

By: Senator(s) Thames, Nunnelee

To: Education

SENATE BILL NO. 2506
(As Sent to Governor)

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.

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

15 SECTION 1. Words and terms, unless otherwise defined below,
16 when used in Sections 37-23-1 through 37-23-159 shall be defined
17 in the same manner as those words and terms used in the
18 Individuals with Disabilities Education Act 1997 Amendments
19 (IDEA), applicable federal regulations and relevant court cases:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65 public supervision and direction, and without charge;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

159 (h) The State Department of Education and local
160 education agencies will assure the protection of the
161 confidentiality of any personally identifiable data, information
162 and records collected or maintained as required under IDEA and the
163 Family Rights and Privacy Act.

164 (i) Children with disabilities participating in early
165 intervention programs assisted under IDEA Part C who will
166 participate in preschool programs assisted under IDEA Part B shall
167 experience a smooth transition. An individualized educational
168 program shall be developed and implemented by the child's third
169 birthday;

170 (j) Children with disabilities enrolled in private
171 schools by their parents shall be provided special education and
172 related services to the extent required under IDEA;

173 (k) Children with disabilities who are placed in
174 private schools or facilities by the local educational agency
175 shall be provided special education and related services, in
176 accordance with an individualized education program, at no cost to
177 their parents;

178 (l) A comprehensive system of personnel development has
179 been developed to ensure appropriately qualified personnel are
180 available and personnel are trained in accordance with the
181 requirements of the State Department of Education and IDEA;

182 (m) Personnel providing educational services to
183 children with disabilities meet the personnel standards of the
184 State Department of Education;

185 (n) The performance goals and indicators shall be
186 implemented as established by the State Board of Education; and

187 (o) Children with disabilities are included in
188 statewide and district-wide assessment programs, with appropriate
189 accommodations, in accordance with regulations established by the
190 State Board of Education.

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

194 (4) If the State Department of Education determines that a
195 local educational agency is not eligible to receive federal funds
196 due to compliance violations not being resolved within a specified

197 timeline, the local educational agency shall be notified of that
198 determination and shall be provided with reasonable notice and an
199 opportunity for a hearing. The local educational agency in
200 receipt of such notice, shall, by means of public notice, take
201 such measures as may be necessary to bring the pendency of an
202 action to withhold funds to the attention of the public within the
203 jurisdiction of such agency.

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

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

210 (a) Prior to initial evaluation;

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

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

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

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

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

229 (4) Written prior notice shall be provided in the native

230 language of the parents, unless it clearly is not feasible to do
231 so.

232 (5) Written prior notice shall include:

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

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

237 (c) A description of any other options that the local
238 educational agency considered and the reasons why those options
239 were rejected;

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

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

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

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

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

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

257 (a) Initial referral for evaluation;

258 (b) Each notification of an individualized education
259 program meeting;

260 (c) Reevaluation; and

261 (d) Registration of a complaint under IDEA to the State
262 Department of Education.

263 (7) The State Department of Education and each local
264 educational agency shall establish procedures to ensure parents of
265 children with disabilities have the opportunity to participate in
266 meetings with respect to the identification, evaluation, and
267 education placement of the child, and the provision of a free
268 appropriate public education of such child. Local educational
269 agencies shall provide parents of children with disabilities an
270 opportunity to provide input in the development of the agencies'
271 application for funding, as required under IDEA.

272 (8) In conducting the evaluation, the local educational
273 agency shall:

274 (a) Use a variety of assessment tools and strategies to
275 gather relevant functional and developmental information,
276 including information provided by the parent, that may assist in
277 determining whether the child is a child with a disability and the
278 content of the child's individualized education program including
279 information related to enabling the child to be involved in and
280 progress in the general curriculum or, for preschool children, to
281 participate in appropriate activities;

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

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

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

289 (a) Tests and other evaluation materials used to assess
290 a child are:

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

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

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

297 (i) Have been validated for the specific purpose
298 for which they are used;

299 (ii) Are administered by trained and knowledgeable
300 personnel; and

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

303 (c) The child is assessed in all areas of suspected
304 disability; and

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

308 (10) Upon completion of administration of tests and other
309 evaluation materials:

310 (a) The determination of whether the child is a child
311 with a disability as defined under IDEA and state regulations
312 established by the State Board of Education shall be made by a
313 team of qualified professionals and the parent of the child and
314 certified by a Screening Team as defined by the State Board of
315 Education;

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

320 (c) A copy of the evaluation report and the
321 documentation of determination of eligibility will be given to the
322 parent.

