

By: Senator(s) Thames, Nunnelee

To: Education

SENATE BILL NO. 2506

1 AN ACT RELATING TO THE EDUCATION OF EXCEPTIONAL CHILDREN; TO
2 ESTABLISH THE POLICY OF THE STATE OF MISSISSIPPI RELATIVE TO THE
3 PROVISION OF A FREE APPROPRIATE PUBLICLY SUPPORTED EDUCATION TO
4 EVERY CHILD WITH SPECIAL NEEDS IN CONFORMITY WITH THE FEDERAL
5 INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA); TO PROVIDE
6 DEFINITIONS; TO PROVIDE ELIGIBILITY STANDARDS; TO PROVIDE FOR
7 PARENTAL CONSENT, NOTICE, PARTICIPATION AND MEETINGS WITH SCHOOL
8 OFFICIALS; TO PRESCRIBE EVALUATION PROCEDURES; TO PROVIDE FOR
9 MEDIATION; TO PROVIDE FOR DUE PROCESS HEARINGS; TO PROVIDE
10 COMPLAINT PROCEDURES; TO AUTHORIZE THE WITHHOLDING OF FUNDS FROM
11 NONCOMPLYING SCHOOL DISTRICTS; TO ESTABLISH AND EMPOWER AN
12 ADVISORY COMMITTEE FOR THE EDUCATION OF STUDENTS WITH
13 DISABILITIES; TO AMEND SECTION 37-16-9, MISSISSIPPI CODE OF 1972,
14 TO DIRECT ACCOMMODATIONS FOR DISABLED STUDENTS IN TAKING THE
15 FUNCTIONAL LITERACY EXAMINATION; TO AMEND SECTIONS 37-23-1 THROUGH
16 37-23-11, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR
17 RELATED PURPOSES.

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

19 SECTION 1. (1) The Mississippi Legislature hereby declares
20 that the policy of the state is to ensure every child a fair and
21 full opportunity to reach his/her full potential and that no child
22 as defined in this section shall be excluded from service or
23 education for any reason whatsoever. This policy shall be the
24 practice of the state for children from birth through age
25 twenty-one (21) and the state requires compliance by all public
26 and private agencies providing publicly funded educational
27 programs and services to children with special needs.

28 (2) The policy of the state is to provide a free appropriate
29 publicly supported education to every child with special needs.
30 The purpose of the act is to:

31 (a) Provide for a system of special educational
32 opportunities for all children requiring special education,
33 hereinafter called children with special needs;

- 34 (b) Provide a system for identifying and evaluating the
35 educational needs of all children with special needs;
- 36 (c) Require evaluation of the needs of such children
37 and the adequacy of special education programs before placing
38 children in the programs;
- 39 (d) Require periodic evaluation of the benefits of the
40 programs to the children and of the nature of the children's needs
41 after placement;
- 42 (e) Require that children with special needs are
43 educated in the least restrictive environment;
- 44 (f) Assure the provision of related services;
- 45 (g) Assure that the rights of children with special
46 needs and their parents or guardians are protected;
- 47 (h) Require local education agencies to establish a
48 policy regarding the programs and services provided to students
49 below the age of three (3) and above the age of twenty-one (21);
- 50 (i) Require each local school district to provide
51 information regarding services available through other state,
52 county and local agencies to parents of children with special
53 needs below the age of three (3);
- 54 (j) Require special education programs and related
55 services to be administered, supervised and provided by
56 appropriately certified professional staff members;
- 57 (k) Require special education programs be located in
58 facilities that are accessible to the disabled;
- 59 (l) Require local education agencies to assure that the
60 hearing aids worn by children who are deaf or hearing impaired are
61 functioning properly;
- 62 (m) Assure provisions for day schools for the deaf and
63 blind of an age under six (6) years, where early training is in
64 accordance with the most advanced and best approved scientific
65 methods of instruction, always taking into consideration the best
66 interests of the child and his improvement at a time which he/she

67 is most susceptible of improvement;

68 (n) Prevent denials of equal educational opportunity on
69 the basis of physical, emotional or mental disability;

70 (o) Ensure that there be no inadequacies, inequities
71 and discrimination with respect to children with special needs;
72 and

73 (p) Bring state law, regulations and practice into
74 conformity with relevant federal law.

75 SECTION 2. Words and terms, unless otherwise defined below,
76 when used in this act, shall be defined in the same manner as
77 those words and terms used in the federal Individuals with
78 Disabilities Education Act (IDEA):

79 (a) "Adaptive behavior" means the ability to
80 demonstrate personal independence and social responsibility
81 according to age and socio-cultural group expectations.

82 (b) "Adult student" means an emancipated minor or a
83 person age eighteen (18) through twenty-one (21) who is or was
84 enrolled in the public school and who is not under legal
85 guardianship.

86 (c) "Assistive technology device" means any item, piece
87 of equipment or product system, whether acquired commercially off
88 the shelf, modified or customized, that is used to increase,
89 maintain or improve the functional capabilities of children with
90 disabilities.

91 (d) "Assistive technology service" means any service
92 that directly assists a student with a disability in the
93 selection, acquisition or use of an assistive technology device.
94 The term includes:

95 (i) The evaluation of the needs of a student with
96 a disability, including a functional evaluation of the student in
97 his or her customary environment;

98 (ii) Purchasing, leasing or otherwise providing
99 for the acquisition of assistive technology devices by students

100 with disabilities;

101 (iii) Selecting, designing, fitting, customizing,
102 adapting, applying, maintaining, repairing or replacing assistive
103 devices;

104 (iv) Coordinating and using other therapies,
105 interventions or services with assistive technology devices, such
106 as those associated with existing education and rehabilitation
107 plans and programs;

108 (v) Training or technical assistance for a student
109 with a disability or, if appropriate, that student's family; and

110 (vi) Training or technical assistance for
111 professionals (including individuals providing education or
112 rehabilitation services), employers or other individuals who may
113 provide services to, employ, or are otherwise substantially
114 involved in the major life functions of students with
115 disabilities.

116 (e) "Consent" means agreement in writing which is
117 required by this act. Consent shall be obtained from the parent
118 having legal responsibility for educational decision making or the
119 adult student. The district board of education shall ensure that
120 the parent or adult student:

121 (i) Has been fully informed of all information
122 relevant to the activity for which consent is being sought, in his
123 or her native language or other mode of communication;

124 (ii) Understands and agrees in writing to the
125 implementation of the activity; and

126 (iii) Understands that the granting of consent is
127 voluntary and may be revoked at any time.

128 (f) "Department" means the State Department of
129 Education.

130 (g) "District board of education" means the local
131 school board of the school district of residence, the board of
132 trustees of a charter school, the state agency or other public

133 education agency which acts as the district of residence for the
134 location, identification, evaluation, determination of
135 eligibility, development of an individualized education program
136 and the provision of a free appropriate, public education to
137 students with disabilities except as defined otherwise.

138 (h) "Individualized education program" or "IEP" means a
139 written plan developed at a meeting which sets forth present
140 levels of performance, measurable annual goals and short-term
141 objectives or benchmarks and describes an integrated, sequential
142 program of individually designed instructional activities and
143 related services necessary to achieve the stated goals and
144 objectives. This plan shall establish the rationale for the
145 student's educational placement, serve as the basis for program
146 implementation and comply with the mandates set forth in this act.

