

By: Senator(s) Thames, Nunnelee

To: Education

SENATE BILL NO. 2506
(As Passed the Senate)

1 AN ACT RELATING TO THE EDUCATION OF EXCEPTIONAL CHILDREN; TO
2 PROVIDE DEFINITIONS; TO PROVIDE ELIGIBILITY STANDARDS; TO PROVIDE
3 FOR PARENTAL CONSENT; NOTICE; PARTICIPATION AND MEETINGS WITH
4 SCHOOL OFFICIALS; TO PRESCRIBE EVALUATION PROCEDURES; TO PROVIDE
5 COMPLAINT PROCEDURES; TO PROVIDE FOR MEDIATION; TO PROVIDE FOR DUE
6 PROCESS HEARINGS; TO ESTABLISH AND EMPOWER AN ADVISORY COMMITTEE
7 FOR SPECIAL EDUCATION; TO ESTABLISH STATE PERFORMANCE GOALS FOR
8 CHILDREN WITH DISABILITIES; TO CREATE A SPECIAL FUND DESIGNATED AS
9 "SPECIAL EDUCATION, SPECIAL SERVICES FUND"; TO AMEND SECTION
10 37-16-9, MISSISSIPPI CODE OF 1972, TO DIRECT STATEWIDE AND
11 DISTRICT-WIDE ASSESSMENT PROGRAMS FOR DISABLED STUDENTS; TO AMEND
12 SECTIONS 37-23-1 THROUGH 37-23-11, MISSISSIPPI CODE OF 1972, IN
13 CONFORMITY THERETO; AND FOR RELATED PURPOSES. BE IT ENACTED BY
14 THE LEGISLATURE OF THE STATE OF MISSISSIPPI:
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16 SECTION 1. Words and terms, unless otherwise defined below,
17 when used in Sections 37-23-1 through 37-23-159 shall be defined
18 in the same manner as those words and terms used in the
19 Individuals with Disabilities Education Act 1997 Amendments
20 (IDEA), applicable federal regulations and relevant court cases:

21 (a) "Assistive technology device" means any item, piece
22 of equipment or product system, whether acquired commercially off
23 the shelf, modified or customized, that is used to increase,
24 maintain or improve the functional capabilities of children with
25 disabilities.

26 (b) "Assistive technology service" means any service
27 that directly assists a student with a disability in the
28 selection, acquisition or use of an assistive technology device.
29 The term includes:

30 (i) The evaluation of the needs of a student with
31 a disability, including a functional evaluation of the student in
32 his or her customary environment;

33 (ii) Purchasing, leasing or otherwise providing
34 for the acquisition of assistive technology devices by students
35 with disabilities;

36 (iii) Selecting, designing, fitting, customizing,
37 adapting, applying, maintaining, repairing or replacing assistive
38 devices;

39 (iv) Coordinating and using other therapies,
40 interventions or services with assistive technology devices, such
41 as those associated with existing education and rehabilitation
42 plans and programs;

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

45 (vi) Training or technical assistance for
46 professionals (including individuals providing education or
47 rehabilitation services), employers or other individuals who may
48 provide services to, employ, or are otherwise substantially
49 involved in the major life functions of students with
50 disabilities.

51 (c) "Consent" means agreement in writing from the
52 parent of a child with a disability pertaining to the activities
53 as required under IDEA and the Family Rights and Privacy Act.
54 Local educational agencies shall ensure that the parent:

55 (i) Has been fully informed of all information
56 relevant to the activity for which consent is required;

57 (ii) Understands the activity for which consent is
58 requested; and

59 (iii) Understands that the granting of consent is
60 voluntary and may be revoked at any time prior to the time the
61 activity is conducted.

62 (d) "Free appropriate public education" means special
63 education and related services provided by local educational
64 agencies that:

65 (i) Have been provided at public expense, under

66 public supervision and direction, and without charge;

67 (ii) Meet the standards of the State Department of
68 Education;

69 (iii) Include an appropriate preschool,
70 elementary, or secondary school education; and

71 (iv) Are provided in conformity with the
72 individualized education program required under IDEA, applicable
73 federal and state regulations and relevant court cases.

74 (e) "Individualized education program" or "IEP" means a
75 written statement for each child with a disability that is
76 developed, reviewed, and revised in accordance with the
77 requirements under IDEA, applicable federal and state regulations
78 and relevant court cases.

