

By: Harden

To: Education

SENATE BILL NO. 2544
(As Passed the Senate)

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

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

49 (c) Must be trained in 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; and

57 (e) Terminate mediation if in the mediator's judgment
58 the parties are not making progress toward resolving the issue(s)
59 in dispute;

60 All mediators shall receive training in the following areas:

61 (a) State and federal special education laws and
62 regulations;

63 (b) Procedures for conducting mediation conferences in

64 an orderly and controlled manner;

65 (c) Group process skills essential to achieving
66 consensus agreement;

67 (d) Phases of mediation;

68 (e) Procedures for writing a consensus agreement;

69 (f) Procedures for debriefing the parties; and

70 (g) Any other topics deemed necessary by the

71 Mississippi Department of Education.

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

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

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

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

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

88 (10) Pending the outcome of mediation, no change shall be
89 made to the student's classification, program or placement, unless
90 both parties agree, or emergency relief as part of a request for a
91 due process hearing is granted by the hearing officer; and

92 (11) Access to education records is defined as "a personal
93 inspection and review of a record or an accurate copy of any
94 record, or receipt of an accurate copy of a record, and a request
95 to release a copy of any record."

96 SECTION 2. Section 37-23-143, Mississippi Code of 1972, is

97 amended as follows:[CRG2]

98 37-23-143. (1) The State Department of Education shall
99 follow the due process procedures for parents and children
100 requesting hearings under the federal Individuals with
101 Disabilities Education Act (IDEA), 20 USCS et seq., and
102 regulations promulgated thereunder, as are specified in this act.

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

113 (3) The State Department of Education shall recruit
114 applicants for due process hearing officers who shall meet the
115 criteria set forth in this act. Each applicant shall provide a
116 comprehensive disclosure of his or her professional background and
117 work experience. Applicants must hold at least a master's level
118 degree. In the selection of individuals to serve as due process
119 hearing officers, the State Department of Education shall actively
120 solicit former members of the judiciary to serve as due process
121 hearing officers. The State Superintendent of Education shall
122 select qualified persons or organizations to establish and conduct
123 training programs for hearing officers, completion of which shall
124 be a prerequisite to service as a hearing officer. Such training
125 shall be conducted in an unbiased manner by education and legal
126 experts, including persons from outside of the public education
127 system. Training for due process hearing officers shall include,
128 at a minimum, instruction in federal and state laws, rules,
129 regulations, regulatory interpretations and court decisions

130 relating to special education, relevant general education issues,
131 evidence, diagnostic procedures, information about disabilities
132 and techniques and procedures for conducting effective and
133 impartial hearings.

134 (4) A due process hearing officer shall be terminated by the
135 State Department of Education for just cause if, after written
136 notice is provided, appropriate timely corrective action is not
137 taken. For purposes of this subsection, just cause shall be:

138 (a) Failure to accept assigned cases without good
139 cause;

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

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

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

147 (e) Violating applicable laws regarding privacy and
148 confidentiality of records of information;

149 (f) Manifesting, by words or conduct, bias or prejudice
150 based upon race, sex, religion, disability or national origin;

151 (g) Failure to recuse himself or herself from a hearing
152 in which he or she has a personal, professional or financial
153 conflict of interest which he or she knew or should have known
154 existed at any time prior to or during the hearing;

155 (h) Conviction in any jurisdiction of any felony or of
156 a misdemeanor involving moral turpitude or dishonesty;

157 (i) Falsification of a material fact on his or her
158 application to serve as a due process hearing officer; or

159 (j) Other malfeasance.

160 (5) The State Department of Education shall provide all
161 hearing officers access to relevant court decisions, impartial
162 hearing officer decisions (with child identifying information

163 deleted) and updates on revisions to applicable laws and
164 regulations. Hearing officers appointed by the State Department
165 of Education shall serve for an initial term of four (4) years and
166 any reappointments following expiration of the four-year term
167 shall be for a period of two (2) years. Due process hearing
168 officers shall receive reasonable compensation for each hearing at
169 a rate established from time to time by the State Board of
170 Education.

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

174 (7) The State Department of Education shall appoint due
175 process hearing officers using a rotating appointment system and
176 shall notify the hearing officer of his or her appointment. A
177 hearing officer having a personal or professional interest that
178 would conflict with his or her objectivity in the hearing shall so
179 notify the State Superintendent of Education and shall be replaced
180 by the next scheduled impartial due process hearing officer under
181 the rotation system.

182 (8) Once appointed, the impartial due process hearing
183 officer shall promptly notify all parties or their representatives
184 of the substance of the communication between any party to the due
185 process hearing as a matter of record.

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

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

193 (a) Determine issues in dispute and the specific relief
194 being sought;

195 (b) Determine access to records by all parties;

196 (c) Determine parents' decision regarding if hearing
197 will be open or closed to the public;

198 (d) Determine sequestering of witnesses;

199 (e) Identify the type of recording to be used in
200 hearing;

201 (f) Schedule date, time and location for sharing of
202 evidence;

203 (g) Determine date and time for sharing of evidence;

204 (h) The right of either party to be accompanied and
205 advised by counsel and by individuals with special knowledge or
206 training with respect to the problems of children with
207 disabilities;

208 (i) The right of either party to present evidence and
209 confront and cross-examine witnesses;

210 (j) The right, at the option of parents, to a written,
211 or, electronic verbatim record of such hearing;

212 (k) The right, at the option of parents, to a written
213 or electronic findings of fact and decisions.