147 (i) "IEP team" means the group of individuals who are
148 responsible for the development, review and revision of the
149 student's individualized educational program.

150 (j) "Native language" means the language or mode of
151 communication normally used by a person with a limited ability to
152 speak or understand the English language.

153 (k) "Parent" means the natural parent, the legal
154 guardian, foster parent, surrogate parent, person acting in the
155 place of a parent such as the person with whom the student legally
156 resides and/or a person legally responsible for the student's
157 welfare. Unless parental rights have been terminated by a court
158 of appropriate jurisdiction, the natural parent retains all rights
159 under this act.

160 (l) "Recreation" for students with disabilities means
161 instruction to enable the student to participate in appropriate
162 leisure activities, including involvement in recreation programs
163 offered by the district board of education and the facilitation of
164 a student's involvement in appropriate community recreation
165 programs.

166 (m) "Referral" means the written request for an initial
167 evaluation to determine whether a student is eligible for
168 services.

169 (n) "Related services" means transportation and such
170 developmental, corrective and other supportive services as are
171 required to assist a student with a disability to benefit from
172 special education as specified in the student's IEP, and includes
173 speech-language pathology and audiology services, psychological
174 services, physical and occupational therapy, recreation, early
175 identification and assessment of disabilities in children,
176 counseling services including rehabilitation counseling,
177 orientation and mobility services, and medical services for
178 diagnostic or evaluation purposes. The term also includes school
179 nursing services, social work services in schools and parent
180 counseling and training that is related to the education of the
181 student.

182 (o) "Special education" means specially designed
183 instruction to meet the educational needs of students with
184 disabilities including, but not limited to, subject matter
185 instruction, physical education and vocational training.

186 (p) "Speech-language specialist" means a speech
187 correctionist or speech-language specialist.

188 (q) "Student" means a person age three (3) through
189 twenty-one (21) who is entitled to receive educational programs
190 and services in accordance with federal or state law or
191 regulation.

192 (r) "Student age" means the school age of a student as
193 defined by the following:

194 (i) "Age three (3)" means the attainment of the
195 third birthday. Children attaining age three (3) shall have a
196 free, appropriate public education available to them provided by
197 the district board of education.

198 (ii) "Age five (5)" means the attainment of age

199 five (5) by the month and day established as the kindergarten
200 entrance cutoff date by the district board of education. Students
201 with disabilities attaining age five (5) after the kindergarten
202 entrance cutoff date shall continue to be provided preschool
203 services for the balance of that school year.

204 (iii) "Age twenty-one (21)" means the attainment
205 of the 21st birthday by June 30 of that school year. Students
206 with disabilities attaining age twenty-one (21) during the school
207 year shall continue to be provided services for the balance of
208 that school year.

209 (s) "Student with a disability" means a student who has
210 been determined to be eligible for special education and related
211 services according to the federal Individuals with Disabilities
212 Education Act (IDEA).

213 (t) "Transition services" means a coordinated set of
214 activities for a student, designed within an outcome-oriented
215 process, that promotes movement from school to post-school
216 activities, including post-secondary education, vocational
217 training, integrated employment (including supported employment),
218 continuing and adult education, adult services, independent living
219 or community participation.

220 SECTION 3. (1) For the purposes of this section, each
221 district board of education and state agency program that acts as
222 a district of residence is eligible for assistance under IDEA Part
223 B for a fiscal year by having a special education plan in effect
224 that is approved by the State Department of Education. The plan
225 shall consist of policies, procedures, assurances; a comprehensive
226 system of personnel development; data collection and an
227 application that describes the use of the Part B funds. Such
228 components of the plan shall be consistent with the approved State
229 Plan for Special Education and this act.

230 (2) Each district board of education shall have policies,
231 procedures and programs in effect to ensure the following:

232 (a) A free appropriate public education is available to
233 all students with disabilities between the ages of three (3) and
234 twenty-one (21), including students with disabilities that have
235 been suspended or expelled from school;

236 (b) Full educational opportunity to all students with
237 disabilities is provided;

238 (c) All students with disabilities, who are in need of
239 special education and related services, including students with
240 disabilities attending nonpublic schools, regardless of the
241 severity of their disabilities, are located, identified and
242 evaluated.

243 (d) An individualized education program is developed,
244 reviewed and as appropriate, revised.

245 (e) To the maximum extent appropriate students with
246 disabilities are educated in the least restrictive environment;

247 (f) Students with disabilities are afforded the
248 procedural safeguards required by IDEA;

249 (g) Students with disabilities are evaluated according
250 to IDEA;

251 (h) The compilation, maintenance, access to and
252 confidentiality of student records are in accordance with IDEA;

253 (i) Children with disabilities participating in early
254 intervention programs assisted under IDEA Part C who will
255 participate in preschool programs under this act experience a
256 smooth transition and that by the student's third birthday an
257 individualized education program has been developed and is being
258 implemented;

259 (j) Students with disabilities who are placed in
260 private schools by the district board of education are provided
261 special education and related services at no cost to their parent;

262 (k) All personnel serving students with disabilities
263 are appropriately certified and licensed, where a license is
264 required;

265 (1) The in-service training needs for parents of
266 students with disabilities and professional and paraprofessional
267 staff who provide special education, general education or related
268 services are identified and that appropriate in-service training
269 is provided; and

270 (m) Students with disabilities are included in
271 statewide and district-wide assessment programs, with appropriate
272 accommodations, where necessary.

273 (3) Each district board of education shall provide written
274 assurance of its compliance with the above requirements.

275 (4) Annually, each district board of education shall hold a
276 special meeting to describe how it will use the funds under Part B
277 of the IDEA during the next school year. Announcement of the
278 special meeting will be sent home to every parent who has a child
279 in the district's special education program.

280 (5) Annually, each district board of education shall submit:

281 (a) A report of the numbers of students with
282 disabilities according to their federal disability category, age,
283 racial-ethnic background and placement;

284 (b) A report or the staff, including contracted
285 personnel, providing services to identify, evaluate, determine
286 eligibility, develop individualized education programs, provide
287 related services and/or instruction to students with disabilities
288 and the full-time equivalence of their assignments and relevant
289 information on current and anticipated personnel vacancies and
290 shortages; and

291 (c) Any additional reports as required by the IDEA (20
292 U.S.C. Section 1400 et seq.) including, but not limited to, the
293 number of students with disabilities who are:

294 (i) Exiting education;

295 (ii) Subject to suspensions and expulsions;

296 (iii) Removed to interim alternative education
297 settings; and

298 (iv) Participating in statewide assessments.

299 Upon request, additional reports shall be submitted to the
300 State Department of Education including, but not limited to, the
301 number of students with disabilities by racial-ethnic group
302 identified as potentially disabled, evaluated and newly
303 classified.

304 (6) The local school district shall make available to
305 parents of students with disabilities and to the general public
306 all documents relating to the eligibility of the local school
307 district under Part B of the IDEA.