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

326 SECTION 4. (1) The State Department of Education shall
327 establish the necessary rules and regulations in accordance with
328 IDEA to provide for an organization or individual to file a signed

329 written complaint with respect to a violation of federal or state
330 regulations by a local educational agency relating to the
331 identification, evaluation, or educational placement of the child,
332 or the provision of a free appropriate public education to such
333 child.

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

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

339 (b) A description of the nature of the problem of the
340 child relating to such proposed initiation or change, including
341 facts relating to such problem; and

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

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

347 (4) All complaints shall remain protected by the
348 confidentiality requirements under IDEA.

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

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

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

360 (b) Not used to deny or delay a parent's right to a due
361 process hearing under IDEA or to deny any other rights afforded

362 under IDEA; and

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

365 (3) The State Department of Education may establish
366 procedures to require parents who choose not to use the mediation
367 process to meet, at a time and location convenient to the parents,
368 with a disinterested party who is under contract with a parent
369 training and information center or community parent resource
370 center in the state established under IDEA, or an appropriate
371 alternative dispute resolution entity. The purpose of the meeting
372 is to encourage the use, and explain the benefits, of the
373 mediation process to the parents.

374 (4) The State Department of Education shall maintain a list
375 of individuals who are qualified mediators and knowledgeable in
376 laws and regulations relating to the provision of special
377 education and related services.

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

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

383 (7) An agreement reached by the parties to the dispute in
384 the mediation process shall be set forth in a written mediation
385 agreement.

386 (8) Discussions that occur during the mediation process
387 shall be confidential and may not be used as evidence in any
388 subsequent due process hearings or civil proceedings and the
389 parties to the mediation process may be required to sign a
390 confidentiality pledge prior to the commencement of such process.

391 SECTION 6. (1) When any public agency directly responsible
392 for the education of children with disabilities initiates or
393 refuses to initiate or change the identification, evaluation, or
394 educational placement of the child or the provision of a free

395 appropriate public education to the child, the parent of a child
396 with a disability or the agency shall have the opportunity to
397 request a state-level impartial due process hearing.

398 (2) The State Department of Education shall promulgate rules
399 and regulations consistent with the requirements under IDEA to
400 establish a system for the provision of state-level impartial due
401 process hearings. Such provisions shall include:

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

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

413 (c) The right of either party to be accompanied and
414 advised by counsel and by individuals with special knowledge or
415 training with respect to the problems of children with
416 disabilities.

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

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

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

423 (g) Findings and facts shall be made available to the
424 public and transmitted to the advisory panel consistent with the
425 requirements under IDEA.

426 (3) The decision made by the hearing officer shall be final,
427 except that any party aggrieved by the findings and decision made

428 by the hearing officer shall have the right to bring a civil
429 action with respect to the issues of the due process hearing.
430 Such civil action may be brought in any court of competent
431 jurisdiction within thirty (30) days from the date of the decision
432 of the impartial due process hearing officer.

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

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

447 (2) The advisory panel shall consist of members appointed by
448 the State Superintendent of Education who are representative of
449 the state's population and who are composed of individuals
450 involved in, or concerned with, the education of children with
451 disabilities, including:

- 452 (a) Parents of children with disabilities;
- 453 (b) Individuals with disabilities;
- 454 (c) Teachers;
- 455 (d) Representatives of institutions of higher education
456 that prepare special education and related services personnel;
- 457 (e) State and local education officials;
- 458 (f) Administrators of programs for children with
459 disabilities;
- 460 (g) Representatives of other state agencies involved in

461 the financing or delivery of related services to children with
462 disabilities;

463 (h) Representatives of private schools and public
464 charter schools;

465 (i) At least one (1) representative of a vocational,
466 community, or business organization concerned with the provision
467 of transition services to children with disabilities; and

468 (j) Representatives from the State juvenile and adult
469 correction agencies.

