

By: Harden

To: Education

SENATE BILL NO. 2544

1 AN ACT TO REVISE STATUTES RELATING TO THE EDUCATION OF
2 EXCEPTIONAL CHILDREN; TO AMEND SECTIONS 37-23-141, 37-23-143,
3 37-23-145 AND 37-23-147, MISSISSIPPI CODE OF 1972, TO REVISE
4 COMPLAINT PROCEDURES FOR PARENTS OF SUCH CHILDREN, PROVIDE FOR
5 MEDIATION, PROVIDE FOR DUE PROCESS HEARINGS, ESTABLISH AND EMPOWER
6 AN ADVISORY COMMITTEE FOR SPECIAL EDUCATION, PROVIDE FOR THE
7 ANNUAL RECOGNITION OF INCLUSIVE PROGRAMS FOR CHILDREN WITH
8 DISABILITIES; TO REPEAL SECTION 37-23-11, MISSISSIPPI CODE OF
9 1972, WHICH PROVIDES FOR HEARINGS REGARDING A CHILD'S
10 IDENTIFICATION, EVALUATION AND PLACEMENT, AND PROVIDES FOR DUE
11 PROCESS HEARINGS IN SUCH MATTERS; AND FOR RELATED PURPOSES.

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

13 SECTION 1. Section 37-23-141, Mississippi Code of 1972, is
14 amended as follows:[CRG1]

15 37-23-141. (1) The State Department of Education shall
16 promulgate the necessary rules and regulations to establish a
17 mediation system which, at a minimum, shall be available whenever
18 a due process hearing under IDEA is requested. The mediation
19 system shall allow parties the opportunity to resolve such
20 disputes involving any matter relating to the identification,
21 evaluation or educational placement of the child, or the provision
22 of a free appropriate public education to such child.

23 (2) The State Department of Education shall ensure that the
24 mediation process is:

25 (a) Voluntary on the part of the parties;

26 (b) Not used to deny or delay a parent's right to a due
27 process hearing under IDEA or to deny any other rights afforded
28 under IDEA; and

29 (c) Conducted by a qualified and impartial mediator who
30 is trained in effective mediation techniques.

31 (3) The State Department of Education may establish
32 procedures to require parents who choose not to use the mediation
33 process to meet, at a time and location convenient to the parents,
34 with a disinterested party who is under contract with a parent
35 training and information center or community parent resource
36 center in the state established under IDEA, or an appropriate
37 alternative dispute resolution entity. The purpose of the meeting
38 is to encourage the use, and explain the benefits, of the
39 mediation process to the parents.

40 (4) The State Department of Education shall maintain a list
41 of individuals who are qualified mediators and knowledgeable in
42 laws and regulations relating to the provision of special
43 education and related services.

44 An individual who serves as a mediator:

45 (a) May not be an employee of any public agency;

46 (b) May not have a personal or professional conflict of
47 interest which impacts his/her objectivity in the mediation; and

48 (c) Must be qualified and impartial and trained in
49 effective mediation techniques;

50 The role of the mediator is to:

51 (a) Facilitate communication between the parties in an
52 impartial manner;

53 (b) Chair the meeting;

54 (c) Assist the parties in reaching an agreement;

55 (d) Assure that the agreement complies with federal and
56 state law and regulation;

57 (e) Adjourn the mediation at the request of the parties
58 to obtain additional information or explore options; and

59 (f) Terminate mediation if in the mediator's judgment
60 the parties are not making progress toward resolving the issue(s)
61 in dispute;

62 All mediators shall receive training in the following areas:

63 (a) State and federal special education laws and

64 regulations;

65 (b) Procedures for conducting mediation conferences in
66 an orderly and controlled manner;

67 (c) Group process skills essential to achieving
68 consensus agreement;

69 (d) Phases of mediation;

70 (e) Procedures for writing a consensus agreement;

71 (f) Procedures for debriefing the parties; and

72 (g) Any other topics deemed necessary by the

73 Mississippi Department of Education.

74 (5) Both parties must be involved in selecting the mediator.

