

**\*\*\*Adopted\*\*\*  
AMENDMENT No. 1 PROPOSED TO**

**Senate Bill NO. 2633**

**By Representative(s) Committee**

**Amend by striking all after the enacting clause and inserting  
in lieu thereof the following:**

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 defined by the  
262 Family Educational Rights and Privacy Act and the Individuals with  
263 Disabilities Education Act, pertaining to their child. The local  
264 educational agency shall be responsible for making the educational  
265 records available to the parent or guardian. The cost of  
266 providing a copy of any information contained in a student's  
267 educational record to the parents or guardians shall be  
268 established by the local school board in accordance with the  
269 requirements of the Family Educational Rights and Privacy Act and

270 the Individuals with Disabilities Education Act.

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

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.