To:  Education; Appropriations

MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2001
By:  Senator(s) Harden

SENATE BILL NO. 2633
(As Sent to Governor)

AN ACT TO AMEND SECTION 37-23-133, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN TERMS RELATING TO THE EDUCATION OF EXCEPTIONAL CHILDREN SHALL BE DEFINED AS SUCH TERMS ARE DEFINED UNDER THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT; TO AMEND SECTION 37-23-137, MISSISSIPPI CODE OF 1972, TO REQUIRE AN INDIVIDUAL OR ENTITY MAKING AN OBSERVATION OF A CHILD WHICH RESULTS IN POSSIBLE CHANGES TO A CHILD'S IEP TO SUBMIT A REPORT OF THE OBSERVATION TO THE LOCAL EDUCATIONAL AGENCY, TO REQUIRE THE AGENCY TO NOTIFY PARENTS UPON RECEIPT OF THE REPORT, AND TO DECLARE THE RIGHTS OF PARENTS TO REVIEW OR RECEIVE COPIES OF THEIR CHILD'S EDUCATIONAL RECORDS; AND FOR RELATED PURPOSES.

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

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

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

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

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

The term includes:
(i) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in his or her customary environment;

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

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

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

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

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

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

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

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

(iii) Understands that the granting of consent is voluntary and may be revoked at any time prior to the time the activity is conducted.
(d) "Free appropriate public education" means special education and related services provided by local educational agencies that:

(i) Have been provided at public expense, under public supervision and direction, and without charge;

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

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

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

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

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

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

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

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

(j) "Supplementary aids and services" means aids, education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the least restrictive environment requirements under IDEA, applicable federal regulations and relevant court cases.

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

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

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

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

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

37-23-137. (1) Consent shall be obtained:
(a) Prior to initial evaluation;
(b) Prior to implementation of the initial
individualized educational program for a child with a disability;
(c) Prior to reevaluation, except that such consent is
not required, if the local educational agency can demonstrate that
it had taken reasonable measures to obtain such consent and the
parent failed to respond; and
(d) Prior to the release of educational records as
required under the Family Educational Rights and Privacy Act and
IDEA.

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

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

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

(5) Written prior notice shall include:
(a) A description of the action proposed or refused by
the local educational agency;
(b) An explanation of why the local educational agency proposes or refuses to take the action;

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

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

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

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

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

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

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

(a) Initial referral for evaluation;

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

(c) Reevaluation; and

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

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

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

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

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

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

(9) Each local educational agency shall ensure that:

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

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

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

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

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

(ii) Are administered by trained and knowledgeable personnel; and
(iii) Are administered in accordance with any
instructions provided by the producer of such tests;

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

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

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

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

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

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

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

(12) An outside individual or entity contracting with a
local educational agency for the purpose of performing an
observation in order to make recommendations of possible changes
in a child's IEP, or any outside individual or entity making an
observation of a child which results in such recommendations,
shall submit a report of the observation to the local educational
agency. The local educational agency shall notify the parent upon
receipt of this report.
(13) Parents and guardians shall have the right of review or
to receive copies of all educational records, as such records are
defined by the Family Educational Rights and Privacy Act and the
Individuals with Disabilities Education Act, pertaining to their
child. The local educational agency shall be responsible for
making the educational records available to the parent or
guardian. The cost of providing a copy of any information
contained in a student's educational record to the parents or
guardians shall be established by the local school board in
accordance with the requirements of the Family Educational Rights
and Privacy Act and the Individuals with Disabilities Education
Act.

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