

By: Senator(s) Chaney

To: Education

SENATE BILL NO. 2876

1 AN ACT TO BRING FORWARD SECTIONS 37-23-61 THROUGH 37-23-77,
2 MISSISSIPPI CODE OF 1972, RELATING TO FINANCIAL ASSISTANCE TO
3 EXCEPTIONAL CHILDREN ATTENDING PRIVATE OR PAROCHIAL SCHOOLS AND
4 UNDER STATE GUARDIANSHIP; AND FOR RELATED PURPOSES.

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

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

8 37-23-61. As used in Sections 37-23-61 through 37-23-75, the
9 word "child" shall mean any child who cannot pursue all regular
10 classwork due to reasons of defective hearing, vision, speech,
11 mental retardation, or other mental or physical conditions as
12 determined by competent medical authorities and psychologists.
13 Said medical authorities and psychologists shall be approved by
14 the state department of education.

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

17 37-23-63. Every child who is a resident citizen of the State
18 of Mississippi under twenty-one (21) years of age, who cannot
19 pursue all regular classwork due to reasons of defective hearing,
20 vision, speech, mental retardation or other mental or physical
21 conditions as determined by competent medical authorities and
22 psychologists, who has not finished or graduated from high school,
23 and who is in attendance in a private school, parochial school or
24 speech, hearing and/or language clinic that is accredited by a
25 state or regional accrediting agency or approved/licensed by the
26 State Department of Education, shall be eligible and entitled to
27 receive state financial assistance in the amount set forth in
28 Section 37-23-69. Children who are certified by the designated

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

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

39 37-23-65. The State Department of Education is authorized
40 and directed to promulgate rules and regulations for the payment
41 of such financial assistance and the administration of Sections
42 37-23-61 through 37-23-75 generally.

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

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

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

57 37-23-67. The State Department of Education shall have the
58 power to receive and administer all funds for or hereafter
59 appropriated to, provided for, or otherwise accruing to, the State
60 Department of Education for the purpose of providing financial
61 assistance to students attending private schools, parochial

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

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

71 37-23-69. The State Department of Education shall have the
72 power to determine and pay the amount of the financial assistance
73 to be made available to each applicant, and to see that all
74 applicants and the programs for them meet the requirements of the
75 program for exceptional children. No financial assistance shall
76 exceed the obligation actually incurred by the applicant for
77 tuition and fees. Within the amount of available state funds
78 appropriated for such purpose, each such applicant may receive
79 assistance according to the following allowances:

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

93 (b) A public school district shall be reimbursed for
94 the educational costs of an applicant up to a maximum of Three

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

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

115 At any time that the Individualized Education Program (IEP)
116 Committee in the district where the home is located determines
117 that an exceptional child, as defined in Section 37-23-3, residing
118 in that home can no longer be provided a free appropriate public
119 education in that school district, and the State Department of
120 Education agrees with that decision, then the State Department of
121 Education shall recommend to the Department of Human Services
122 placement of the child by the Department of Human Services, which
123 shall take appropriate action. The placement of the exceptional
124 child in the facility shall be at no cost to the local school
125 district. Funds available under Sections 37-19-1 through 37-19-53
126 and Sections 37-23-61 through 37-23-77, as well as any available
127 federal funds, may be used to provide the costs of the placement.

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

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

155 The State Department of Education may also provide for the
156 payment of such financial assistance in installments and for
157 proration of such financial assistance in the case of children
158 attending a school or clinic for less than a full school session
159 and, in the event that available funds are insufficient, may
160 allocate the available funds among the qualified applicants and

161 local school districts by reducing the maximum assistance provided
162 for herein.

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

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

176 37-23-71. Upon approving the application for financial
177 assistance, the state department of education shall issue its
178 commitment in writing to the parent or guardian of, or person
179 standing in loco parentis to the applicant, or to the public
180 school district, which said commitment shall be for a specified
181 amount for each day. Payments made under such commitment shall be
182 made by the department, in accordance with the terms of the
183 commitment, and each commitment shall be conditioned upon the
184 applicant's attendance in accordance with his application and the
185 provisions of Sections 37-23-61 through 37-23-75.

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

188 37-23-73. In the event of disapproval by the state
189 department of education of an application for financial assistance
190 payable from department funds, the department shall give notice to
191 the applicant, through the parent or guardian of, or person
192 standing in loco parentis to, the applicant, or to the public
193 school district, by certified mail. Any applicant, through the

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

226 shall be subject to the procedures applicable to appeals in
227 ordinary civil actions.

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

230 37-23-75. It shall be unlawful for any person to obtain,
231 seek to obtain, expend, or seek to expend, any financial
232 assistance funds for any purpose other than in payment of or in
233 reimbursement for the tuition costs for the attendance of his
234 child or ward at a private school, parochial school or speech,
235 hearing and/or language clinic. A violation of this section shall
236 constitute a misdemeanor and, upon conviction thereof, shall be
237 punishable by a fine not to exceed Five Hundred Dollars (\$500.00),
238 by imprisonment for not more than six (6) months in jail, or both.

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

241 37-23-77. In the event that a child, as defined in Sections
242 37-23-61 and 37-23-63, is under the legal guardianship of the
243 State Department of Human Services, or any other state agency, and
244 for whom no foster parents are available, funds available pursuant
245 to Section 37-23-1 et seq. may be used to provide for the
246 education of the child in an institution approved by the
247 Department of Human Services and the State Department of
248 Education. However, provided the educational services needed by
249 the child are available in a state funded institution, these funds
250 shall not be used to pay for educational services at that
251 institution. At any such time a child is taken out of a school
252 setting and placed under the custody of the Department of Human
253 Services, the department shall immediately notify the State
254 Department of Education and apply for funds for such child's
255 educational services pursuant to Section 37-23-1 et seq. and the
256 State Department of Education shall respond to such application
257 within ten (10) working days. The special education and related
258 services provided for this child shall be provided in compliance

259 with State Department of Education regulations. The State
260 Department of Education shall promulgate such regulations as are
261 necessary to implement this section.

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

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