308 (7) Amendments to the special education plan shall be made
309 according to the following:

310 (a) The approved special education plan submitted by
311 the district board of education shall remain in effect until the
312 State Department of Education approves such amendments as the
313 district board of education deems necessary; or

314 (b) If the provisions of the IDEA Amendments of 1997,
315 or its regulations are amended, or there is a new legally binding
316 interpretation of the IDEA by federal or state courts, or there is
317 an official finding of noncompliance with federal or state law or
318 regulations, the State Department of Education shall require the
319 local school district to modify its special education plan only to
320 the extent necessary to ensure compliance with federal and/or
321 state requirements.

322 SECTION 4. (1) Consent shall be obtained:

323 (a) Prior to initial evaluation;

324 (b) Prior to implementation of the initial IEP
325 resulting from initial evaluation;

326 (c) Prior to reevaluation, except that such consent is
327 not required, if the district board of education can demonstrate
328 that it had taken reasonable measures to obtain such consent and
329 the parent or adult student failed to respond; and

330 (d) Prior to the release of student records.

331 (2) If a parent or adult student refuses to provide consent
332 and the district and the parent have not agreed to other action,
333 the district shall request a due process hearing to obtain
334 consent.

335 (3) Upon receipt of consent, the district board of education
336 shall implement without delay the action for which consent was
337 granted.

338 (4) Written notice which meets the requirements of this
339 section shall be provided to the parent when a district board of
340 education:

341 (a) Proposes to initiate or change the identification,
342 classification, evaluation, educational placement of the student
343 or the provision of a free, appropriate public education to the
344 student; or

345 (b) Declines to initiate or change the identification,
346 classification, evaluation, educational placement of the student
347 or the provision of a free, appropriate public education to the
348 student.

349 (5) Written notice shall be in language understandable to
350 the general public, and shall be provided in the native language
351 of the parents, unless it clearly is not feasible to do so.

352 Written notice shall include:

353 (a) A description of the action proposed or denied by
354 the district board of education including:

355 (i) An explanation of why it is taking such
356 action;

357 (ii) A description of any options the district
358 board of education considered and the reasons why those options
359 were rejected;

360 (iii) A description of the procedures, tests,
361 records or reports and factors used by the district board of
362 education in determining whether to propose or deny an action;

363 (iv) A description of any other factors that are

364 relevant to the proposal or refusal by the district board of
365 education; and

366 (v) A statement that the parents of a student with
367 a disability have protection under the procedural safeguards of
368 this act, the means by which a copy of a description of the
369 procedural safeguards can be obtained and sources for parents to
370 contact to obtain assistance in understanding the provisions of
371 this act.

372 (b) In addition, a copy of the procedural safeguards
373 statement published by the State Department of Education which
374 contains a full explanation of the procedural of safeguards
375 available to parents and/or adult students shall be provided:

376 (i) Upon referral for an initial evaluation;

377 (ii) Upon each notification of an IEP meeting;

378 (iii) Upon reevaluation; and

379 (iv) When a request for a due process hearing is
380 submitted to the State Department of Education.

381 (c) The written notice shall be provided to the parent
382 at least ten (10) calendar days prior to the implementation of a
383 proposed action so that the parent and/or adult student may
384 consider the proposal.

385 (6) A district board of education shall take steps to ensure
386 that the parent is given the opportunity to participate in any
387 school meeting regarding the delivery of special education and
388 related services to their child such as, but not limited to:

389 (a) The identification and evaluation of the student by
390 providing relevant information to the evaluation team;

391 (b) The determination of the student's eligibility for
392 special education and related services;

393 (c) The development of an IEP;

394 (d) The placement of the student with a disability; and

395 (e) The annual review of the IEP.

396 (7) Meetings shall be conducted to determine eligibility and

397 to develop, review and revise the student's IEP. Meetings to
398 determine eligibility and develop an IEP may be combined as long
399 as the requirements for notice of a meeting are met.

400 (8) Written notice shall be provided to the parent at least
401 ten (10) calendar days prior to the implementation of a proposed
402 action so that the parent and/or adult student may consider the
403 proposal.

404 (9) Meeting shall be scheduled at a mutually agreed upon
405 time and place.

406 (10) Notice of meetings shall indicate the purpose, time,
407 location and the names and positions of participants.

408 (11) If the parent cannot attend the meeting(s), the
409 district board of education or designee shall attempt to ensure
410 parental participation. Parental participation may include the
411 use of electronic conference equipment. Documentation shall be
412 maintained of all attempts to secure the parental participation.

413 (12) A meeting may be conducted without the parent in
414 attendance if the district board of education can document that it
415 is unable to secure the participation of the parent.

416 (13) Participants at the IEP meeting shall be allowed to use
417 an audio-tape or video recorder during the meeting.

418 (14) In conducting the evaluation, each district board of
419 education shall:

420 (a) Use a variety of assessment tools and strategies to
421 gather relevant functional and developmental information,
422 including information:

423 (i) Provided by the parent that may assist in
424 determining whether a child is a student with a disability and in
425 determining the content of the student's IEP; and

426 (ii) Related to enabling the student to be
427 involved in and progress in the general education curriculum or,
428 for preschool children with disabilities to participate in
429 appropriate activities;

430 (b) Not use any single procedure as the sole criterion
431 for determining whether a student is a student with a disability
432 or determining an appropriate education program for the student;
433 and

434 (c) Use technically sound instruments that may assess
435 the relative contribution of cognitive and behavioral factors, in
436 addition to physical or developmental factors.

437 (15) Each district board of education shall ensure:

438 (a) That evaluation procedures including, but not
439 limited to, tests and other evaluation materials, are:

440 (i) Selected and administered so as not to be
441 racially or culturally discriminatory; and

442 (ii) Provided and administered in the student's
443 native language or other mode of communication unless it is
444 clearly not feasible to do so;

445 (b) Any standardized tests that are administered:

446 (i) Have been validated for the purpose(s) for
447 which they are administered; and

448 (ii) Are administered by certified personnel
449 trained in conformance with the instructions provided by their
450 producer;

451 (c) The student is assessed in all areas of suspected
452 disability;

453 (d) Assessment tools and strategies that provide
454 relevant information that directly assists persons in determining
455 the educational needs of the student are provided;

456 (e) Tests are selected, administered and interpreted so
457 that when a student has sensory, manual or communication
458 impairments, the results accurately reflect the ability which that
459 procedure purports to measure, rather than the impairment unless
460 that is the intended purpose of the testing; and

461 (f) The evaluation is conducted by the student's
462 parents and a multi-disciplinary team of professionals consisting

463 of at least two (2) members of the child study team and where
464 appropriate, other specialists. At least one (1) evaluator shall
465 be knowledgeable in the area of the suspected disability.

466 (16) A parent may request an independent evaluation if there
467 is disagreement with the evaluation provided by a district board
468 of education:

469 (a) Such independent evaluation(s) shall be provided at
470 no cost to the parent unless the district board of education
471 initiates a due process hearing to show that its evaluation is
472 appropriate and a final determination to that effect is made
473 following the hearing.

474 (b) Upon receipt of a parental request, each district
475 board of education shall provide information about where an
476 independent evaluation may be obtained.

477 (c) Any independent evaluation submitted to the
478 district shall be considered in making decisions regarding special
479 education and related services.

480 SECTION 5. (1) Mediation is a voluntary process which is
481 available to resolve disputes arising under this act. Mediation
482 shall be available for students age three (3) through twenty-one
483 (21) years when there is a disagreement regarding identification,
484 evaluation, classification, educational placement or the provision
485 of a free, appropriate public education. A request for mediation
486 shall not be used to deny or delay the right to request a due
487 process hearing.