470 (3) A majority of the members of the panel shall be
471 individuals with disabilities or parents of children with
472 disabilities.

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

474 (a) Advise the State Department of Education of unmet
475 needs within the State in the education of children with
476 disabilities;

477 (b) Comment publicly on any rules or regulations
478 proposed by the State Department of Education regarding the
479 education of children with disabilities;

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

483 (d) Advise the State Department of Education in
484 developing and implementing policies relating to the coordination
485 of services for children with disabilities; and

486 (e) Advise the State Department of Education in
487 developing corrective action plans to address findings identified
488 in federal monitoring reports under IDEA.

489 (5) The advisory panel shall be provided the opportunity to
490 provide comments to the State Board of Education on rules or
491 regulations proposed by the State Department of Education relating
492 to the implementation of the IDEA 1997 Amendments.

493 SECTION 8. The State Department of Education shall establish

494 goals for the performance of children with disabilities that will
495 promote the purpose of IDEA and are consistent, to the maximum
496 extent appropriate, with other goals and standards for children
497 established by the State Department of Education. Performance
498 indicators used to assess progress toward achieving those goals
499 that, at a minimum, address the performance of children with
500 disabilities on assessments, drop-out rates, and graduation rates
501 shall be developed. Every two (2) years, the progress toward
502 meeting the established performance goals shall be reported to the
503 public.

504 SECTION 9. (1) Children with disabilities shall be included
505 in general statewide and district-wide assessments programs, with
506 appropriate accommodations, where necessary. As appropriate, the
507 State Department of Education and the local educational agency
508 shall:

509 (a) Develop policies and procedures for the
510 participation of children with disabilities in alternate
511 assessments for those children who cannot participate in statewide
512 and district-wide assessment programs; and

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

515 (2) The State Department of Education shall make available
516 to the public, and report to the public with the same frequency
517 and in the same detail as it reports on the assessment of
518 nondisabled children, the following:

519 (a) The number of children with disabilities
520 participating in regular assessments;

521 (b) The number of children participating in alternate
522 assessments;

523 (c) The performance of those children on regular
524 assessments, beginning not later than July 1, 1998, and on
525 alternate assessments, not later than July 1, 2000, if doing so
526 would be statistically sound and would not result in the

527 disclosure of performance results identifiable to individual
528 children; and

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

532 SECTION 10. There is hereby created in the State Treasury a
533 special fund to be designated as the "Special Education, Special
534 Services Fund" which shall be used to distribute any funds
535 specifically appropriated by the Legislature to such fund. This
536 Special Education, Special Services Fund will be used solely for
537 the provision of direct services to individual children with
538 disabilities. Any funds remaining in the fund at the end of the
539 fiscal year shall not lapse into the State General Fund, but shall
540 carryover to subsequent fiscal years. Any interest accruing on
541 any unexpended balance in the Special Education, Special Services
542 Fund shall be invested by the State Treasurer and shall remain in
543 the fund.

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

546 37-16-9. (1) The state board shall, after a public hearing
547 and consideration, make provision for appropriate modification of
548 testing instruments and procedures for students with identified
549 handicaps or disabilities in order to ensure that the results of
550 the testing represent the student's achievement, rather than
551 reflecting the student's impaired sensory, manual, speaking or
552 psychological process skills, except when such skills are the
553 factors the test purports to measure.

554 (2) The public hearing and consideration required hereunder
555 shall not be construed to amend or nullify the requirements of
556 security relating to the contents of examinations or assessment
557 instruments and related materials or data.