79 (f) "Least restrictive environment" means to the
80 maximum extent appropriate, children with disabilities, are
81 educated with children who are not disabled, and special classes,
82 separate schooling, or other removal of children with disabilities
83 from the regular educational environment occurs only when the
84 nature or severity of the disability of a child is such that
85 education in regular classes with the use of supplementary aids
86 and services cannot be achieved satisfactorily.

87 (g) "Parent" means a person who is legally responsible
88 for a child's welfare or acting for the child in the absence of
89 the legally responsible person. Parent may also mean a natural
90 parent, a guardian, or a surrogate parent.

91 (h) "Related services" means transportation, and such
92 developmental, corrective, and other supportive services
93 (including speech-language pathology and audiology services,
94 psychological services, physical and occupational therapy,
95 recreation, including therapeutic recreation, social work
96 services, counseling services, including rehabilitation
97 counseling, orientation and mobility services, and medical
98 services, except that such medical services shall be for

99 diagnostic and evaluation purposes only) as may be required to
100 assist a child with a disability to benefit from special
101 education, and includes the early identification and assessment of
102 disabling conditions in children.

103 (i) "Special education" means specially designed
104 instruction provided by local educational agencies, at no cost to
105 parents, to meet the unique needs of a child with a disability,
106 including instruction conducted in the classroom, in the home, in
107 hospitals and institutions, and in other settings. This term also
108 includes instruction in physical education.

109 (j) "Supplementary aids and services" means aids,
110 services, and other supports that are provided in regular
111 education classes or other education-related settings to enable
112 children with disabilities to be educated with nondisabled
113 children to the maximum extent appropriate in accordance with the
114 least restrictive environment requirements under IDEA, applicable
115 federal regulations and relevant court cases.

116 (k) "Transition services" means a coordinated set of
117 activities for a student with a disability that:

118 (i) Is designed within an outcome-oriented
119 process, which promotes movement from school to post-school
120 activities, including post-secondary education, vocational
121 training, integrated employment (including supported employment),
122 continuing and adult education, adult services, independent
123 living, or community participation;

124 (ii) Is based upon the individual student's needs,
125 taking into account the student's preferences and interests;

126 (iii) Includes instruction, related services,
127 community experiences, the development of employment and other
128 post-school adult living objectives, and, when appropriate,
129 acquisition of daily living skills and functional vocational
130 evaluation.

131 SECTION 2. (1) For the purposes of this section, each local

132 educational agency is eligible for assistance under IDEA Part B
133 for a fiscal year if, in providing for the education of children
134 with disabilities within its jurisdiction, policies, procedures
135 and programs are in effect that are consistent with the
136 regulations established by the State Department of Education.

137 (2) The local educational agency shall have in effect
138 policies and procedures, and programs that are consistent with the
139 State Department of Education's policies and procedures to ensure:

140 (a) A free appropriate public education is available to
141 all children with disabilities residing in the state between the
142 ages of three (3) and twenty (20), inclusive. Educational
143 services for children with disabilities who have been suspended or
144 expelled from school shall be provided based on the requirements
145 of IDEA, applicable federal regulations and state regulations;

146 (b) The full educational opportunity goal established
147 by the state is implemented;

148 (c) All children with disabilities, who are in need of
149 special education and related services, including children with
150 disabilities attending private school, regardless of the severity
151 of their disabilities, are identified, located, and evaluated;

152 (d) An individualized education program is developed,
153 reviewed and revised for each child with a disability;

154 (e) Children with disabilities are provided services
155 within their least restrictive environment;

156 (f) Children with disabilities and their parents are
157 afforded the procedural safeguards required under IDEA;

158 (g) Children with disabilities are evaluated as
159 required under IDEA;

160 (h) Children with disabilities participating in early
161 intervention programs assisted under IDEA Part C who will
162 participate in preschool programs assisted under IDEA Part B shall
163 experience a smooth transition. An individualized educational
164 program shall be developed and implemented by the child's third

165 birthday;

166 (i) Children with disabilities enrolled in private
167 schools by their parents shall be provided special education and
168 related services to the extent required under IDEA;

169 (j) Children with disabilities who are placed in
170 private schools or facilities by the local educational agency
171 shall be provided special education and related services, in
172 accordance with an individualized education program, at no cost to
173 their parents;

174 (k) A comprehensive system of personnel development has
175 been developed to ensure appropriately qualified personnel are
176 available and personnel are trained in accordance with the
177 requirements of the State Department of Education and IDEA;

178 (l) Personnel providing educational services to
179 children with disabilities meet the personnel standards of the
180 State Department of Education;

181 (m) The performance goals and indicators shall be
182 implemented as established by the State Board of Education; and

183 (n) Children with disabilities are included in
184 statewide and district-wide assessment programs, with appropriate
185 accommodations, in accordance with regulations established by the
186 State Board of Education.