488 (2) The State Department of Education may establish
489 procedures that require a parent, who chooses not to use the
490 mediation process, to meet with a representative from a parent
491 training center or community parent resource center to discuss the
492 benefits of mediation.

493 (3) Either party may be accompanied and advised at mediation
494 by legal counsel or other person(s) with special knowledge or
495 training with respect to the needs of students with disabilities.

496 (4) Mediation is available from the State Department of
497 Education at the state level through the Office of Special
498 Education Programs. Mediation shall be provided as follows:

499 (a) To initiate mediation through the Office of Special
500 Education Programs, a written request shall be submitted to the
501 State Director of the Office of Special Education Programs;

502 (b) The party initiating the request for mediation
503 shall send a copy of the written request to the other party. The
504 written request shall note that a copy has been sent to the other
505 party. The mediation request shall specify the issue(s) in
506 dispute and the relief sought;

507 (c) A mediation conference shall be conducted within
508 twenty (20) calendar days after receipt of a written request. At
509 the mediation conference, issues shall be identified and options
510 for resolution shall be explored;

511 (d) The role of the mediator is to:

512 (i) Facilitate communication between the parties
513 in an impartial manner;

514 (ii) Chair the meeting;

515 (iii) Assist the parties in reaching an agreement;

516 (iv) Assure that the agreement complies with
517 federal and state law and regulation;

518 (v) Adjourn the mediation at the request of the
519 parties to obtain additional information or explore options; and

520 (vi) Terminate mediation if in the mediator's
521 judgment the parties are not making progress toward resolving the
522 issue(s) in dispute;

523 (e) An individual who serves as a mediator: (i) may
524 not be an employee of any public agency; (ii) may not have a
525 personal or professional conflict of interest which impacts
526 his/her objectivity in the mediation; and (iii) must be qualified
527 and impartial and trained in effective mediation techniques;

528 (f) The State Department of Education will maintain a

529 list of individuals who are qualified mediators and knowledgeable
530 in laws and regulations relating to the provision of special
531 education and related services;

532 (g) The State Department of Education will bear the
533 cost of the mediator, including travel costs and a standard fee
534 for services based on State Department of Education policies;

535 (h) The mediation conference shall be held at a time
536 and place that is convenient to the parties in the dispute;

537 (i) If the mediation results in agreement, the
538 conclusions shall be incorporated into a written agreement and
539 signed by each party. If the mediation does not result in
540 agreement, the mediator shall document the date and the
541 participants at the meeting. No other record of the mediation
542 shall be made;

543 (j) Discussions that occur during the mediation process
544 shall be confidential and shall not be used as evidence in any
545 subsequent due process hearings or civil proceedings;

546 (k) The mediator shall not be called as a witness in
547 any subsequent proceeding to testify regarding any information
548 gained during the course of mediation; and

549 (l) Pending the outcome of mediation, no change shall
550 be made to the student's classification, program or placement,
551 unless both parties agree, or emergency relief as part of a
552 request for a due process hearing is granted by the hearing
553 officer.

554 SECTION 6. (1) For students age three (3) years through
555 twenty-one (21) years, a due process hearing may be requested by
556 any interested party when there is a disagreement regarding
557 identification, evaluation, reevaluation, classification,
558 educational placement or the provision of a free, appropriate
559 public education.

560 (2) In addition to the issues specified in (1) above, the
561 district board of education or other public agency responsible for

562 the development of the student's IEP may request a due process
563 hearing when it is unable to obtain required consent to conduct an
564 initial evaluation, reevaluation, to implement an initial IEP or
565 to release student records. The district board of education shall
566 request a due process hearing when it denies a written parental
567 request for an independent evaluation.

568 (3) A request for a due process hearing shall be made in
569 writing to the State Director of the Office of Special Education
570 Programs. The party initiating the due process hearing shall send
571 a copy of the request to the other party. The written request
572 shall note that a copy has been sent to the other party. The
573 written request shall include the student's name, student's
574 address, parent's name, name of the school the student is
575 attending, the name of the school district and shall state the
576 specific issues in dispute, relevant facts and the relief sought.

577 (4) When the Office of Special Education Programs receives a
578 request for a due process hearing the following shall occur:

579 (a) The Office of Special Education Programs shall
580 acknowledge receipt of the request and provide information to the
581 parent regarding free and low cost legal services and the
582 availability of mediation;

583 (b) Within five (5) calendar days of the written
584 request, the Office of Special Education Programs shall appoint a
585 hearing officer and notify both parties in writing;

586 (c) The appointment of the due process hearing officer
587 will be based on a rotating appointment system. The list of
588 hearing officers will be made available to the public. A hearing
589 officer having a personal or professional interest that would
590 conflict with his/her objectivity in the hearing shall notify the
591 State Director of Special Education and shall be replaced by the
592 next scheduled impartial due process hearing officer under the
593 rotating system.

594 (5) Current employees of the State Department of Education,

595 local school districts or special education cooperatives,
596 part-time contractual school personnel who serve in a consulting
597 capacity or private providers of special education facilities or
598 programs shall be disqualified from serving as impartial due
599 process hearing officers.

600 (6) The State Department of Education shall select qualified
601 persons or organizations to establish and conduct mandatory
602 training programs for impartial due process hearing officers. The
603 training shall be conducted in an unbiased manner by education and
604 legal experts, including individuals from outside the public
605 education system. Persons, corporations or organizations
606 receiving any type of compensation from the State Department of
607 Education or a local school district shall be prohibited from
608 providing training except in the case of training related to state
609 education regulations and laws and any federal or state orders or
610 consent decrees applicable to the State of Mississippi. This
611 training shall be presented by State Department of Education
612 personnel.

613 (7) The training for impartial hearing officers shall
614 include, at a minimum, instruction in federal and state law, rules
615 and regulations, federal regulatory interpretations and court
616 decisions regarding special education and relevant general
617 education issues, diagnostic procedure, information about
618 disabilities and techniques for conducting effective and impartial
619 hearings.

620 (8) Any party to the hearing shall have the right to request
621 the exclusion of witnesses from the hearing until they are called
622 to testify; provided this provision may not be invoked to exclude
623 any party or its designated representative.

624 (9) The State Department of Education shall provide
625 impartial due process hearing officers with access to relevant
626 court decisions, impartial hearing officer decisions with
627 child-specific identifying information deleted, statutory and

628 regulatory changes, and federal regulatory interpretations and any
629 applicable consent decree(s).

630 (10) All impartial due process hearing officers appointed
631 shall serve initial terms of three (3) years; then all
632 reappointments shall be for a term of two (2) years.

633 (11) Once appointed, the impartial due process hearing
634 officer shall not communicate with the State Department of
635 Education or its employees concerning the hearing, except where
636 circumstances require. Communications for administrative purposes
637 that do not deal with substantive or procedural matters or issues
638 on the merits are authorized, provided that the hearing officer
639 promptly notifies all parties or their representatives of the
640 substance of the communication as a matter of record.

