom to provide for the
425 educational needs of their students without governmental control.
426 No participating nonpublic school or education provider shall be
427 required to alter its creed, practices, admission policies or
428 curriculum in order to accept participating students.

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

433 **SECTION 10.** The Mississippi Department of Education may
434 receive and expend contributions from any public or private source
435 for the administration of the IEF program.

436 **SECTION 11.** If any provision of this law or its application
437 is held invalid, the invalidity does not affect other provisions
438 or applications of this law which can be given effect without the
439 invalid provision or application and to this end the provisions of
440 this law are severable.

441 **SECTION 12.** This act shall take effect and be in force from
442 and after its passage, and shall stand repealed as of June 30,
443 2017.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**



1 AN ACT TO CREATE THE EQUAL OPPORTUNITY FOR 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 ON A PHASED-IN BASIS; TO PRESCRIBE THE CRITERIA FOR
5 DETERMINING ELIGIBILITY FOR PARTICIPATION IN THE PROGRAM AND
6 RECEIPT OF PROGRAM FUNDS; TO PROVIDE FOR THE FUNDING OF EACH
7 STUDENT'S IEF; TO STIPULATE THE OBLIGATIONS OF PARENTS OR LEGAL
8 GUARDIANS, STUDENTS AND SCHOOLS TO BECOME AND REMAIN ELIGIBLE FOR
9 PARTICIPATION; TO PRESCRIBE THE DUTIES OF THE DEPARTMENT OF
10 EDUCATION REGARDING THE ADMINISTRATION OF THE FUNDS; TO PROVIDE
11 FOR THE ISSUANCE OF IEF PROCUREMENT CARDS; TO REQUIRE PEER TO
12 PREPARE A BIENNIAL REPORT ON THE SUFFICIENCY OF FUNDING FOR IEFS
13 AND STUDENT PERFORMANCE AND ASSESSMENT EVALUATION BEGINNING IN
14 2018 AND EVERY TWO YEARS THEREAFTER; TO PROVIDE FOR THE
15 ADMINISTRATIVE, FINANCIAL AND ACADEMIC ACCOUNTABILITY STANDARDS TO
16 BE ADHERED TO BY PARTICIPATING SCHOOLS; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

X (SIGNED)
Moore

X (SIGNED)
Crawford

X (SIGNED)
Currie

CONFEREES FOR THE SENATE

X (SIGNED)
Tollison

X (SIGNED)
Collins

X (SIGNED)
Polk

