

By: Representative Pierce

To: Education;
Appropriations

HOUSE BILL NO. 1366

1 AN ACT TO BRING FORWARD SECTIONS 37-23-61, 37-23-63,
2 37-23-65, 37-23-67, 37-23-69, 37-23-71, 37-23-73, 37-23-75 AND
3 37-23-77, MISSISSIPPI CODE OF 1972, WHICH RELATE TO FINANCIAL
4 ASSISTANCE TO EXCEPTIONAL CHILDREN ATTENDING PRIVATE OR PAROCHIAL
5 SCHOOLS, FOR THE PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 37-23-61, Mississippi Code of 1972, is
8 brought forward as follows:

9 37-23-61. As used in Sections 37-23-61 through 37-23-75, the
10 word "child" shall mean any child who cannot pursue all regular
11 classwork due to reasons of defective hearing, vision, speech,
12 mental retardation, or other mental or physical conditions as
13 determined by competent medical authorities and psychologists.
14 Said medical authorities and psychologists shall be approved by
15 the State Department of Education.

16 **SECTION 2.** Section 37-23-63, Mississippi Code of 1972, is
17 brought forward as follows:

18 37-23-63. Every child who is a resident citizen of the State
19 of Mississippi under twenty-one (21) years of age, who cannot
20 pursue all regular classwork due to reasons of defective hearing,
21 vision, speech, mental retardation or other mental or physical
22 conditions as determined by competent medical authorities and
23 psychologists, who has not finished or graduated from high school,
24 and who is in attendance in a private school, parochial school or
25 speech, hearing and/or language clinic that is accredited by a
26 state or regional accrediting agency or approved/licensed by the
27 State Department of Education, shall be eligible and entitled to
28 receive state financial assistance in the amount set forth in

29 Section 37-23-69. Children who are certified by the designated
30 state authority as requiring inpatient care in a private
31 intermediate care facility for the mentally retarded or
32 psychiatric residential treatment facility, with Medicaid
33 reimbursement, shall be eligible and entitled to receive state
34 financial assistance under the provisions of Section 37-23-69, if
35 an approved private school is operated as an integral part of the
36 facility which provides twenty-four (24) hours a day monitoring,
37 treatment and education.

38 **SECTION 3.** Section 37-23-65, Mississippi Code of 1972, is
39 brought forward as follows:

40 37-23-65. The State Department of Education is authorized
41 and directed to promulgate rules and regulations for the payment
42 of such financial assistance and the administration of Sections
43 37-23-61 through 37-23-75 generally.

44 The State Department of Education shall have the authority to
45 promulgate and enforce reasonable rules and regulations
46 establishing standards for administration of the program
47 contemplated by Sections 37-23-61 through 37-23-75, consistent
48 with the maintenance of high quality programs for the benefit of
49 the exceptional children served.

50 The State Department of Education shall require that the
51 programs for which children are eligible for financial assistance
52 under Sections 37-23-61 through 37-23-75 be designed to provide
53 individualized appropriate special education and related services
54 that enable a child to reach his or her appropriate and uniquely
55 designed goals for success.

56 **SECTION 4.** Section 37-23-67, Mississippi Code of 1972, is
57 brought forward as follows:

58 37-23-67. The State Department of Education shall have the
59 power to receive and administer all funds for or hereafter
60 appropriated to, provided for, or otherwise accruing to, the State
61 Department of Education for the purpose of providing financial

62 assistance to students attending private schools, parochial
63 schools or speech, hearing and/or language clinics that are
64 accredited by a state or regional accrediting agency or
65 approved/licensed by the State Department of Education, for the
66 purpose of defraying the cost of the administration of Sections
67 37-23-61 through 37-23-75, and for any and all purposes necessary
68 or proper for the administration of the provisions of said
69 sections.

70 **SECTION 5.** Section 37-23-69, Mississippi Code of 1972, is
71 brought forward as follows:

72 37-23-69. The State Department of Education shall have the
73 power to determine and pay the amount of the financial assistance
74 to be made available to each applicant, and to see that all
75 applicants and the programs for them meet the requirements of the
76 program for exceptional children. No financial assistance shall
77 exceed the obligation actually incurred by the applicant for
78 tuition and fees. Within the amount of available state funds
79 appropriated for such purpose, each such applicant may receive
80 assistance according to the following allowances:

81 (a) If the applicant chooses to attend a private
82 school, a parochial school or a speech, hearing and/or language
83 clinic having an appropriate program for the applicant, and if the
84 school or clinic meets federal and state regulations, then the
85 tuition reimbursement will be one hundred percent (100%) of the
86 first Six Hundred Dollars (\$600.00) in tuition charged by the
87 school or clinic; or, if the applicant is under six (6) years of
88 age, and no program appropriate for the child exists in the public
89 schools of his domicile, then the reimbursement shall be one
90 hundred percent (100%) of the first Six Hundred Dollars (\$600.00)
91 in tuition charged by the school or clinic, and fifty percent
92 (50%) of the next Eight Hundred Dollars (\$800.00) in tuition
93 charged by the school or clinic;

94 (b) A public school district shall be reimbursed for
95 the educational costs of an applicant up to a maximum of Three
96 Thousand Dollars (\$3,000.00) if the following conditions are met:
97 (i) an applicant in the age range six (6) through twenty (20)
98 requests the public school district where he resides to provide an
99 education for him and the nature of the applicant's educational
100 problem is such that, according to best educational practices, it
101 cannot be met in the public school district where the child
102 resides; (ii) the public school district decides to provide the
103 applicant a free appropriate education by placing him in a private
104 school, a parochial school or a speech, hearing and/or language
105 clinic having an appropriate program for the applicant; and (iii)
106 the program meets federal and state regulations. Nothing in this
107 paragraph shall prevent two (2) or more public school districts
108 from forming a cooperative to meet the needs of low incidence
109 exceptional children, nor shall the public school be relieved of
110 its responsibility to provide an education for all children.

111 If an exceptional child, as defined in Section 37-23-3, is
112 placed in a therapeutic or other group home licensed or approved
113 by the state which has no educational program associated with it,
114 the local school district in which the home is located shall offer
115 an appropriate educational program to that child.

116 At any time that the Individualized Education Program (IEP)
117 Committee in the district where the home is located determines
118 that an exceptional child, as defined in Section 37-23-3, residing
119 in that home can no longer be provided a free appropriate public
120 education in that school district, and the State Department of
121 Education agrees with that decision, then the State Department of
122 Education shall recommend to the Department of Human Services
123 placement of the child by the Department of Human Services, which
124 shall take appropriate action. The placement of the exceptional
125 child in the facility shall be at no cost to the local school
126 district. Funds available under Sections 37-19-1 through 37-19-53

127 and Sections 37-23-61 through 37-23-77, as well as any available
128 federal funds, may be used to provide the costs of the placement.
129 If the exceptional child is under the guardianship of the
130 Department of Human Services or another state agency, the State
131 Department of Education shall pay only for the educational costs
132 of that placement, and the other agency shall be responsible for
133 the room, board and any other costs. The special education and
134 related services provided to the child shall be in compliance with
135 State Department of Education and any related federal regulations.
136 The State Board of Education may promulgate regulations that are
137 necessary to implement this section; and

138 (c) If an appropriate local or regional system of care,
139 including a free appropriate public education, is available for
140 exceptional children who are currently being served in
141 out-of-district or Department of Human Services placements
142 pursuant to Section 37-23-69(b) or 37-23-77, then the state funds
143 from the State Department of Education which would have been used
144 for those placements may be paid into a pool of funds with funds
145 from other state agencies to be used for the implementation of the
146 individualized plans of care for those children. If there are
147 sufficient funds to serve additional exceptional children because
148 of cost savings as a result of serving these students at home
149 and/or matching the pooled funds with federal dollars, the funds
150 may be used to implement individualized plans of care for those
151 additional exceptional children. Each local or regional provider
152 of services included in the individualized plans of care shall
153 comply with all appropriate state and federal regulations. The
154 State Board of Education may promulgate regulations that are
155 necessary to implement this section.

156 The State Department of Education may also provide for the
157 payment of such financial assistance in installments and for
158 proration of such financial assistance in the case of children
159 attending a school or clinic for less than a full school session

160 and, in the event that available funds are insufficient, may
161 allocate the available funds among the qualified applicants and
162 local school districts by reducing the maximum assistance provided
163 for herein.

164 Any monies provided an applicant under Sections 37-23-61
165 through 37-23-75 shall be applied by the receiving educational
166 institution as a reduction in the amount of the tuition paid by
167 the applicant, and the total tuition paid by the applicant shall
168 not exceed the total tuition paid by any other child in similar
169 circumstances enrolled in the same program in that institution.
170 However, this limitation shall not prohibit the waiving of all or
171 part of the tuition for a limited number of children based upon
172 demonstrated financial need, and the State Department of Education
173 may adopt and enforce reasonable rules and regulations to carry
174 out the intent of these provisions.