75 (6) The state shall bear the cost of the mediation process,
76 including the costs of all meetings described in this section.

77 (7) Each session in the mediation process shall be scheduled
78 in a timely manner and shall be held in a location that is
79 convenient to the parties in dispute.

80 (8) If the mediation results in agreement, the conclusions
81 shall be incorporated into a written agreement and signed by each
82 party. If the mediation does not result in agreement, the
83 mediator shall document the date and the participants at the
84 meeting. No other record of the mediation shall be made.

85 (9) Discussions that occur during the mediation process
86 shall be confidential and may not be used as evidence in any
87 subsequent due process hearings or civil proceedings and the
88 parties to the mediation process may be required to sign a
89 confidentiality pledge prior to the commencement of such process.

90 (10) The mediator shall not be called as a witness in any
91 subsequent proceedings to testify regarding any information gained
92 during the course of mediation; and

93 (11) Pending the outcome of mediation, no change shall be
94 made to the student's classification, program or placement, unless
95 both parties agree, or emergency relief as part of a request for a
96 due process hearing is granted by the hearing officer.

97 (12) Any federal laws relating to mediation of special
98 education disputes which are enacted after the effective date of
99 this section shall supersede this section.

100 SECTION 2. Section 37-23-143, Mississippi Code of 1972, is
101 amended as follows:[CRG2]

102 37-23-143. (1) The State Department of Education shall
103 follow the due process procedures for parents and children
104 requesting hearings under the federal Individuals with
105 Disabilities Education Act (IDEA), 20 USCS et seq., and
106 regulations promulgated thereunder, as are specified in this act.

107 (2) When any public agency directly responsible for the
108 education of exceptional children shall (a) initiate * * * or
109 change the identification, evaluation, or educational placement of
110 the child or the provision of a free appropriate public education
111 to the child, or (b) refuse to initiate or change the
112 identification, evaluation or educational placement of the child
113 or the provision of a free appropriate public education to the
114 child, the parent of a child with a disability or the agency shall
115 have the opportunity to request a state-level impartial due
116 process hearing.

117 (3) The State Department of Education shall recruit
118 applicants for due process hearing officers who shall meet the
119 criteria set forth in this act. Each applicant shall provide a
120 comprehensive disclosure of his or her professional background and
121 work experience. Applicants must hold at least a master's level
122 degree and have relevant experience. Current employees of the
123 State Department of Education, local school districts or special
124 education cooperatives, part-time contractual school personnel who
125 serve in a consulting capacity or private providers of special
126 education facilities or programs and persons affiliated with
127 programs which receive funding from the State Department of
128 Education shall be disqualified from serving as due process
129 hearing officers. The State Superintendent of Education shall

130 select qualified persons or organizations to establish and conduct
131 training programs for hearing officers, completion of which shall
132 be a prerequisite to service as a hearing officer. Such training
133 shall be conducted in an unbiased manner by education and legal
134 experts, including persons from outside of the public education
135 system. Persons or organizations receiving any type of
136 compensation from the State Department of Education or a local
137 school district shall be prohibited from providing training except
138 for training related to state education regulations and laws or
139 orders from any court applicable to the public schools of this
140 state. Training for due process hearing officers shall include,
141 at a minimum, instruction in federal and state laws, rules,
142 regulations, regulatory interpretations and court decisions
143 relating to special education, relevant general education issues,
144 evidence, diagnostic procedures, information about disabilities
145 and techniques and procedures for conducting effective and
146 impartial hearings.