187 (3) The local educational agency shall make available to
188 parents of children with disabilities and to the general public
189 all documents relating to the agency's eligibility under IDEA.

190 (4) If the State Department of Education determines that a
191 local educational agency is not eligible to receive federal funds
192 due to compliance violations not being resolved within a specified
193 timeline, the local educational agency shall be notified of that
194 determination and shall be provided with reasonable notice and an
195 opportunity for a hearing. The local educational agency in
196 receipt of such notice, shall, by means of public notice, take
197 such measures as may be necessary to bring the pendency of an

198 action to withhold funds to the attention of the public within the
199 jurisdiction of such agency.

200 (5) The State Department of Education, after reasonable
201 notice and an opportunity for a hearing, shall reduce or shall not
202 provide any further payments to the local educational agency until
203 the department is satisfied that the violations have been
204 corrected.

205 SECTION 3. (1) Consent shall be obtained:

206 (a) Prior to initial evaluation;

207 (b) Prior to implementation of the initial
208 individualized educational program for a child with a disability;

209 (c) Prior to reevaluation, except that such consent is
210 not required, if the local educational agency can demonstrate that
211 it had taken reasonable measures to obtain such consent and the
212 parent failed to respond; and

213 (d) Prior to the release of educational records as
214 required under the Family Rights and Privacy Act and IDEA.

215 (2) If the parent of a child with a disability refuses
216 consent for the evaluation, the local educational agency may
217 continue to pursue an evaluation by utilizing the due process
218 hearing procedures under IDEA, except to the extent these are not
219 in conflict with Mississippi law relating to parental consent.

220 (3) Written prior notice shall be provided to the parents of
221 the child whenever a local educational agency proposes to initiate
222 or change or refuses to initiate or change the identification,
223 evaluation, or educational placement of the child, or the
224 provision of a free appropriate public education to that child.

225 (4) Written prior notice shall be provided in the native
226 language of the parents, unless it clearly is not feasible to do
227 so.

228 (5) Written prior notice shall include:

229 (a) A description of the action proposed or refused by
230 the local educational agency;

231 (b) An explanation of why the local educational agency
232 proposes or refuses to take the action;

233 (c) A description of any other options that the local
234 educational agency considered and the reasons why those options
235 were rejected;

236 (d) A description of any other factors that are
237 relevant to the local educational agency's proposal or refusal;

238 (e) A description of each evaluation procedure, test,
239 record, or report the local educational agency used as a basis for
240 the proposed or refused action;

241 (f) A description of any factors that are relevant to
242 the local educational agency's proposal or refusal;

243 (g) A statement that the parents of a child with a
244 disability have protection under the procedural safeguards under
245 IDEA and, if the notice is not an initial referral for evaluation,
246 notification of an individualized educational program meeting or
247 notice for reevaluation, the means by which a copy of a
248 description of procedural safeguards can be obtained; and

249 (h) Sources for parents to contact to obtain assistance
250 in understanding the provisions under IDEA.

251 (6) A copy of the procedural safeguards established by the
252 State Department of Education shall be given to the parents upon:

253 (a) Initial referral for evaluation;

254 (b) Each notification of an individualized education
255 program meeting;

256 (c) Reevaluation; and

257 (d) Registration of a complaint under IDEA to the State
258 Department of Education.

259 (7) The State Department of Education and each local
260 educational agency shall establish procedures to ensure parents of
261 children with disabilities have the opportunity to participate in
262 meetings with respect to the identification, evaluation, and
263 education placement of the child, and the provision of a free

264 appropriate public education of such child.