175 **SECTION 6.** Section 37-23-71, Mississippi Code of 1972, is
176 brought forward as follows:

177 37-23-71. Upon approving the application for financial
178 assistance, the State Department of Education shall issue its
179 commitment in writing to the parent or guardian of, or person
180 standing in loco parentis to the applicant, or to the public
181 school district, which said commitment shall be for a specified
182 amount for each day. Payments made under such commitment shall be
183 made by the department, in accordance with the terms of the
184 commitment, and each commitment shall be conditioned upon the
185 applicant's attendance in accordance with his application and the
186 provisions of Sections 37-23-61 through 37-23-75.

187 **SECTION 7.** Section 37-23-73, Mississippi Code of 1972, is
188 brought forward as follows:

189 37-23-73. In the event of disapproval by the state
190 department of education of an application for financial assistance
191 payable from department funds, the department shall give notice to
192 the applicant, through the parent or guardian of, or person

193 standing in loco parentis to, the applicant, or to the public
194 school district, by certified mail. Any applicant, through the
195 parent or guardian of, or the person standing in loco parentis to,
196 the applicant, or to the public school district, may, within ten
197 (10) days after receipt of such notice, apply to the state board
198 of education for a hearing, and shall be given a prompt and fair
199 hearing on the question of entitlement to such financial
200 assistance. The board shall render prompt decision upon such
201 hearing. If the board shall affirm the previous action of
202 disapproval of the application, notice shall be given to the
203 applicant, through the parent or guardian of, or the person
204 standing in loco parentis to, the applicant, or to the public
205 school district, by certified mail. Any applicant aggrieved by
206 the action of the board may, through the parent or guardian of, or
207 the person standing in loco parentis to, the applicant or to the
208 public school district within ten (10) days after receipt of such
209 notice, file a petition in the chancery court of the county in
210 which applicant resides for a hearing in the matter on all
211 questions of fact and of law. The petition shall be served upon
212 the state superintendent of public education. Within thirty (30)
213 days after service of the petition, the board shall prepare and
214 deposit a certified transcript of the record in the case in the
215 office of the clerk of the court, which record shall include a
216 copy of the application and any official findings, orders and
217 rulings of the board in the case. The state board of education
218 shall have thirty (30) days after the service of the petition
219 within which to appear and file exceptions, answers or other
220 pleadings. Additional time for preparation of the certified
221 transcript of the record and for appearing and filing exceptions,
222 answers or other pleadings may be granted to the board by order of
223 the court. The court, after considering the law, the pleadings
224 and such evidence as may be adduced in the case, may modify,
225 affirm or reverse the findings of the board and make, issue and

226 enter its judgment accordingly. Appeal from any such judgment
227 shall be subject to the procedures applicable to appeals in
228 ordinary civil actions.

229 **SECTION 8.** Section 37-23-75, Mississippi Code of 1972, is
230 brought forward as follows:

231 37-23-75. It shall be unlawful for any person to obtain,
232 seek to obtain, expend, or seek to expend, any financial
233 assistance funds for any purpose other than in payment of or in
234 reimbursement for the tuition costs for the attendance of his
235 child or ward at a private school, parochial school or speech,
236 hearing and/or language clinic. A violation of this section shall
237 constitute a misdemeanor and, upon conviction thereof, shall be
238 punishable by a fine not to exceed Five Hundred Dollars (\$500.00),
239 by imprisonment for not more than six (6) months in jail, or both.

240 **SECTION 9.** Section 37-23-77, Mississippi Code of 1972, is
241 brought forward as follows:

242 37-23-77. In the event that a child, as defined in Sections
243 37-23-61 and 37-23-63, is under the legal guardianship of the
244 State Department of Human Services, or any other state agency, and
245 for whom no foster parents are available, funds available pursuant
246 to Section 37-23-1 et seq. may be used to provide for the
247 education of the child in an institution approved by the
248 Department of Human Services and the State Department of
249 Education. However, provided the educational services needed by
250 the child are available in a state funded institution, these funds
251 shall not be used to pay for educational services at that
252 institution. At any such time a child is taken out of a school
253 setting and placed under the custody of the Department of Human
254 Services, the department shall immediately notify the State
255 Department of Education and apply for funds for such child's
256 educational services pursuant to Section 37-23-1 et seq. and the
257 State Department of Education shall respond to such application
258 within ten (10) working days. The special education and related

259 services provided for this child shall be provided in compliance
260 with State Department of Education regulations. The State
261 Department of Education shall promulgate such regulations as are
262 necessary to implement this section.

263 The State Department of Education shall require that the
264 special education and related services provided for the children
265 under this section be designed to provide individualized
266 appropriate special education and related services that enable a
267 child to reach his or her appropriate and uniquely designed goals
268 for success.

269 **SECTION 10.** This act shall take effect and be in force from
270 and after July 1, 2004.