147 (4) An impartial due process hearing officer shall be
148 terminated by the State Department of Education for just cause if,
149 after written notice is provided, appropriate timely corrective
150 action is not taken. For purposes of this subsection, just cause
151 shall be:

152 (a) Failure to accept assigned cases without good
153 cause;

154 (b) Failure or refusal to fulfill duties as a hearing
155 officer in a timely manner;

156 (c) Consistent disregard for applicable laws and
157 regulations in the conduct of hearings;

158 (d) Consistent failure to conduct himself or herself in
159 a patient, dignified and courteous manner to parties, witnesses,
160 counsel and other participants in hearings;

161 (e) Failure to accord parties or their representatives
162 a full and fair opportunity to be heard in matters coming before

163 him or her;

164 (f) Violating applicable laws regarding privacy and
165 confidentiality of records of information;

166 (g) Manifesting, by words or conduct, bias or prejudice
167 based upon race, sex, religion, disability or national origin;

168 (h) Failure to recuse himself or herself from a hearing
169 in which he or she has a personal, professional or financial
170 conflict of interest which he or she knew or should have known
171 existed at any time prior to or during the hearing;

172 (i) Conviction in any jurisdiction of any felony or of
173 a misdemeanor involving moral turpitude or dishonesty;

174 (j) Falsification of a material fact on his or her
175 application to serve as a due process hearing officer; or

176 (k) Other malfeasance.

177 In addition, an impartial hearing officer who, as a result of
178 events occurring after appointment, no longer meets the minimum
179 requirements set forth in this section, shall be disqualified to
180 complete the balance of his or her term.

181 (5) The State Department of Education shall provide all
182 hearing officers access to relevant court decisions, impartial
183 hearing officer decisions (with child identifying information
184 deleted) and updates on revisions to applicable laws and
185 regulations. Hearing officers appointed by the State Department
186 of Education shall serve for an initial term of four (4) years and
187 any reappointments following expiration of the four-year term
188 shall be for a period of two (2) years. Impartial due process
189 hearing officers shall receive reasonable compensation for each
190 hearing at a rate established by the school district for which the
191 hearing is being conducted which shall be within any guidelines
192 adopted from time to time by the State Department of Education.

193 (6) A request for due process hearing will be made to the
194 State Department of Education with a copy of the request being
195 sent to all parties involved.

196 (7) The State Department of Education shall appoint due
197 process hearing officers using a rotating appointment system and
198 shall notify the hearing officer of his or her appointment. A
199 hearing officer having a personal or professional interest that
200 would conflict with his or her objectivity in the hearing shall so
201 notify the State Superintendent of Education and shall be replaced
202 by the next scheduled impartial due process hearing officer under
203 the rotation system.

204 (8) Once appointed, the impartial due process hearing
205 officer shall:

206 (a) Not communicate with the State Department of
207 Education or its employees concerning the hearing, except that
208 where circumstances require, communications for administrative
209 purposes that do not deal with substantive or procedural matters
210 or issues on the merits are authorized, provided that the hearing
211 officer promptly notifies all parties or their representatives of
212 the substance of the communication as a matter of record; and

213 (b) Promptly notify all parties or their
214 representatives of the substance of the communication between any
215 party to the due process hearing as a matter of record.

216 (9) A pre-hearing conference will be held within ten (10)
217 days of the State Department of Education receiving the request
218 for a hearing.

219 (10) The State Department of Education shall, by rule,
220 establish procedures of the conduct of pre-hearing conferences to
221 be used by all hearing officers. Pre-hearing conferences
222 procedures shall include, but not be limited to, the following:

223 (a) Determine or disclose any actual or potential
224 conflicts of interest regarding the due process hearing officer.
225 Any party may raise facts that constitute a conflict of interest
226 for the hearing officer at any time before or during the hearing
227 and may move for recusal;

228 (b) Determine issues in dispute and the specific relief

229 being sought;
230 (c) Determine access to records by all parties;
231 (d) Determine parents' decision regarding if hearing
232 will be open or closed to the public;
233 (e) Determine sequestering of witnesses;
234 (f) Determine who may sit at counsel table;
235 (g) Determine which party has the burden-of-proof;
236 (h) Identify the type of recording to be used in
237 hearing;
238 (i) Determine need for subpoenas for witnesses and/or
239 relevant documents;
240 (j) Schedule date, time and location for sharing of
241 evidence;
242 (k) Determine date and time for sharing of evidence;
243 (l) The right of either party to be accompanied and
244 advised by counsel and by individuals with special knowledge or
245 training with respect to the problems of children with
246 disabilities;
247 (m) The right of either party to present evidence and
248 confront and cross-examine witnesses;
249 (n) The right, at the option of parents, to a written,
250 or, electronic verbatim record of such hearing;
251 (o) The right, at the option of parents, to a written
252 or electronic findings of fact and decisions.