265 (8) In conducting the evaluation, the local educational
266 agency shall:

267 (a) Use a variety of assessment tools and strategies to
268 gather relevant functional and developmental information,
269 including information provided by the parent, that may assist in
270 determining whether the child is a child with a disability and the
271 content of the child's individualized education program including
272 information related to enabling the child to be involved in and
273 progress in the general curriculum or, for preschool children, to
274 participate in appropriate activities;

275 (b) Not use any single procedure as the sole criterion
276 for determining whether a child is a child with a disability or
277 determining an appropriate educational program for the child; and

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

281 (9) Each local educational agency shall ensure that:

282 (a) Tests and other evaluation materials used to assess
283 a child are:

284 (i) Selected and administered so as not to be
285 discriminatory on a racial or cultural basis; and

286 (ii) Provided and administered in the child's
287 native language or other mode of communication, unless it is
288 clearly not feasible to do so;

289 (b) Any standardized tests that are given to the child:

290 (i) Have been validated for the specific purpose
291 for which they are used;

292 (ii) Are administered by trained and knowledgeable
293 personnel; and

294 (iii) Are administered in accordance with any
295 instructions provided by the producer of such tests;

296 (c) The child is assessed in all areas of suspected

297 disability; and

298 (d) Assessment tools and strategies that provide
299 relevant information that directly assist persons in determining
300 the educational needs of the child are provided.

301 (10) Upon completion of administration of tests and other
302 evaluation materials:

303 (a) The determination of whether the child is a child
304 with a disability as defined under IDEA and state regulations
305 established by the State Board of Education shall be made by a
306 team of qualified professionals and the parent of the child and
307 certified by a Screening Team as defined by the State Board of
308 Education;

309 (b) In making such a determination of eligibility, a
310 child shall not be determined to be a child with a disability if
311 the determinant factor for such determination is lack of
312 instruction in reading or math or limited English proficiency; and

313 (c) A copy of the evaluation report and the
314 documentation of determination of eligibility will be given to the
315 parent.

316 (11) Parents shall have an opportunity to obtain an
317 independent educational evaluation of their child in accordance
318 with the requirements under IDEA.

319 SECTION 4. (1) The State Department of Education shall
320 establish the necessary rules and regulations in accordance with
321 IDEA to provide for an organization or individual to file a signed
322 written complaint with respect to a violation of federal or state
323 regulations by a local educational agency relating to the
324 identification, evaluation, or educational placement of the child,
325 or the provision of a free appropriate public education to such
326 child.

327 (2) Procedures that require the parent of a child with a
328 disability, or the attorney representing the child, to provide
329 notice to the State Department of Education shall include:

330 (a) The name of the child, the address of the residence
331 of the child, and the name of the school the child is attending;

332 (b) A description of the nature of the problem of the
333 child relating to such proposed initiation or change, including
334 facts relating to such problem; and

335 (c) A proposed resolution of the problem to the extent
336 known and available to the parents at the time.

337 (3) The State Department of Education shall develop a model
338 form to assist parents in filing a complaint in accordance with
339 the requirements under IDEA.

340 (4) All complaints shall remain protected by the
341 confidentiality requirements under IDEA.

342 SECTION 5. (1) The State Department of Education shall
343 promulgate the necessary rules and regulations to establish a
344 mediation system which, at a minimum, shall be available whenever
345 a due process hearing under IDEA is requested. The mediation
346 system shall allow parties the opportunity to resolve such
347 disputes involving any matter relating to the identification,
348 evaluation or educational placement of the child, or the provision
349 of a free appropriate public education to such child.

350 (2) The State Department of Education shall ensure that the
351 mediation process is:

352 (a) Voluntary on the part of the parties;

353 (b) Not used to deny or delay a parent's right to a due
354 process hearing under IDEA; and

355 (c) Conducted by a qualified and impartial mediator who
356 is trained in effective mediation techniques.

357 (3) The State Department of Education may establish
358 procedures to require parents who choose not to use the mediation
359 process to meet, at a time and location convenient to the parents,
360 with a disinterested party who is under contract with a parent
361 training and information center or community parent resource
362 center in the state established under IDEA, or an appropriate

363 alternative dispute resolution entity. The purpose of the meeting
364 is to encourage the use, and explain the benefits, of the
365 mediation process to the parents.

366 (4) The State Department of Education shall maintain a list
367 of individuals who are qualified mediators and knowledgeable in
368 laws and regulations relating to the provision of special
369 education and related services.

370 (5) The state shall bear the cost of the mediation process,
371 including the costs of all meetings described in this section.

372 (6) Each session in the mediation process shall be scheduled
373 in a timely manner and shall be held in a location that is
374 convenient to the parties in dispute.

375 (7) An agreement reached by the parties to the dispute in
376 the mediation process shall be set forth in a written mediation
377 agreement.

378 (8) Discussions that occur during the mediation process
379 shall be confidential and may not be used as evidence in any
380 subsequent due process hearings or civil proceedings and the
381 parties to the mediation process may be required to sign a
382 confidentiality pledge prior to the commencement of such process.

