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Chapter No. 209

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SENATE BILL NO. 2433

Originated in Senate

Renato Bugno

Secretary

SENATE BILL NO. 2433

AN ACT TO AMEND SECTION 37-23-137, MISSISSIPPI CODE OF 1972, TO REVISE THE SCHOOL DISTRICT REQUIREMENTS FOR THE DISTRIBUTION OF THE PROCEDURAL SAFEGUARDS DOCUMENT RELATED TO CHILDREN WITH AN IDENTIFIED DISABILITY; AND FOR RELATED PURPOSES.

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

SECTION 1. 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 or parent request for evaluation;

* * *

(b) The child's initial IEP meeting;
(c) Registration of a complaint under IDEA to the State Department of Education;
(d) Upon a request by a parent; and
(e) If there is no circumstance giving rise to the purpose of parents receiving a copy of the procedural safeguards under paragraphs (a), (b) and (c) of this subsection, then the parents shall be provided with a copy of the procedural safeguards at least once on an annual basis.

(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 2. This act shall take effect and be in force from
and after July 1, 2011.

PASSED BY THE SENATE
March 28, 2011



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2011



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

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