Chapter No. 548
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HOUSE BILL NO. 1405

Originated in House _____ Clerk

HOUSE BILL NO. 1405

AN ACT TO AMEND SECTIONS 37-23-137, 37-23-31 AND 37-23-195, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A PARENT OF AN EXCEPTIONAL CHILD TO RECORD INDIVIDUALIZED EDUCATION PROGRAM (IEP) MEETINGS WITH AUDIO OR VISUAL RECORDING; TO REQUIRE THAT SUCH PARENTAL RIGHT TO RECORD BE INCLUDED IN THE PROCEDURAL SAFEGUARDS; TO PERMIT SCHOOL BOARDS, BOARDS OF SUPERVISORS AND MUNICIPAL GOVERNING AUTHORITIES TO AUTHORIZE THE USE OF DOGS WITH THE ABILITY TO DETECT DIABETES IN SCHOOLS AND PUBLIC PLACES; 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, reevaluation 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.

The procedural safeguards shall include provisions which allow parents to be informed of the parental right to record IEP meetings by means of an audio or visual recording device or written transcript at the parent's own expense if they so desire a record of the meeting.

(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) The parent or guardian or local educational agency shall have the right to audio record the proceedings of individualized education program team meetings. The parent or guardian or local educational agency shall notify the members of the individualized education program team of his, her, or its intent to audio record a meeting at least twenty-four (24) hours prior to the meeting.

(9) 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.

(10) 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.

(11) 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.

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

(13) 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.

(14) 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. Section 37-23-31, Mississippi Code of 1972, is amended as follows:

37-23-31. (1) When five (5) or more children under twenty-one (21) years of age who because of deafness, aphasia, emotional disturbance and/or other low-incidence conditions, are unable to have their educational needs met in a regular public school program, and a special education program in their particular areas of exceptionality is not available in their respective local public school districts, a state-supported university or college shall be authorized and empowered, in its discretion, to provide a program of education, instruction and training to such children, provided that such program shall operate under rules, regulations, policies and standards adopted by the State Department of Education as provided for in Section 37-23-33. The opinion of a parent or guardian in regard to the provision of an appropriate special education program in or by their respective local public school district shall be considered before a placement decision is finalized. Parents shall have any and all rights as provided in the Individuals with Disabilities Education Act, including, but not limited to, the right to equal participation in their child's Individualized Education Program (IEP), the right to require review of their child's IEP, and the right to appeal an IEP Committee decision immediately. <u>The parent or guardian or local educational agency shall have the right to audio record the proceedings of individualized education program team meetings. The parent or guardian or local educational agency shall notify the members of the individualized education program</u>

team of his, her, or its intent to audio record a meeting at least twenty-four (24) hours prior to the meeting.

(2) Any state-supported university or college conducting a full-time medical teaching program acceptable to the State Board of Education may, at its discretion, enter into such contracts or agreements with any private school or nonprofit corporation-supported institution, the Mississippi School for the Deaf, or any state-supported institution, providing the special education contemplated by this section for such services, provided the private school or institution offering such services shall have conducted a program of such services at standards acceptable to the State Department of Education for a period of at least one (1) year prior to the date at which the university or college proposes to enter into an agreement or contract for special educational services as described above.

SECTION 3. Section 37-23-195, Mississippi Code of 1972, is amended as follows:

37-23-195. Each appropriate educational entity shall provide for the development of an IEP or 504 Plan for each blind or visually impaired student eligible for educational services or equipment, or both, under Sections 37-23-1 through 37-23-157. In developing the written IEP or 504 Plan for each blind or visually impaired student, there shall be a presumption that proficiency in Braille reading and writing is essential for the student to achieve satisfactory educational progress. The assessment required for each student shall be conducted by a blindness assessment specialist and shall include, at a minimum, a Braille skills inventory, or if necessary in the determination of the IEP Committee, a comprehensive assistive technology evaluation. The assessment shall include a statement of the student's strengths and deficits. If, in the course of developing a student's IEP or 504 Plan, the majority of members of the team concur that the student's visual impairment does not affect reading and writing

performance commensurate with ability, Braille instruction and use shall not be required by this section for that student. Nothing in this section shall require the exclusive use of Braille if other specialized educational services are appropriate to the student's educational needs. However, the provision of other appropriate services shall not preclude Braille use or instruction, unless other assistive technology devices are determined more appropriate by the assessment specialist.

The parent or guardian or local educational agency shall have the right to audio record the proceedings of individualized education program team meetings. The parent or guardian or local educational agency shall notify the members of the individualized education program team of his, her, or its intent to audio record a meeting at least twenty-four (24) hours prior to the meeting.

SECTION 4. (1) The Legislature recognizes the necessity of school districts to provide reasonable accommodations to students and licensed employees of a school district who are diagnosed with debilitating illnesses or disabilities, including, but not limited to, diabetes and epilepsy.

(2) The school board of any school district shall authorize the use, in all district facilities and property, of service or assistance dogs which have been specifically trained to alert people of symptoms or conditions resulting from a debilitating illness or disability that threaten their health.

(3) In providing accommodations for students, the parent of a child with such illness or disability, the teacher or teachers of the student and the appropriate school administrator shall meet and develop a written 504 Plan consistent with the provisions of Chapter 23, Title 37, Mississippi Code of 1972, that would permit the use of service dogs in the school facility. Also, in providing accommodations for students, the teacher or teachers of the student and the appropriate school administrator shall develop a plan designed to educate other students of the appropriate

behavior in the presence of such dogs, as well as the proper handling of such dogs in the presence of those students who may have an allergic reaction to the dog and the reasonable care to be taken in efforts to prevent contact by students who are allergic with such dogs.

SECTION 5. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE HOUSE OF REPRESENTATIVES
April 30, 2012

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
May 1, 2012

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

3:52pm

5-22-12