383 SECTION 6. (1) When any public agency directly responsible
384 for the education of children with disabilities initiates or
385 refuses to initiate or change the identification, evaluation, or
386 educational placement of the child or the provision of a free
387 appropriate public education to the child, the parent of a child
388 with a disability or the agency shall have the opportunity to
389 request a state-level impartial due process hearing.

390 (2) A hearing officer shall have the power to issue a
391 subpoena to compel the attendance of witnesses or the production
392 of documents specifically relevant to the resolution to the issues
393 of the hearing.

394 (3) The State Department of Education shall promulgate rules
395 and regulations consistent with the requirements under IDEA to

396 establish a system for the provision of state-level impartial due
397 process hearings. Such provisions shall include:

398 (a) At least five (5) business days prior to a hearing
399 being conducted, each party shall disclose to all other parties
400 all evaluations completed by that date and recommendations based
401 on the offering party's evaluations that the party intends to use
402 at the hearing. A hearing officer may bar any party that fails to
403 comply with this requirement from introducing the relevant
404 evaluation or recommendation at the hearing without the consent of
405 the other party.

406 (b) A hearing may not be conducted by an employee of
407 the State Department of Education or the local educational agency
408 involved in the education or care of the child.

409 (c) The right of either party to be accompanied and
410 advised by counsel and by individuals with special knowledge or
411 training with respect to the problems of children with
412 disabilities.

413 (d) The right of either party to present evidence and
414 confront and cross-examine witnesses.

415 (e) The right, at the option of parents, to a written,
416 or, electronic verbatim record of such hearing.

417 (f) The right, at the option of parents, to electronic
418 findings of fact and decisions.

419 (g) Findings and facts shall be made available to the
420 public and transmitted to the advisory panel consistent with the
421 requirements under IDEA.

422 (4) The decision made by the hearing officer shall be final,
423 except that any party aggrieved by the findings and decision made
424 by the hearing officer shall have the right to bring a civil
425 action with respect to the issues of the due process hearing.
426 Such civil action may be brought in any court of competent
427 jurisdiction within thirty (30) days from the date of the decision
428 of the impartial due process hearing officer.

429 (5) Except as provided under IDEA, during the pendency of
430 any proceedings conducted pursuant to this section, unless the
431 local educational agency and the parents otherwise agree, the
432 child will remain in the then-current educational placement of
433 such child, or, if applying for initial admission to a public
434 school, shall, with the consent of the parents, be placed in the
435 public school program until all such proceedings have been
436 completed. This requirement does not limit the local educational
437 agency from obtaining a temporary restraining order from any court
438 of competent jurisdiction, as deemed necessary by the agency.

439 SECTION 7. (1) The State Board of Education shall establish
440 and maintain an advisory panel for the purpose of providing policy
441 guidance with respect to special education and related services
442 for children with disabilities in the State.

443 (2) The advisory panel shall consist of members appointed by
444 the State Board of Education that are representative of the
445 state's population and that are composed of individuals involved
446 in, or concerned with, the education of children with
447 disabilities, including:

448 (a) Parents of children with disabilities;

449 (b) Individuals with disabilities;

450 (c) Teachers;

451 (d) Representatives of institutions of higher education
452 that prepare special education and related services personnel;

453 (e) State and local education officials;

454 (f) Administrators of programs for children with
455 disabilities;

456 (g) Representatives of other state agencies involved in
457 the financing or delivery of related services to children with
458 disabilities;

459 (h) Representatives of private schools and public
460 charter schools;

461 (i) At least one (1) representative of a vocational,

462 community, or business organization concerned with the provision
463 of transition services to children with disabilities; and

464 (j) Representatives from the State juvenile and adult
465 correction agencies.

466 (3) A majority of the members of the panel shall be
467 individuals with disabilities or parents of children with
468 disabilities.

469 (4) The duties of the advisory panel shall include:

470 (a) Advise the State Department of Education of unmet
471 needs within the State in the education of children with
472 disabilities;

473 (b) Comment publicly on any rules or regulations
474 proposed by the State Department of Education regarding the
475 education of children with disabilities;

476 (c) Advise the State Department of Education in
477 developing evaluations and reporting on data to the secretary in
478 accordance with the requirements under IDEA; and

479 (d) Advise the State Department of Education in
480 developing and implementing policies relating to the coordination
481 of services for children with disabilities.