253 * * *

254 (11) At least five (5) business days prior to a hearing
255 being conducted, each party shall disclose to all other parties
256 all evaluations completed by that date and recommendations based
257 on the offering party's evaluations that the party intends to use
258 at the hearing. A hearing officer may bar any party that fails to
259 comply with this requirement from introducing the relevant
260 evaluation or recommendation at the hearing without the consent of
261 the other party.

262 (12) The State Department of Education shall maintain a
263 reporting system of all decisions rendered as a result of due
264 process hearings and shall make such decisions available for
265 review by the public after deleting all child-identifying
266 information and shall provide the State Advisory Committee on the
267 Education of Children with Disabilities a copy of all such
268 decisions on an annual basis.

269 (13) At any time prior to the conclusion of the hearing, the
270 impartial due process hearing officer shall have the authority to
271 require additional information and order independent evaluations
272 for the student at the expense of the school district.

273 (14) The impartial hearing officer and only the impartial
274 hearing officer shall issue a written decision, including findings
275 of fact and conclusions of law, within ten (10) days after the
276 conclusion of the hearing and mail a copy of the decision to the
277 parents, guardian, or student (if the student requests the
278 hearing), the school district, the director of special education,
279 legal representatives of the parties and the State Department of
280 Education. Unless the hearing officer has granted specific
281 extensions of time at the request of a party, a final decision
282 shall be reached and mailed to the parties named above not later
283 than forty-five (45) days after the request for a due process
284 hearing. The decision shall specify the educational and related
285 services that shall be provided to the student in accordance with
286 the student's needs.

287 (15) The decision made by the hearing officer shall be
288 final, except that any party aggrieved by the findings and
289 decision made by the hearing officer shall have the right to bring
290 a civil action with respect to the issues of the due process
291 hearing. Such civil action may be brought in any court of
292 competent jurisdiction within thirty (30) days from the date of
293 the decision of the impartial due process hearing officer or
294 within thirty (30) days from the date of delivery of the official

295 transcripts of all hearings conducted in connection with the due
296 process hearing to the appealing party, whichever period is
297 longer.

298 (16) Except as provided under IDEA, during the pendency of
299 any proceedings conducted pursuant to this section, unless the
300 local educational agency and the parents otherwise agree, the
301 child will remain in the then-current educational placement of
302 such child, or, if applying for initial admission to a public
303 school, shall, with the consent of the parents, be placed in the
304 public school program until all such proceedings have been
305 completed. This requirement does not limit the local educational
306 agency from obtaining a temporary restraining order from any court
307 of competent jurisdiction, as deemed necessary by the agency.

308 (17) The State Department of Education shall prepare an
309 annual written report by July 1 of each year, beginning in 2000,
310 on due process hearings concluded in this state during the
311 preceding year. This report shall be submitted to the members of
312 the State Board of Education, the State Advisory Committee on the
313 Education of Children with Disabilities and shall be made
314 available to the public. This report shall include a listing of
315 all current hearing officers and their qualifications, a current
316 list of mediators and their qualifications, the name of each
317 school district involved in a due process hearing, the date each
318 due process hearing request was filed, the name of the hearing
319 officer assigned to each due process hearing, if mediation
320 procedures were used, mediation outcomes, if used, the hearing
321 date for each due process hearing, the prevailing party in each
322 due process hearing, and the date of the hearing officer's
323 decision in each due process hearing.

324 (18) Each local school district will submit to the State
325 Superintendent of Education an itemized list of all costs incurred
326 in each due process hearing.