641 (12) The hearing officer shall convene a prehearing
642 conference within ten (10) days of his/her appointment. The
643 purpose of the prehearing conference is:

644 (a) To schedule a date for the due process hearing,
645 which shall be convenient for all parties;

646 (b) To determine the location of the due process
647 hearing, which shall be convenient for all parties;

648 (c) To determine representation by legal counsel;

649 (d) To determine if the hearing will be open or closed
650 to the public;

651 (e) To determine all issues claimed to be in dispute
652 and the relief sought;

653 (f) To determine format of record to be provided to
654 parent(s) or guardian(s);

655 (g) To determine date for exchange of evidence and list
656 of witnesses;

657 (h) To determine the need for subpoenas;

658 (i) To determine and resolve any disputes regarding
659 documents needed by any party;

660 (j) To determine length of time estimated necessary to

661 complete the hearing;

662 (k) Any other relevant matters requested by any party.

663 (13) Any party may request that the due process hearing
664 officer issue a subpoena to compel the testimony of witnesses or
665 the production of documents relevant to the resolution to the
666 hearing. All subpoenas for documents shall be in compliance with
667 Rule 45 of the Mississippi Rules of Civil Procedure.

668 (14) Whenever a person refuses to comply with any subpoena
669 issued under this section, the circuit court of the county in
670 which the hearing is pending, on application of the impartial
671 hearing officer or the party requesting the issuance of the
672 subpoena, may compel compliance through the contempt powers of the
673 court in the same manner as if the requirements of a subpoena
674 issued by the court has been disobeyed.

675 (15) The due process hearing officer may administer oaths to
676 witnesses.

677 (16) A hearing officer shall disclose any actual or
678 potential conflicts of interests to the parties upon learning of
679 those conflicts. Any party may raise facts that constitute a
680 conflict of interest for the hearing officer at any time before or
681 during the hearing and may move for recusal.

682 (17) An impartial due process hearing officer shall be
683 terminated by the State Board of Education for just cause if,
684 after written notice is provided, appropriate timely corrective
685 action is not taken.

686 (18) For purposes of this subsection just cause shall be:

687 (a) Failure to accept assigned cases without good
688 cause;

689 (b) Failure or refusal to fulfill duties as a hearing
690 officer in a timely manner;

691 (c) Consistent disregard for applicable laws and
692 regulations in the conduct of hearings;

693 (d) Consistent failure to conduct himself or herself in

694 a patient, dignified and courteous manner to parties, witnesses,
695 counsel and other participants in hearings;

696 (e) Failure to accord parties or their representatives
697 a full and fair opportunity to be heard in matters coming before
698 him or her.

699 (f) Violating applicable laws regarding privacy and
700 confidentiality of records or information;

701 (g) Manifesting, by words or conduct, bias or prejudice
702 based upon race, sex, religion, disability or national origin;

703 (h) Failure to recuse himself or herself from a hearing
704 in which he or she has a personal, professional or financial
705 conflict of interest which he or she knew or should have known
706 existed at any time prior to or during the hearing.

707 (i) Conviction in any jurisdiction of any felony or of
708 a misdemeanor involving moral turpitude; or

709 (j) Falsification of a material fact on his or her
710 application to serve as a due process hearing officer.

711 (k) In addition, an impartial hearing officer who, as a
712 result of events occurring after appointment, no longer meets the
713 minimum requirements set forth in this section, shall be
714 disqualified to complete the balance of his or her term.

715 (19) The impartial hearing officer and only the impartial
716 hearing officer shall issue a written decision, including findings
717 of fact and conclusions of law, within ten (10) days after the
718 conclusion of the hearing and shall mail a copy of the decision to
719 the parent or guardian, the school district, the director of
720 special education and legal representatives of the parties, unless
721 the hearing officer has been granted a specific extension of time
722 agreed to by the parties.

723 (20) The hearing officer shall retain jurisdiction for the
724 sole purpose of considering a request for clarification of the
725 final decision submitted in writing by a party to the impartial
726 hearing officer within ten (10) days after the date of the

727 decision. A copy of the request for clarification shall specify
728 the portions of the decision for which clarification is sought and
729 shall be mailed to all parties of record and to the State
730 Department of Education. The request shall operate to stay
731 implementation of those portions of the decision for which
732 clarification is sought, pending action on the request by the
733 hearing officer, unless the parties otherwise agree. The hearing
734 officer shall issue a clarification of the specified portion of
735 the decision or issue a partial or full denial of the request in
736 writing within ten (10) days of receipt of the request and mail
737 copies to all parties to whom the decision was mailed. This
738 subsection does not permit a party to request or authorize a
739 hearing officer to entertain reconsideration of the decision
740 itself.

741 (21) The period of time for seeking review of the decision
742 shall be tolled from the date the request is submitted until the
743 date the hearing officer acts upon the request. Upon the filing
744 of a civil action, the hearing officer shall no longer exercise
745 jurisdiction over the case. The hearing officer's decision shall
746 be binding upon the school district and the parents or guardian
747 unless a civil action is commenced.

748 (22) Any party to an impartial due process hearing aggrieved
749 by the final written decision of the impartial due process hearing
750 officer shall have the right to commence a civil action with
751 respect to the issues presented in the impartial due process
752 hearing. Such civil action may be brought in any court of
753 competent jurisdiction within thirty (30) days from the date of
754 the decision of the impartial due process hearing officer. The
755 civil action authorized by this subsection shall not be exclusive
756 of any rights or causes of action otherwise available. The
757 commencement of a civil action under this subsection shall operate
758 as a supersedeas. In any action brought under this subsection,
759 the court shall receive the record of the impartial due process

760 hearing, shall hear additional evidence at the request of a party
761 and basing its decision on the preponderance of the evidence,
762 shall grant such relief as the court determines is appropriate.

763 (23) During the pendency of any administrative or judicial
764 proceeding conducted pursuant to this section, unless the school
765 district and the parents or guardian of the student otherwise
766 agree, the student shall remain in his or her present educational
767 placement and continue in his or her present eligibility status
768 and continue to receive special education and related services, if
769 any, being received. If the hearing officer orders a change in
770 the eligibility status, educational placement or special education
771 and related services provided to the student, that change shall
772 not be implemented until thirty (30) days have elapsed following
773 the date the hearing officer's decision is mailed to the parties
774 in order to allow any party aggrieved by the decision to commence
775 a civil action to stay implementation of the decision.

776 (24) If applying for initial admission to the school
777 district, the student shall, with the consent of the parents or
778 guardian, be placed in the school district program until all such
779 proceedings have been completed. The cost for any special
780 education and related services or placement incurred following
781 forty-five (45) days after the initial request for evaluation
782 shall be borne by the school district if the services and/or
783 placement are in accordance with the final determination as to the
784 special education and related services or placement that must be
785 provided to the child, provided that during such 45-day period
786 there have been no delays caused by the child's parent or
787 guardian.

788 (25) At all stages of the hearing, the hearing officer shall
789 require that appropriate accommodations be made available by the
790 local school district for persons with disabilities or for persons
791 whose normally spoken language is other than English.

792 (26) By April 1 of each year, the State Department of

793 Education shall provide the State Advisory Committee on Children
794 with Disabilities with a copy of all hearing officers' decisions
795 for the previous year. All child-specific identifying information
796 will be deleted.