482 (5) The advisory panel shall be provided the opportunity to
483 provide comments to the State Board of Education on rules or
484 regulations proposed by the State Department of Education relating
485 to the implementation of the IDEA 1997 Amendments.

486 SECTION 8. The State Department of Education shall establish
487 goals for the performance of children with disabilities that will
488 promote the purpose of IDEA and are consistent, to the maximum
489 extent appropriate, with other goals and standards for children
490 established by the State Department of Education. Performance
491 indicators used to assess progress toward achieving those goals
492 that, at a minimum, address the performance of children with
493 disabilities on assessments, drop-out rates, and graduation rates
494 shall be developed. Every two (2) years, the progress toward

495 meeting the established performance goals shall be reported to the
496 public.

497 SECTION 9. (1) Children with disabilities shall be included
498 in general statewide and district-wide assessments programs, with
499 appropriate accommodations, where necessary. As appropriate, the
500 State Department of Education and the local educational agency
501 shall:

502 (a) Develop policies and procedures for the
503 participation of children with disabilities in alternate
504 assessments for those children who cannot participate in statewide
505 and district-wide assessment programs; and

506 (b) Develop and, beginning not later than July 1, 2000,
507 conduct those alternate assessments.

508 (2) The State Department of Education shall make available
509 to the public, and report to the public with the same frequency
510 and in the same detail as it reports on the assessment of
511 nondisabled children, the following:

512 (a) The number of children with disabilities
513 participating in regular assessments;

514 (b) The number of children participating in alternate
515 assessments;

516 (c) The performance of those children on regular
517 assessments, beginning not later than July 1, 1998, and on
518 alternate assessments, not later than July 1, 2000, if doing so
519 would be statistically sound and would not result in the
520 disclosure of performance results identifiable to individual
521 children; and

522 (d) Data relating to the performance of children with
523 disabilities shall be disaggregated for assessments conducted
524 after July 1, 1998.

525 SECTION 10. There is hereby created in the State Treasury a
526 special fund to be designated as the "Special Education, Special
527 Services Fund" which shall be used to distribute any funds

528 specifically appropriated by the Legislature to such fund. Any
529 funds remaining in the fund at the end of the fiscal year shall
530 not lapse into the State General Fund, but shall carryover to
531 subsequent fiscal years. Any interest accruing on any unexpended
532 balance in the Special Education, Special Services Fund shall be
533 invested by the State Treasurer and shall remain in the fund.

534 SECTION 11. Section 37-16-9, Mississippi Code of 1972, is
535 amended as follows:

536 37-16-9. (1) The state board shall, after a public hearing
537 and consideration, make provision for appropriate modification of
538 testing instruments and procedures for students with identified
539 handicaps or disabilities in order to ensure that the results of
540 the testing represent the student's achievement, rather than
541 reflecting the student's impaired sensory, manual, speaking or
542 psychological process skills, except when such skills are the
543 factors the test purports to measure.

544 (2) The public hearing and consideration required hereunder
545 shall not be construed to amend or nullify the requirements of
546 security relating to the contents of examinations or assessment
547 instruments and related materials or data.

548 (3) Children with disabilities shall be included in general
549 statewide and district-wide assessments programs, with appropriate
550 accommodations, where necessary. As appropriate, the State
551 Department of Education and the local educational agency shall:

552 (a) Develop policies and procedures for the
553 participation of children with disabilities in alternate
554 assessments for those children who cannot participate in statewide
555 and district-wide assessment programs; and

556 (b) Develop and, beginning not later than July 1, 2000,
557 conduct those alternate assessments.

558 (4) The State Department of Education shall make available
559 to the public, and report to the public with the same frequency
560 and in the same detail as it reports on the assessment of

561 nondisabled children, the following:

562 (a) The number of children with disabilities
563 participating in regular assessments;

564 (b) The number of children participating in alternate
565 assessments;

566 (c) The performance of those children on regular
567 assessments, beginning not later than July 1, 1998, and on
568 alternate assessments, not later than July 1, 2000, if doing so
569 would be statistically sound and would not result in the
570 disclosure of performance results identifiable to individual
571 children; and

572 (d) Data relating to the performance of children with
573 disabilities shall be disaggregated for assessments conducted
574 after July 1, 1998.