558 (3) Children with disabilities shall be included in general
559 statewide and district-wide assessments programs, with appropriate

560 accommodations, where necessary. As appropriate, the State
561 Department of Education and the local educational agency shall:

562 (a) Develop policies and procedures for the
563 participation of children with disabilities in alternate
564 assessments for those children who cannot participate in statewide
565 and district-wide assessment programs; and

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

568 (4) The State Department of Education shall make available
569 to the public, and report to the public with the same frequency
570 and in the same detail as it reports on the assessment of
571 nondisabled children, the following:

572 (a) The number of children with disabilities
573 participating in regular assessments;

574 (b) The number of children participating in alternate
575 assessments;

576 (c) The performance of those children on regular
577 assessments, beginning not later than July 1, 1998, and on
578 alternate assessments, not later than July 1, 2000, if doing so
579 would be statistically sound and would not result in the
580 disclosure of performance results identifiable to individual
581 children; and

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

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

587 37-23-1. The purpose of Sections 37-23-1 through 37-23-159
588 is to mandate free appropriate public educational services and
589 equipment for exceptional children in the age range three (3)
590 through twenty (20) for whom the regular school programs are not
591 adequate and to provide, on a permissive basis, a free appropriate
592 public education, as a part of the state's early intervention

593 system in accordance with regulations developed in collaboration
594 with the agency designated as "lead agency" under Part C of the
595 Individuals with Disabilities Education Act. The portion of the
596 regulations developed in collaboration with the lead agency which
597 are necessary to implement the programs under the authority of the
598 State Board of Education shall be presented to the State Board of
599 Education for adoption. * * * This specifically includes, but
600 shall not be limited to, provision for day schools for the deaf
601 and blind of an age under six (6) years, where early training is
602 in accordance with the most advanced and best approved scientific
603 methods of instruction, always taking into consideration the best
604 interests of the child and his improvement at a time during which
605 he is most susceptible of improvement. Educational programs to
606 exceptional children under the age of three (3) years shall be
607 eligible for minimum program funds as defined in Sections 37-23-3
608 and 37-19-5.

609 The educational programs and services provided for
610 exceptional children in Sections 37-23-1 through 37-23-15,
611 37-23-31 through 37-23-35, 37-23-61 through 37-23-75 and 37-23-77
612 shall be designed to provide individualized appropriate special
613 education and related services that enable a child to reach his or
614 her appropriate and uniquely designed goals for success. The
615 State Board of Education shall establish an accountability system
616 for special education programs and students with disabilities.
617 The system shall establish accountability standards for services
618 provided to improve the educational skills designed to prepare
619 children for life after their years in school. These standards
620 shall be a part of the accreditation system and shall be
621 implemented before July 1, 1996.

622 The State Department of Education shall establish goals for
623 the performance of children with disabilities that will promote
624 the purpose of IDEA and are consistent, to the maximum extent
625 appropriate, with other goals and standards for children

626 established by the State Department of Education. Performance
627 indicators used to assess progress toward achieving those goals
628 that, at a minimum, address the performance of children with
629 disabilities on assessments, drop-out rates, and graduation rates
630 shall be developed. Every two (2) years, the progress toward
631 meeting the established performance goals shall be reported to the
632 public.

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

635 37-23-3. (1) An exceptional child shall be defined as any
636 child as herein defined, in the age range birth through twenty
637 (20) years of age with mental retardation, hearing impairments
638 (including deafness), speech or language impairments, visual
639 impairments (including blindness), emotional disturbance,
640 orthopedic impairments, autism, traumatic brain injury, other
641 health impairments, or specific learning disabilities and, by
642 reason thereof, needs special education and related services. Such
643 children shall be determined by competent professional persons in
644 such disciplines as medicine, psychology, special education,
645 speech pathology and social work and shall be considered
646 exceptional children for the purposes of Sections 37-23-1 through
647 37-23-159. Such professional persons shall be approved by the
648 State Department of Education. The mandate for the provision of
649 educational programs to exceptional children shall only apply to
650 the children in the age range three (3) through twenty (20).
651 Children who are potentially in need of special educational and
652 related services must be considered for the services on an
653 individual basis.

654 (2) During the Fiscal Year 1995 and Fiscal Year 1996, the
655 State Department of Education shall conduct a pilot project in one
656 or more school districts which shall test the method of providing
657 language services described in this subsection. For purposes of
658 this pilot project, a child with a disability as defined in the

659 Individuals with Disabilities Education Act (IDEA) may not be
660 denied language services because his measured cognitive
661 functioning is equivalent to or lower than his measured
662 functioning level in the language area. In order for language
663 services to be provided for a child, the measure functioning level
664 of the child in the language area must indicate a delay relative
665 to the child's chronological age. Individual determination of a
666 child's needs must take into consideration the need for
667 development in the language area, the need for support for basic
668 adaptive skills in language development an the extent to which the
669 child's lack of ability in the language area may have interfered
670 with academic achievement or development milestones. In the area
671 of language development, a child's need of alternative or
672 augmentative communication modes and the need for language
673 development must be considered fundamental in making their
674 determination of need for services.