797 (27) By April 1 of each year, the State Department of
798 Education shall prepare an annual report including:

799 (a) A list of current hearing officers and their
800 qualifications;

801 (b) The number of hearings conducted by each officer;

802 (c) The outcome of the hearing including the prevailing
803 party; and

804 (d) The name of the local school districts involved in
805 each hearing.

806 SECTION 7. (1) An organization or individual may file a
807 signed written complaint with the State Department of Education.
808 The complaint must include a statement that a school district or
809 private school providing special education services has violated a
810 requirement of part B of the Individuals with Disabilities
811 Education Act or state regulations regarding children with
812 disabilities and the facts on which the statement is based.
813 Formal complaints may be addressed to:

814 State Department of Education
815 Office of Special Education
816 Attention: Parent Consultant
817 Post Office Box 771
818 359 North West Street - Suite 338
819 Jackson, MS 39205-0771

820 Written complaints may be in a letter or on a form provided
821 upon request by the State Department of Education. If assistance
822 is needed in filing the complaint, the complainant may call the
823 State Department of Education, Office of Special Education.

824 (2) The complainant is contacted to gather additional
825 information that may be needed or offered by the complainant.

826 Information is documented on the Parent/District Contact Form and
827 maintained on file.

828 (3) If a written complaint received by the State Department
829 of Education contains an issue that is a part of a due process
830 hearing under IDEA, Part B, the State Department of Education will
831 notify the complainant that the procedures of the due process must
832 be followed and the complaint procedures cannot be utilized.
833 Written notification will be provided by the State Department of
834 Education to the complainant within seven (7) days of receipt of
835 the complaint.

836 (4) If an issue is raised in a written complaint that has
837 previously been decided in a due process hearing involving the
838 same parties, the complainant will be notified that the decision
839 of the hearing officer is binding unless civil action is taken.
840 Written notification will be provided by the State Department of
841 Education to the complainant within ten (10) days of receipt of
842 the complaint.

843 (5) The filing date of the formal complaint is documented,
844 and the State Department of Education, Office of Special Education
845 notifies the local school district or private school by phone that
846 a complaint has been filed that indicates a violation with Part B
847 regulations and that the Child Action Form and notification letter
848 will be sent.

849 (6) The Child Action Form and the initial notification
850 letter are completed and mailed to the Superintendent or the
851 District Board of Education and a copy sent to the Supervisor of
852 Special Education Programs within seven (7) days of receipt of the
853 complaint. A copy of the Child Action Form is sent to the
854 appropriate Office of Special Education staff and to the
855 complainant. If the Office of Special Education staff are
856 scheduled to conduct a site visit or follow-up visit with the
857 school district or private school, the student's file and/or
858 program are reviewed to assist school district personnel in

859 determining actions needed to correct the problem.

860 (7) A written response is to be received by the State
861 Department of Education and the complainant from school district
862 or private school personnel within seven (7) days of the date the
863 initial notification letter is received in the school district.
864 If no response is received, the State Department of Education will
865 call the Supervisor of Special Education to determine the status
866 of resolving the complaint and will mail a reminder letter to the
867 Superintendent. Dates of the call and reminder notice are
868 documented and maintained on file.

869 (8) Upon receipt of the written response from school
870 district or private school personnel, State Department of
871 Education reviews the data and determines whether the complaint
872 has been resolved. If data indicates the complaint has been
873 resolved, a closing letter is sent to the superintendent/director
874 with copies to the Supervisor of Special Education staff. A
875 letter is also sent to the complainant that addresses each
876 allegation in the complaint and contains (a) findings of fact and
877 conclusions, (b) the reasons for State Department of Education's
878 final decision, and (c) a copy of procedural safeguards.

879 (9) If the school district's response indicates the
880 complaint has not been resolved, a decision is made as to the need
881 for an on-site visit to the school district or private school to
882 assist them in resolving the problem. If a site visit is
883 necessary, Office of Special Education staff appropriate to
884 address the problem will visit the school district or private
885 school, review the problem, and determine the options available to
886 resolve the problem. School district and private school personnel
887 are then asked to explore the options with parents and determine
888 the appropriate corrective actions. If specific corrective
889 actions are necessary due to non-compliance issues being confirmed
890 during the site visit, the State Department of Education will
891 issue a letter to the school district or private school specifying

892 the problem noted, as well as solutions and timelines for
893 correction.

894 (10) If, after the receipt of the response from the school
895 district or private school personnel, the complaint is not
896 resolved, a letter is sent to the school district requesting
897 bi-monthly reports until the complaint is resolved in accordance
898 with timelines. The State Department of Education will provide
899 any additional technical assistance needed to achieve compliance.

900 (11) The school district has sixty (60) days from the date
901 the complaint was filed to resolve a complaint unless exceptional
902 circumstances warrant an extension. An extension that outlines
903 specific exceptional circumstances must be requested in writing by
904 the school district or private school. Exact timeline extensions
905 are set by the State Department of Education personnel. Examples
906 of exceptional circumstances that might warrant an extension are:

907 (a) If the appointment and results of follow-up testing
908 (i.e., hearing, vision or emotion) will delay the completion of a
909 comprehensive assessment;

910 (b) If a school district will need time to contact
911 surrounding agencies, residential school or private schools to
912 arrange appropriate placement for a child; and

913 (c) If a school district will have to order and wait
914 for the delivery of specific materials/equipment to implement the
915 appropriate program for a student.

916 (12) When documentation received by the State Department of
917 Education indicates a complaint has been resolved, a letter is
918 sent to the superintendent/director of the school district with
919 copies to the Supervisor of Special Education and appropriate
920 State Department of Education, Office of Special Education staff.

921 A letter is sent to the complainant that addresses each
922 allegation and contains (a) findings of fact and conclusions, (b)
923 the reasons for the State Department of Education's final
924 decision, and (c) a copy of procedural safeguards. Letters to the

925 complainant and the public school district or private school also
926 notify them of their right to request the Secretary of Education
927 to review the State Department of Education's final decision.

928 (13) If, after sixty (60) days, the complaint is not
929 resolved due to disagreement between the parties and an extension
930 has not been granted, letters will be sent to the school district
931 or private school, as well as the complainant, informing them that
932 their only option is for either party to request in writing a due
933 process hearing. Procedural safeguards will be forwarded with
934 each letter, along with notification of the right to request the
935 Secretary of Education to review the State Department of
936 Education's final decision.

937 (14) In the event that within sixty (60) days of the State
938 Department of Education's receipt of a complaint the school
939 district or the private school is clearly not implementing the
940 solutions and timelines required in the compliance report, the
941 State Department of Education shall notify the superintendent of
942 the school district or private school that IDEA, Part B, and
943 preschool funding will be withheld until such time as compliance
944 is achieved. The hearing procedures will be followed prior to the
945 actual withholding of funds.

946 SECTION 8. Whenever the State Board of Education, in its
947 discretion, determines that a school district fails to establish
948 and maintain programs of free and appropriate public education
949 which comply with regulations established by the board, the board
950 may withhold all special education monies from the school district
951 and may use the payments which would have been available to such
952 school district to provide special education, directly or by
953 contract, to eligible children with disabilities in such manner as
954 the board considers appropriate.

