

By: Senator(s) Harden

To: Education;  
Appropriations

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2633

1 AN ACT TO AMEND SECTION 37-23-133, MISSISSIPPI CODE OF 1972,  
2 TO DEFINE CERTAIN TERMS RELATING TO THE EDUCATION OF EXCEPTIONAL  
3 CHILDREN; TO AMEND SECTION 37-23-137, MISSISSIPPI CODE OF 1972, TO  
4 REQUIRE NOTICE TO PARENTS WHEN EDUCATIONAL AGENCIES CONTRACT FOR  
5 THE ASSESSMENT OF A CHILD; AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 37-23-133, Mississippi Code of 1972, is  
8 amended as follows:

9 37-23-133. Words and terms, unless otherwise defined below,  
10 when used in Sections 37-23-1 through 37-23-159 shall be defined  
11 in the same manner as those words and terms used in the  
12 Individuals with Disabilities Education Act 1997 Amendments  
13 (IDEA), applicable federal regulations and relevant court cases:

14 (a) "Access to education records" means a review of  
15 education records or receipt of an accurate copy of an education  
16 record and a request to release a copy of any education record.

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

22 (c) "Assistive technology service" means any service  
23 that directly assists a student with a disability in the  
24 selection, acquisition or use of an assistive technology device.

25 The term includes:

26 (i) The evaluation of the needs of a student with  
27 a disability, including a functional evaluation of the student in  
28 his or her customary environment;

29                   (ii) Purchasing, leasing or otherwise providing  
30 for the acquisition of assistive technology devices by students  
31 with disabilities;

32                   (iii) Selecting, designing, fitting, customizing,  
33 adapting, applying, maintaining, repairing or replacing assistive  
34 devices;

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

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

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

47                   (d) "Computer media" means any manner of maintaining  
48 information that is stored through and retrieved by a computer,  
49 including information stored on CD-ROM.

50                   (e) "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           (f) "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           (g) "Education records" means those records that are  
74 directly related to a student and maintained by an educational  
75 agency or institution or by a party acting for the agency or  
76 institution specifically relating to an individual student.

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

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

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

94           (k) "Personally identifiable information" means, but is  
95 not limited to:

96           (i) The student's name;

97           (ii) The name of the student's parent or parents  
98 or other family members;

99           (iii) The address of the student or student's  
100 family; and

101           (iv) A list of personal characteristics that would  
102 make the student's identity easily traceable.

103           (l) "Record" means any information recorded in any way,  
104 including, but not limited to, handwriting, print, computer media,  
105 video or audiotape, film, microfilm or microfiche specifically  
106 related to an individual student.

107           (m) "Related services" means transportation, and such  
108 developmental, corrective, and other supportive services  
109 (including speech-language pathology and audiology services,  
110 psychological services, physical and occupational therapy,  
111 recreation, including therapeutic recreation, social work  
112 services, counseling services, including rehabilitation  
113 counseling, orientation and mobility services, and medical  
114 services, except that such medical services shall be for  
115 diagnostic and evaluation purposes only) as may be required to  
116 assist a child with a disability to benefit from special  
117 education, and includes the early identification and assessment of  
118 disabling conditions in children.

119           (n) "Special education" means specially designed  
120 instruction provided by local educational agencies, at no cost to  
121 parents, to meet the unique needs of a child with a disability,  
122 including instruction conducted in the classroom, in the home, in  
123 hospitals and institutions, and in other settings. This term also  
124 includes instruction in physical education.

125           (o) "Supplementary aids and services" means aids,  
126 services, and other supports that are provided in regular

127 education classes or other education-related settings to enable  
128 children with disabilities to be educated with nondisabled  
129 children to the maximum extent appropriate in accordance with the  
130 least restrictive environment requirements under IDEA, applicable  
131 federal regulations and relevant court cases.

132         

(p) "Transition services" means a coordinated set of  
133 activities for a student with a disability that:

134                 (i) Is designed within an outcome-oriented  
135 process, which promotes movement from school to post-school  
136 activities, including post-secondary education, vocational  
137 training, integrated employment (including supported employment),  
138 continuing and adult education, adult services, independent  
139 living, or community participation;

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

142                 (iii) Includes instruction, related services,  
143 community experiences, the development of employment and other  
144 post-school adult living objectives, and, when appropriate,  
145 acquisition of daily living skills and functional vocational  
146 evaluation.