575 SECTION 12. Section 37-23-1, Mississippi Code of 1972, is
576 amended as follows:

577 37-23-1. The purpose of Sections 37-23-1 through 37-23-159
578 is to mandate free appropriate public educational services and
579 equipment for exceptional children in the age range three (3)
580 through twenty (20) for whom the regular school programs are not
581 adequate and to provide, on a permissive basis, a free appropriate
582 public education, as a part of the state's early intervention
583 system in accordance with regulations developed in collaboration
584 with the agency designated as "lead agency" under Part C of the
585 Individuals with Disabilities Education Act. The portion of the
586 regulations developed in collaboration with the lead agency which
587 are necessary to implement the programs under the authority of the
588 State Board of Education shall be presented to the State Board of
589 Education for adoption. * * * This specifically includes, but
590 shall not be limited to, provision for day schools for the deaf
591 and blind of an age under six (6) years, where early training is
592 in accordance with the most advanced and best approved scientific
593 methods of instruction, always taking into consideration the best

594 interests of the child and his improvement at a time during which
595 he is most susceptible of improvement. Educational programs to
596 exceptional children under the age of three (3) years shall be
597 eligible for minimum program funds as defined in Sections 37-23-3
598 and 37-19-5.

599 The educational programs and services provided for
600 exceptional children in Sections 37-23-1 through 37-23-15,
601 37-23-31 through 37-23-35, 37-23-61 through 37-23-75 and 37-23-77
602 shall be designed to provide individualized appropriate special
603 education and related services that enable a child to reach his or
604 her appropriate and uniquely designed goals for success. The
605 State Board of Education shall establish an accountability system
606 for special education programs and students with disabilities.
607 The system shall establish accountability standards for services
608 provided to improve the educational skills designed to prepare
609 children for life after their years in school. These standards
610 shall be a part of the accreditation system and shall be
611 implemented before July 1, 1996.

612 The State Department of Education shall establish goals for
613 the performance of children with disabilities that will promote
614 the purpose of IDEA and are consistent, to the maximum extent
615 appropriate, with other goals and standards for children
616 established by the State Department of Education. Performance
617 indicators used to assess progress toward achieving those goals
618 that, at a minimum, address the performance of children with
619 disabilities on assessments, drop-out rates, and graduation rates
620 shall be developed. Every two (2) years, the progress toward
621 meeting the established performance goals shall be reported to the
622 public.

623 SECTION 13. Section 37-23-3, Mississippi Code of 1972, is
624 amended as follows:

625 37-23-3. (1) An exceptional child shall be defined as any
626 child as herein defined, in the age range birth through twenty

627 (20) years of age with mental retardation, hearing impairments
628 (including deafness), speech or language impairments, visual
629 impairments (including blindness), emotional disturbance,
630 orthopedic impairments, autism, traumatic brain injury, other
631 health impairments, or specific learning disabilities and, by
632 reason thereof, needs special education and related services. Such
633 children shall be determined by competent professional persons in
634 such disciplines as medicine, psychology, special education,
635 speech pathology and social work and shall be considered
636 exceptional children for the purposes of Sections 37-23-1 through
637 37-23-159. Such professional persons shall be approved by the
638 State Department of Education. The mandate for the provision of
639 educational programs to exceptional children shall only apply to
640 the children in the age range three (3) through twenty (20).
641 Children who are potentially in need of special educational and
642 related services must be considered for the services on an
643 individual basis.

644 (2) During the Fiscal Year 1995 and Fiscal Year 1996, the
645 State Department of Education shall conduct a pilot project in one
646 or more school districts which shall test the method of providing
647 language services described in this subsection. For purposes of
648 this pilot project, a child with a disability as defined in the
649 Individuals with Disabilities Education Act (IDEA) may not be
650 denied language services because his measured cognitive
651 functioning is equivalent to or lower than his measured
652 functioning level in the language area. In order for language
653 services to be provided for a child, the measure functioning level
654 of the child in the language area must indicate a delay relative
655 to the child's chronological age. Individual determination of a
656 child's needs must take into consideration the need for
657 development in the language area, the need for support for basic
658 adaptive skills in language development and the extent to which the
659 child's lack of ability in the language area may have interfered

660 with academic achievement or development milestones. In the area
661 of language development, a child's need of alternative or
662 augmentative communication modes and the need for language
663 development must be considered fundamental in making their
664 determination of need for services.

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

669 Such reports shall include, but not be limited to, the project;
670 the number and ages of the children who applied for participation
671 and who did participate in the pilot project; and evaluation of
672 the benefits obtained by the children who participated in the
673 pilot project; an estimate of the number of children who would
674 likely utilize similar services if provided on a statewide basis;
675 and an estimate of the cost of providing such services on a
676 statewide basis.