327 (19) At all stages of the hearing, the hearing officer shall

328 require that appropriate accommodations be made available by the
329 school district for persons with disabilities or for persons whose
330 normally spoken language is other than English.

331 SECTION 3. Section 37-23-145, Mississippi Code of 1972, is
332 amended as follows:[CRG3]

333 37-23-145. (1) The State Board of Education shall establish
334 and maintain an advisory panel for the purpose of providing policy
335 guidance with respect to special education and related services
336 for children with disabilities in the State.

337 (2) The advisory panel shall consist of thirty (30)
338 members * * * who are representative of the state's population and
339 who are composed of individuals involved in, or concerned with,
340 the education of children with disabilities, including:

341 (a) Parents of children with disabilities:

342 (i) One (1) parent representing children for birth
343 to two (2) years of age appointed by the Governor;

344 (ii) Two (2) parents representing preschool age
345 children, one (1) appointed by the Governor and one (1) appointed
346 by the Lieutenant Governor;

347 (iii) Four (4) parents representing elementary age
348 children, two (2) appointed by the Governor and two (2) appointed
349 by the Lieutenant Governor;

350 (iv) Three (3) parents representing middle school
351 age children, two (2) appointed by the Governor and one (1)
352 appointed by the Lieutenant Governor;

353 (v) Three (3) parents representing high school age
354 children, one (1) appointed by the Governor and two (2) appointed
355 by the Lieutenant Governor;

356 (vi) One (1) parent with a child between the ages
357 of twenty-one (21) and twenty-five (25) appointed by the
358 Lieutenant Governor.

359 (b) Three (3) individuals with disabilities, two (2)
360 appointed by the Governor and one (1) appointed by the Lieutenant

361 Governor;

362 (c) One (1) special education teacher and one (1)
363 regular education teacher appointed by the State Superintendent of
364 Education;

365 (d) One (1) representative of institutions of higher
366 education that prepare special education and related services
367 personnel appointed by the Governor;

368 (e) One (1) principal and one (1) school superintendent
369 appointed by the State Superintendent of Education;

370 (f) One (1) administrator of special education programs
371 appointed by the State Superintendent of Education;

372 (g) One (1) representative each from the following
373 state agencies appointed by the Governor:

374 (i) The Mississippi Department of Mental Health;

375 (ii) The Mississippi Department of Rehabilitation
376 Services;

377 (iii) The Mississippi Department of Health, Early
378 Intervention Program;

379 (h) One (1) representative of private schools and
380 public charter schools appointed by the State Superintendent of
381 Education;

382 (i) * * * One (1) representative of a vocational,
383 community, or business organization concerned with the provision
384 of transition services to children with disabilities appointed by
385 the State Superintendent of Education; * * *

386 (j) One (1) representative from the state juvenile and
387 adult correction agencies appointed by the Governor; and

388 (k) Two (2) members of the State Legislature: one (1)
389 from the House of Representatives Education Committee appointed by
390 the Speaker of the House of Representatives and one (1) from the
391 Senate Education Committee appointed by the Lieutenant Governor.

392 (3) A majority of the members of the panel shall be
393 individuals with disabilities or parents of children with

394 disabilities.

395 (4) The duties of the advisory panel shall include:

396 (a) Review annually the state regulations, standards
397 and guidelines pertaining to special education and recommend to
398 the State Board of Education any changes which it finds necessary;

399 (b) Review annually all information collected,
400 maintained or used by the State Department of Education relating
401 to special education;

402 (c) Advise the State Department of Education of unmet
403 needs within the State in the education of children with
404 disabilities;

405 (d) Advise the State Board of Education on any
406 legislative issues involving the provision of special education;

407 (e) Comment publicly on any rules or regulations
408 proposed by the State Department of Education regarding the
409 education of children with disabilities;

410 (f) Advise the State Department of Education in
411 developing evaluations and reporting on data to the secretary in
412 accordance with the requirements under IDEA;

413 (g) Advise the State Department of Education in
414 developing and implementing policies relating to the coordination
415 of services for children with disabilities; * * *

416 (h) Advise the State Department of Education in
417 developing corrective action plans to address findings identified
418 in federal monitoring reports under IDEA.