147         SECTION 2. Section 37-23-137, Mississippi Code of 1972, is  
148 amended as follows:

149         37-23-137. (1) Consent shall be obtained:

150                 (a) Prior to initial evaluation;

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

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

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

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

164           (3) Written prior notice shall be provided to the parents of  
165 the child whenever a local educational agency proposes to initiate  
166 or change or refuses to initiate or change the identification,  
167 evaluation, or educational placement of the child, or the  
168 provision of a free appropriate public education to that child.

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

172           (5) Written prior notice shall include:

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

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

177               (c) A description of any other options that the local  
178 educational agency considered and the reasons why those options  
179 were rejected;

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

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

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

187               (g) A statement that the parents of a child with a  
188 disability have protection under the procedural safeguards under  
189 IDEA and, if the notice is not an initial referral for evaluation,  
190 notification of an individualized educational program meeting or

191 notice for reevaluation, the means by which a copy of a  
192 description of procedural safeguards can be obtained; and

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

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

197 (a) Initial referral for evaluation;

198 (b) Each notification of an individualized education  
199 program meeting;

200 (c) Reevaluation; and

201 (d) Registration of a complaint under IDEA to the State  
202 Department of Education.

203 (7) The State Department of Education and each local  
204 educational agency shall establish procedures to ensure parents of  
205 children with disabilities have the opportunity to participate in  
206 meetings with respect to the identification, evaluation, and  
207 education placement of the child, and the provision of a free  
208 appropriate public education of such child. Local educational  
209 agencies shall provide parents of children with disabilities an  
210 opportunity to provide input in the development of the agencies'  
211 application for funding, as required under IDEA.

212 (8) In conducting the evaluation, the local educational  
213 agency shall:

214 (a) Use a variety of assessment tools and strategies to  
215 gather relevant functional and developmental information,  
216 including information provided by the parent, that may assist in  
217 determining whether the child is a child with a disability and the  
218 content of the child's individualized education program including  
219 information related to enabling the child to be involved in and  
220 progress in the general curriculum or, for preschool children, to  
221 participate in appropriate activities;

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

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

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

229           (a) Tests and other evaluation materials used to assess  
230 a child are:

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

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

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

237                   (i) Have been validated for the specific purpose  
238 for which they are used;

239                   (ii) Are administered by trained and knowledgeable  
240 personnel; and

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

243           (c) The child is assessed in all areas of suspected  
244 disability; and

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

248           (10) Upon completion of administration of tests and other  
249 evaluation materials:

250           (a) The determination of whether the child is a child  
251 with a disability as defined under IDEA and state regulations  
252 established by the State Board of Education shall be made by a  
253 team of qualified professionals and the parent of the child and



254 certified by a Screening Team as defined by the State Board of  
255 Education;

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

260 (c) A copy of the evaluation report and the  
261 documentation of determination of eligibility will be given to the  
262 parent.

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

266 (12) An individual or entity contracting with a local  
267 educational agency shall submit a written report to the local  
268 educational agency and the parent/guardian of the child on the  
269 final findings, decisions and recommendations regarding the child  
270 resulting from the assessment, evaluation or observation. Such  
271 report and any other documentation relating to a particular child  
272 shall be maintained in the child's student file.

273 (13) Individuals or entities contracting to perform an  
274 assessment, evaluation or observation of a child with a local  
275 educational agency shall retain all information and records which  
276 pertain to that child sent to or received from the local  
277 educational agency.

278 (14) Parents and guardians shall have the right to review or  
279 receive copies of all information pertaining to their child which  
280 is collected, maintained or used by individuals or entities  
281 contracting with a local educational agency to perform an  
282 assessment, evaluation or observation of that particular child.  
283 The contracting entity or individual shall be responsible for  
284 making the information available to such parent or guardian.

285 SECTION 3. This act shall take effect and be in force from  
286 and after July 1, 2001.