955 SECTION 9. (1) The State of Mississippi recognizes that
956 parent and family involvement is essential to educating our
957 state's children to meet high academic expectations. Schools and

958 families must partner together to develop strong programs and
959 policies that meet the needs of each community. Educators must
960 take the initiative in developing these vital collaboratives.

961 (2) The State Board of Education, in cooperation with the
962 State Department of Education, shall develop and implement
963 policies to support and assist schools and school districts in
964 developing, implementing, and evaluating policies and programs
965 that involve all parents and families. Successful programs will:

966 (a) Create welcoming atmospheres for parents and
967 families;

968 (b) Support parents and families as advocates for
969 lifelong learning and as decision-makers in school issues and
970 programs;

971 (c) promote clear, two-way communications between
972 schools and families about school programs and students' progress;

973 (d) Assist parents, families and guardians in acquiring
974 techniques to support their children's learning;

975 (e) Involve parents and family members, wherever
976 appropriate, in a variety of instructional and support roles both
977 within and without the school;

978 (f) Provide access to and coordinate community and
979 support services for children and families;

980 (g) Identify and reduce barriers to parent/family
981 involvement;

982 (h) Provide professional development for teachers,
983 administrators and staff on ways to effectively work with parents
984 and families; and

985 (i) Provide a written copy of the policy for each
986 parent and/or family and post the policy in the school.

987 These forms of parent and family involvement require
988 coordinated school-wide efforts and the support of parents,
989 teachers, students and administrators at each school site.
990 Effective parent and family involvement is fundamental to a

991 healthy system of public education that expects all students to
992 achieve at high levels.

993 (3) There shall be an Advisory Committee for the Education
994 of Students with Disabilities which shall advise and consult with
995 the Governor, the State Superintendent of Education, the State
996 Board of Education and the Director of the Office of Special
997 Education, and which shall engage in such activities as are
998 hereinafter set forth. The advisory committee shall be composed
999 of at least thirty-one (31) members, including:

1000 (a) Parents of children with disabilities;

1001 (i) One (1) parent representing children from
1002 birth to two (2) years of age;

1003 (ii) Two (2) parents representing preschool age
1004 children;

1005 (iii) Four (4) parents representing elementary age
1006 children;

1007 (iv) Three (3) parents representing middle school
1008 age children;

1009 (v) Three (3) parents representing high school age
1010 children; and

1011 (vi) One (1) parent with a child between the ages
1012 of 21 and 25;

1013 (b) Two (2) individuals with disabilities;

1014 (c) One (1) special and one (1) regular education
1015 teacher;

1016 (d) One (1) representative of institutions of higher
1017 learning;

1018 (e) One (1) principal and one (1) superintendent;

1019 (f) One (1) administrator of special education programs
1020 for children with disabilities;

1021 (g) One (1) representative each from the following
1022 state agencies:

1023 (i) The Mississippi Department of Mental Health;

1024 (ii) The Mississippi Department of Rehabilitation
1025 Services; and

1026 (iii) The Mississippi Department of Health, Early
1027 Intervention Program.

1028 (h) One (1) representative of private and public
1029 charter schools (if any);

1030 (i) One (1) representative of a vocational, community
1031 or business organization concerned with the provision of
1032 transition services to children with disabilities;

1033 (j) One (1) representative each from the state juvenile
1034 and adult corrections agencies; and

1035 (k) Two (2) members of the State Legislature (one (1)
1036 appointed by the Speaker from the House of Representatives
1037 Education Committee and one (1) appointed by the Lieutenant
1038 Governor from the Senate Education Committee).

1039 (l) The Governor shall appoint the parents of children
1040 with disabilities; individuals with disabilities; representatives
1041 of other state agencies, representatives of institutions of higher
1042 education that prepare special education and related services
1043 personnel; representatives from the state juvenile and adult
1044 corrections agencies and two (2) members of the State Legislature
1045 (one (1) from the House of Representatives Education Committee and
1046 one (1) from the Senate Education Committee).

1047 (m) The State Board of Education shall appoint the
1048 special and regular education teachers, state and local education
1049 officials; administrators of programs for children with
1050 disabilities, representatives of private and public charter
1051 schools, at least one (1) representative of a vocational,
1052 community or business organization concerned with the provision of
1053 transition services to children with disabilities.

1054 (4) The advisory committee shall:

1055 (a) Assume all responsibilities required of the state
1056 panel by federal law;

1057 (b) Review periodically the regulations, standards and
1058 guidelines pertaining to special education and recommend to the
1059 State Board of Education any changes which it finds necessary;

1060 (c) Review all information collected, maintained or
1061 used by the State Department of Education regarding special
1062 education on a yearly basis;

1063 (d) Comment on any new or revised regulations,
1064 standards and guidelines proposed for issuance;

1065 (e) Advise the State Board of Education in the
1066 development of any state plan provision of special education;

1067 (f) Advise the State Board of Education of any
1068 provision of special education relating to legislative issues;

1069 (g) Annually elect its own co-chairs (one (1) a parent
1070 of a child with a disability and one (1) a professional);

1071 (h) Establish and implement guidelines and bylaws for
1072 the committee to follow;

1073 (i) Annually review committee bylaws and amend as
1074 needed; and

1075 (j) Make an annual report to the Governor and State
1076 Board of Education regarding the unmet needs of children with
1077 disabilities in the state. The annual report will be presented to
1078 the State Board of Education during the August meeting.

1079 (5) The State Superintendent of Education should keep
1080 members of the State Advisory Committee advised of any and all
1081 educational issues presented to the legislators.

1082 SECTION 10. Section 37-16-9, Mississippi Code of 1972, is
1083 amended as follows:

1084 37-16-9. (1) The state board shall, after a public hearing
1085 and consideration, make provision for appropriate modification of
1086 testing instruments and procedures for students with identified
1087 handicaps or disabilities in order to ensure that the results of
1088 the testing represent the student's achievement, rather than
1089 reflecting the student's impaired sensory, manual, speaking or

1090 psychological process skills, except when such skills are the
1091 factors the test purports to measure.

1092 (2) The public hearing and consideration required hereunder
1093 shall not be construed to amend or nullify the requirements of
1094 security relating to the contents of examinations or assessment
1095 instruments and related materials or data.

1096 (3) The same accommodations or modifications used by the
1097 student in regular coursework and shown on the student's IEP
1098 (Individualized Education Program) will be permitted in taking the
1099 Functional Literacy Examination.

1100 (4) The State Department of Education is hereby directed to
1101 conduct a study to determine the number of students with
1102 disabilities statewide who have passed all coursework for a
1103 diploma but who were prevented from receiving a diploma due to
1104 failure of the FLE and the number of students failing particular
1105 sections of the FLE. Such a study shall cover the previous three
1106 (3) school years.