419 (i) Annually elect its own co-chairs one (1) a parent
420 of a child with a disability and one (1) a professional;

421 (j) Establish and implement guidelines and bylaws for
422 the committee to follow; and

423 (k) Develop an annual report to be given to the State
424 Superintendent of Education and state legislators by July 1
425 regarding the unmet needs of children with disabilities in the
426 state. Co-chairs of the committee will present the annual report

427 to the State Board of Education during the August meeting.

428 (5) The advisory panel shall be provided the opportunity to
429 provide comments to the State Board of Education on rules or
430 regulations proposed by the State Department of Education relating
431 to the implementation of the IDEA 1997 Amendments.

432 SECTION 4. Section 37-23-147, Mississippi Code of 1972, is
433 amended as follows:[CRG4]

434 37-23-147. (1) The State Department of Education shall
435 establish goals for the performance of children with disabilities
436 that will promote the purpose of IDEA and are consistent, to the
437 maximum extent appropriate, with other goals and standards for
438 children established by the State Department of Education.
439 Performance indicators used to assess progress toward achieving
440 those goals that, at a minimum, address the performance of
441 children with disabilities on assessments, drop-out rates, and
442 graduation rates shall be developed. Every two (2) years, the
443 progress toward meeting the established performance goals shall be
444 reported to the public.

445 (2) In accordance with Individuals with Disabilities
446 Education Act (IDEA) regulation 300.550, it is the policy of the
447 Mississippi Department of Education that each child with a
448 disability be educated with children having no disabilities in
449 his/her age range to the maximum extent appropriate, including
450 children in public or private institutions or other care
451 facilities. No special classes, separate schools or other removal
452 of children with disabilities from the regular educational
453 environment shall occur unless the nature or severity of the
454 disability is such that education in regular classes with the use
455 of supplementary aids and services cannot be achieved
456 satisfactorily. Students with disabilities are afforded an equal
457 opportunity to participate in nonacademic and extracurricular
458 services and activities. Local school districts and other
459 agencies who provide special education and related services to

460 children with disabilities are required to adopt this policy and
461 the procedures necessary to implement it.

462 (3) To encourage the full inclusion of children with
463 disabilities in all aspects of academic and extracurricular
464 activities, the State Department of Education shall annually award
465 up to three prizes of Five Thousand (\$5,000.00) each to schools or
466 school districts conducting exemplary inclusive programs. Prizes
467 shall be awarded to one (1) elementary, one (1) middle school and
468 one (1) high school, based on entries submitted to the Mississippi
469 Advisory Committee for Special Education by the deadline of March
470 31. These entries shall be in the form of a report, not to exceed
471 five (5) pages, listing name, address and telephone number of the
472 school district/school; teacher or staff responsible for
473 administering the program; type of position held by each of these
474 employees including credentials; description of the program;
475 number of students with disabilities included; type and level of
476 severity of disabilities; number of students without disabilities
477 involved in the program; how long the program has been in
478 operation; benefit of program to all students; and a description
479 of how this program could be replicated by other school districts.
480 Winners of the Exemplary Inclusion Program contest shall be
481 chosen by the Mississippi Advisory Committee for Special Education
482 in April of each year. Prizes shall be awarded and recognition
483 given to these schools during the May Mississippi School Board of
484 Education meeting each year. Information on these exemplary
485 programs shall be provided to other school districts and the
486 general public through new releases, the state department website,
487 and other similar avenues.

488 SECTION 5. Section 37-23-11, Mississippi Code of 1972, which
489 provides for hearings regarding a child's identification,
490 evaluation and placement, and provides for due process hearings in
491 such matters, is hereby repealed.

492 SECTION 6. This act shall take effect and be in force from

493 and after July 1, 2000.