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

679 Such reports shall include, but not be limited to, the project;
680 the number and ages of the children who applied for participation
681 and who did participate in the pilot project; and evaluation of
682 the benefits obtained by the children who participated in the
683 pilot project; an estimate of the number of children who would
684 likely utilize similar services if provided on a statewide basis;
685 and an estimate of the cost of providing such services on a
686 statewide basis.

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

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

692 37-23-5. Except as otherwise provided in Senate Bill No.
693 2506, 1999 Regular Session, the State Department of Education is
694 empowered to foster, inspect, approve and administer a program of
695 education for exceptional children. The State Department of
696 Education shall make the necessary rules and regulations in
697 keeping with the provision of Sections 37-23-1 through 37-23-9 and
698 applicable federal laws and regulations which are not in conflict
699 with Mississippi law for its proper administration and shall
700 employ such personnel as may be necessary to administer such
701 program.

702 The department shall require that the program of education
703 for exceptional children be designed to provide individualized
704 appropriate special education and related services that enable a
705 child to reach his or her appropriate and uniquely designed goals
706 for success.

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

709 37-23-9. Except as otherwise provided in Senate Bill No.
710 2506, 1999 Regular Session, course of study, teacher-pupil ratio,
711 adequacy of methods of instruction, in-service training
712 qualifications of teachers and technicians, and necessary
713 equipment for special education must comply with the requirements
714 established by the state department of education. Boards of
715 trustees of the districts wherein a special class or classes are
716 established are to employ teachers as provided by law for the
717 purpose of teaching the established special classes.

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

720 37-23-11. (1) When any public agency directly responsible
721 for the education of exceptional children * * *
722 shall: (a) initiate or change the identification, evaluation, or
723 educational placement of the child or the provision of a free
724 appropriate public education to the child, or (b) refuse to

725 initiate or change the identification, evaluation, or educational
726 placement of the child or the provision of a free appropriate
727 public education to the child, the parent of a child with a
728 disability or the agency shall have the opportunity to request a
729 state-level impartial due process hearing.

730 * * *

731 (2) The State Department of Education shall promulgate rules
732 and regulations consistent with the requirements under IDEA to
733 establish a system for the provision of state-level impartial due
734 process hearings. Such provisions shall include:

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

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

746 (c) The right of either party to be accompanied and
747 advised by counsel and by individuals with special knowledge or
748 training with respect to the problems of children with
749 disabilities.

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

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

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

756 (g) Findings and facts shall be made available to the
757 public and transmitted to the advisory panel consistent with the

758 requirements under IDEA.

759 (3) The decision made by the hearing officer shall be final,
760 except that any party aggrieved by the findings and decision made
761 by the hearing officer shall have the right to bring a civil
762 action with respect to the issues of the due process hearing.
763 Such civil action may be brought in any court of competent
764 jurisdiction within thirty (30) days from the date of the decision
765 of the impartial due process hearing officer.

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

776 SECTION 17. It is the intent of the Legislature that none of
777 the provisions of this act shall create mandates that impose
778 financial or legal requirements upon local school districts which
779 are greater or more restrictive upon local school districts as
780 required by the Individuals with Disabilities Education Act of
781 1997 and any subsequent amendments or regulations thereunder, or
782 any other relevant federal legislation. Furthermore, it is not
783 the intent of the Legislature to impose any additional state
784 unfunded mandates for the implementation of this act. Any
785 provisions of this act which are inconsistent, create additional
786 unfunded state mandates, or which are more restrictive upon school
787 districts than federal requirements shall be expressly
788 unenforceable and have no effect.

789 SECTION 18. This act shall take effect and be in force from
790 and after July 1, 1999.