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

680 SECTION 14. Section 37-23-5, Mississippi Code of 1972, is
681 amended as follows:

682 37-23-5. Except as otherwise provided in Senate Bill No.
683 2506, 1999 Regular Session, the State Department of Education is
684 empowered to foster, inspect, approve and administer a program of
685 education for exceptional children. The State Department of
686 Education shall make the necessary rules and regulations in
687 keeping with the provision of Sections 37-23-1 through 37-23-9 and
688 applicable federal laws and regulations which are not in conflict
689 with Mississippi law for its proper administration and shall
690 employ such personnel as may be necessary to administer such
691 program.

692 The department shall require that the program of education

693 for exceptional children be designed to provide individualized
694 appropriate special education and related services that enable a
695 child to reach his or her appropriate and uniquely designed goals
696 for success.

697 SECTION 15. Section 37-23-9, Mississippi Code of 1972, is
698 amended as follows:

699 37-23-9. Except as otherwise provided in Senate Bill No.
700 2506, 1999 Regular Session, course of study, teacher-pupil ratio,
701 adequacy of methods of instruction, in-service training
702 qualifications of teachers and technicians, and necessary
703 equipment for special education must comply with the requirements
704 established by the state department of education. Boards of
705 trustees of the districts wherein a special class or classes are
706 established are to employ teachers as provided by law for the
707 purpose of teaching the established special classes.

708 SECTION 16. Section 37-23-11, Mississippi Code of 1972, is
709 amended as follows:

710 Section 37-23-11. (1) When any public agency directly
711 responsible for the education of exceptional children * * *
712 shall: (a) initiate or change the identification, evaluation, or
713 educational placement of the child or the provision of a free
714 appropriate public education to the child, or (b) refuse to
715 initiate or change the identification, evaluation, or educational
716 placement of the child or the provision of a free appropriate
717 public education to the child, the parent of a child with a
718 disability or the agency shall have the opportunity to request a
719 state-level impartial due process hearing.

720 (2) A hearing officer * * * shall have the power to issue a
721 subpoena to compel the attendance of witnesses or the production
722 of documents specifically relevant to the resolution to the issues
723 of the hearing.

724 (3) The State Department of Education shall promulgate rules
725 and regulations consistent the requirements under IDEA to

726 establish a system for the provision of state-level impartial due
727 process hearings. Such provisions shall include:

728 (a) At least five (5) business days prior to a hearing
729 being conducted, each party shall disclose to all other parties
730 all evaluations completed by that date and recommendations based
731 on the offering party's evaluations that the party intends to use
732 at the hearing. A hearing officer may bar any party that fails to
733 comply with this requirement from introducing the relevant
734 evaluation or recommendation at the hearing without the consent of
735 the other party.

736 (b) A hearing may not be conducted by an employee of
737 the State Department of Education or the local educational agency
738 involved in the education or care of the child.

739 (c) The right of either party to be accompanied and
740 advised by counsel and by individuals with special knowledge or
741 training with respect to the problems of children with
742 disabilities.

743 (d) The right of either party to present evidence and
744 confront and cross-examine witnesses.

745 (e) The right, at the option of parents, to a written,
746 or, electronic verbatim record of such hearing.

747 (f) The right, at the option of parents, to electronic
748 findings of fact and decisions.

749 (g) Findings and facts shall be made available to the
750 public and transmitted to the advisory panel consistent with the
751 requirements under IDEA.

752 (4) The decision made by the hearing officer shall be final,
753 except that any party aggrieved by the findings and decision made
754 by the hearing officer shall have the right to bring a civil
755 action with respect to the issues of the due process hearing.
756 Such civil action may be brought in any court of competent
757 jurisdiction within thirty (30) days from the date of the decision
758 of the impartial due process hearing officer.

759 (5) Except as provided under IDEA, during the pendency of
760 any proceedings conducted pursuant to this section, unless the
761 local educational agency and the parents otherwise agree, the
762 child will remain in the then-current educational placement of
763 such child, or, if applying for initial admission to a public
764 school, shall, with the consent of the parents, be placed in the
765 public school program until all such proceeding have been
766 completed. This requirement does not limit the local educational
767 agency from obtaining a temporary restraining order from any court
768 of competent jurisdiction, as deemed necessary by the agency.

769 SECTION 17. This act shall take effect and be in force from
770 and after July 1, 1999.