

By: Senator(s) Harden

To: Education;
Appropriations

SENATE BILL NO. 2633
(As Sent to Governor)

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

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

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

15 37-23-133. 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), Family Educational Rights and Privacy Act, applicable
20 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 Educational Rights and
54 Privacy Act. Local educational agencies shall ensure that the
55 parent:

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

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

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

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

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

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

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

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

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

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

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

92 (h) "Related services" means transportation, and such
93 developmental, corrective, and other supportive services
94 (including speech-language pathology and audiology services,
95 psychological services, physical and occupational therapy,

96 recreation, including therapeutic recreation, social work
97 services, counseling services, including rehabilitation
98 counseling, orientation and mobility services, and medical
99 services, except that such medical services shall be for
100 diagnostic and evaluation purposes only) as may be required to
101 assist a child with a disability to benefit from special
102 education, and includes the early identification and assessment of
103 disabling conditions in children.

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

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

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

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

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

127 (iii) Includes instruction, related services,
128 community experiences, the development of employment and other

129 post-school adult living objectives, and, when appropriate,
130 acquisition of daily living skills and functional vocational
131 evaluation.

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

134 37-23-137. (1) Consent shall be obtained:

135 (a) Prior to initial evaluation;

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

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

142 (d) Prior to the release of educational records as
143 required under the Family Educational Rights and Privacy Act and
144 IDEA.

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

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

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

158 (5) Written prior notice shall include:

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

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

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

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

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

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

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

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

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

183 (a) Initial referral for evaluation;

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

186 (c) Reevaluation; and

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

189 (7) The State Department of Education and each local
190 educational agency shall establish procedures to ensure parents of
191 children with disabilities have the opportunity to participate in
192 meetings with respect to the identification, evaluation, and
193 education placement of the child, and the provision of a free

194 appropriate public education of such child. Local educational
195 agencies shall provide parents of children with disabilities an
196 opportunity to provide input in the development of the agencies'
197 application for funding, as required under IDEA.

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

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

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

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

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

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

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

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

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

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

225 (ii) Are administered by trained and knowledgeable
226 personnel; and

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

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

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

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

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

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

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

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

252 (12) An outside individual or entity contracting with a
253 local educational agency for the purpose of performing an
254 observation in order to make recommendations of possible changes
255 in a child's IEP, or any outside individual or entity making an
256 observation of a child which results in such recommendations,
257 shall submit a report of the observation to the local educational
258 agency. The local educational agency shall notify the parent upon
259 receipt of this report.

260 (13) Parents and guardians shall have the right of review or
261 to receive copies of all educational records, as such records are
262 defined by the Family Educational Rights and Privacy Act and the
263 Individuals with Disabilities Education Act, pertaining to their
264 child. The local educational agency shall be responsible for
265 making the educational records available to the parent or
266 guardian. The cost of providing a copy of any information
267 contained in a student's educational record to the parents or
268 guardians shall be established by the local school board in
269 accordance with the requirements of the Family Educational Rights
270 and Privacy Act and the Individuals with Disabilities Education
271 Act.

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