1107 SECTION 11. Section 37-23-1, Mississippi Code of 1972, is
1108 amended as follows:

1109 37-23-1. Except as otherwise provided in Senate Bill No.
1110 2506, 1999 Regular Session, the purpose of Sections 37-23-1
1111 through 37-23-159 is to mandate competent educational services and
1112 equipment for exceptional children in the age range three (3)
1113 through twenty (20) for whom the regular school programs are not
1114 adequate and to provide, on a permissive basis, a free appropriate
1115 public education, as a part of the state's early intervention
1116 system in accordance with regulations developed in collaboration
1117 with the agency designated as "lead agency" under Part H of the
1118 Individuals with Disabilities Education Act. The portion of the
1119 regulations developed in collaboration with the lead agency which
1120 are necessary to implement the programs under the authority of the
1121 State Board of Education shall be presented to the State Board of
1122 Education for adoption. The mandate for three- and four-year-old

1123 exceptional children is in effect only in those years where
1124 federal funds under P.L. 99-457 are equal to or greater than Six
1125 Hundred Dollars (\$600.00) per child. This specifically includes,
1126 but shall not be limited to, provision for day schools for the
1127 deaf and blind of an age under six (6) years, where early training
1128 is in accordance with the most advanced and best approved
1129 scientific methods of instruction, always taking into
1130 consideration the best interests of the child and his improvement
1131 at a time during which he is most susceptible of improvement.
1132 Educational programs to exceptional children under the age of
1133 three (3) years shall be eligible for minimum program funds as
1134 defined in Sections 37-23-3 and 37-19-5.

1135 The educational programs and services provided for
1136 exceptional children in Sections 37-23-1 through 37-23-15,
1137 37-23-31 through 37-23-35, 37-23-61 through 37-23-75 and 37-23-77
1138 shall be designed to provide individualized appropriate special
1139 education and related services that enable a child to reach his or
1140 her appropriate and uniquely designed goals for success. The
1141 State Board of Education shall establish an accountability system
1142 for special education programs and students with disabilities.
1143 The system shall establish accountability standards for services
1144 provided to improve the educational skills designed to prepare
1145 children for life after their years in school. These standards
1146 shall be a part of the accreditation system and shall be
1147 implemented before July 1, 1996.

1148 SECTION 12. Section 37-23-3, Mississippi Code of 1972, is
1149 amended as follows:

1150 37-23-3. (1) Except as otherwise provided in Senate Bill
1151 No. 2506, 1999 Regular Session, an exceptional child shall be
1152 defined as any child as herein defined, in the age range birth
1153 through twenty (20) years of age for whose particular needs
1154 institutional care and training are not available in this state or
1155 who cannot or should not pursue regular classwork because of

1156 defective hearing, vision, speech, or because of mental
1157 retardation or other mental, emotional or physical handicaps.
1158 Such children shall be determined by competent professional
1159 persons in such disciplines as medicine, psychology, special
1160 education, speech pathology and social work and shall be
1161 considered exceptional children for the purposes of Sections
1162 37-23-1 through 37-23-159. Such professional persons shall be
1163 approved by the State Department of Education. The mandate for
1164 the provision of educational programs to exceptional children
1165 shall only apply to the children in the age range three (3)
1166 through twenty (20). Children who are potentially in need of
1167 educational and related services must be considered for the
1168 services on an individual basis.

1169 (2) During Fiscal Year 1995 and Fiscal Year 1996, the State
1170 Department of Education shall conduct a pilot project in one or
1171 more school districts which shall test the method of providing
1172 language services described in this subsection. For purposes of
1173 this pilot project, a child with a disability as defined in the
1174 Individuals with Disabilities Education Act (IDEA) may not be
1175 denied language services because his measured cognitive
1176 functioning is equivalent to or lower than his measured
1177 functioning level in the language area. In order for language
1178 services to be provided for a child, the measured functioning
1179 level of the child in the language area must indicate a delay
1180 relative to the child's chronological age. Individual
1181 determination of a child's needs must take into consideration the
1182 need for development in the language area, the need for support
1183 for basic adaptive skills in language development and the extent
1184 to which the child's lack of ability in the language area may have
1185 interfered with academic achievement or development milestones.
1186 In the area of language development, a child's need for
1187 alternative or augmentative communication modes and the need for
1188 language development must be considered fundamental in making

1189 their determination of need for services.

1190 (3) The State Department of Education shall report to the
1191 Education Committees of the House of Representatives and the
1192 Senate by December 1, 1995, and December 1, 1996, on the results
1193 of the pilot project described in subsection (2) of this section.

1194 Such reports shall include, but not be limited to, the following
1195 information: the school district or districts included in the
1196 pilot project; the number and ages of the children who applied for
1197 participation and who did participate in the pilot project; an
1198 evaluation of the benefits obtained by the children who
1199 participated in the pilot project; an estimate of the number of
1200 children who would likely utilize similar services if provided on
1201 a statewide basis; and an estimate of the cost of providing such
1202 services on a statewide basis.

1203 (4) The State Board of Education shall promulgate
1204 regulations which ensure services are provided to children as such
1205 services are defined in this chapter.

1206 SECTION 13. Section 37-23-5, Mississippi Code of 1972, is
1207 amended as follows:

1208 37-23-5. Except as otherwise provided in Senate Bill No.
1209 2506, 1999 Regular Session, the State Department of Education is
1210 empowered to foster, inspect, approve and administer a program of
1211 education for exceptional children. The State Department of
1212 Education shall make the necessary rules and regulations in
1213 keeping with the provisions of Sections 37-23-1 through 37-23-9
1214 and applicable federal laws and regulations which are not in
1215 conflict with Mississippi law for its proper administration and
1216 shall employ such personnel as may be necessary to administer such
1217 program.

1218 The department shall require that the program of education
1219 for exceptional children be designed to provide individualized
1220 appropriate special education and related services that enable a
1221 child to reach his or her appropriate and uniquely designed goals

1222 for success.

1223 SECTION 14. Section 37-23-9, Mississippi Code of 1972, is
1224 amended as follows:

1225 37-23-9. Except as otherwise provided in Senate Bill No.
1226 2506, 1999 Regular Session, courses of study, teacher-pupil ratio,
1227 adequacy of methods of instruction, in-service training
1228 qualifications of teachers and technicians, and necessary
1229 equipment for special education must comply with the requirements
1230 established by the state department of education. Boards of
1231 trustees of the districts wherein a special class or classes are
1232 established are to employ teachers as provided by law for the
1233 purpose of teaching the established special classes.

1234 SECTION 15. Section 37-23-11, Mississippi Code of 1972, is
1235 amended as follows:

1236 37-23-11. (1) Except as otherwise provided in Senate Bill
1237 No. 2506, 1999 Regular Session, when any public agency directly
1238 responsible for the education of exceptional children, with the
1239 exception of those children possessing an exceptionally high
1240 degree of intellect, ability or creative talent, shall: (1)
1241 initiate or change the identification, evaluation, or educational
1242 placement of the child or the provision of a free appropriate
1243 public education to the child, or (2) refuse to initiate or change
1244 the identification, evaluation or educational placement of the
1245 child or the provision of a free appropriate public education to
1246 the child, and a hearing be initiated, either before the public
1247 agency directly responsible for the education of the child or the
1248 State Department of Education, the hearing officer and the State
1249 Department of Education shall have the power to compel the
1250 attendance of witnesses.

1251 (2) Any party aggrieved by the findings and decision of a
1252 hearing officer made in an impartial due process hearing pursuant
1253 to the Individuals With Disabilities Education Act may bring a
1254 civil action in any state court of competent jurisdiction or in a

1255 district court of the United States without regard to the amount
1256 in controversy. The action shall be filed no later than thirty
1257 (30) days after the date of the hearing officer's decision.

1258 SECTION 16. This act shall take effect and be in force from
1259 and after July 1, 1999.