214 * * *

215 (11) At least five (5) business days prior to a hearing
216 being conducted, each party shall disclose to all other parties
217 all evaluations completed by that date and recommendations based
218 on the offering party's evaluations that the party intends to use
219 at the hearing. A hearing officer may bar any party that fails to
220 comply with this requirement from introducing the relevant
221 evaluation or recommendation at the hearing without the consent of
222 the other party.

223 (12) The State Department of Education shall maintain a
224 reporting system of all decisions rendered as a result of due
225 process hearings and shall make such decisions available for
226 review by the public after deleting all child-identifying
227 information and shall provide the State Advisory Committee on the
228 Education of Children with Disabilities a copy of all such

229 decisions on an annual basis.

230 (13) At any time prior to the conclusion of the hearing, the
231 hearing officer shall have the authority to require additional
232 information and order independent evaluations for the student at
233 the expense of the school district.

234 (14) The hearing officer shall issue a written decision,
235 including findings of fact and conclusions of law, within ten (10)
236 days after the conclusion of the hearing and mail a copy of the
237 decision to the parents, guardian, or student (if the student
238 requests the hearing), the school district, the director of
239 special education, legal representatives of the parties and the
240 State Department of Education. Unless the hearing officer has
241 granted specific extensions of time at the request of a party, a
242 final decision shall be reached and mailed to the parties named
243 above not later than forty-five (45) days after the request for a
244 due process hearing. The decision shall specify the educational
245 and related services that shall be provided to the student in
246 accordance with the student's needs.

247 (15) The decision made by the hearing officer shall be
248 final, except that any party aggrieved by the findings and
249 decision made by the hearing officer shall have the right to bring
250 a civil action with respect to the issues of the due process
251 hearing. Such civil action may be brought in any court of
252 competent jurisdiction within thirty (30) days from the date of
253 the decision of the impartial due process hearing officer or
254 within thirty (30) days from the date of delivery of the official
255 transcripts of all hearings conducted in connection with the due
256 process hearing to the appealing party, whichever period is
257 longer.

258 (16) Except as provided under IDEA, during the pendency of
259 any proceedings conducted pursuant to this section, unless the
260 local educational agency and the parents otherwise agree, the
261 child will remain in the then-current educational placement of

262 such child, or, if applying for initial admission to a public
263 school, shall, with the consent of the parents, be placed in the
264 public school program until all such proceedings have been
265 completed. This requirement does not limit any party from
266 obtaining a temporary restraining order from any court of
267 competent jurisdiction, as deemed necessary by the agency.

268 (17) The State Department of Education shall prepare an
269 annual written report by July 1 of each year, beginning in 2000,
270 on due process hearings concluded in this state during the
271 preceding year. This report shall be submitted to the members of
272 the State Board of Education, the State Advisory Committee on the
273 Education of Children with Disabilities and shall be made
274 available to the public. This report shall include a listing of
275 all current hearing officers and their qualifications, a current
276 list of mediators and their qualifications, the name of each
277 school district involved in a due process hearing, the date each
278 due process hearing request was filed, the name of the hearing
279 officer assigned to each due process hearing, if mediation
280 procedures were used, mediation outcomes, if used, the hearing
281 date for each due process hearing, the prevailing party in each
282 due process hearing, and the date of the hearing officer's
283 decision in each due process hearing.

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

286 37-23-145. (1) The State Board of Education shall establish
287 and maintain an advisory panel for the purpose of providing policy
288 guidance with respect to special education and related services
289 for children with disabilities in the State.

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

294 (a) Parents of children with disabilities:

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

297 (ii) Two (2) parents representing preschool age
298 children, one (1) appointed by the Governor and one (1) appointed
299 by the Lieutenant Governor;

300 (iii) Two (2) parents representing elementary age
301 children, one (1) appointed by the Governor and one (1) appointed
302 by the Lieutenant Governor;

303 (iv) Two (2) parents representing middle school
304 age children, one (1) appointed by the Governor and one (1)
305 appointed by the Lieutenant Governor;

306 (v) Two (2) parents representing high school age
307 children, one (1) appointed by the Governor and one (1) appointed
308 by the Lieutenant Governor;

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

312 (b) Two (2) individuals with disabilities, one (1)
313 appointed by the Governor and one (1) appointed by the Lieutenant
314 Governor;

315 (c) One (1) special education teacher and one (1)
316 regular education teacher appointed by the State Superintendent of
317 Education;

318 (d) One (1) representative of institutions of higher
319 education that prepare special education and related services
320 personnel appointed by the Governor;

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

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

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

327 (i) The Executive Director of the Mississippi

328 Department of Mental Health, or his designee;

329 (ii) The Executive Director of the Mississippi
330 Department of Rehabilitation Services, or his designee;

331 (iii) The Director of the Mississippi Department
332 of Health, Early Intervention Program, or his designee;

333 (h) One (1) representative of private schools and
334 public charter schools appointed by the State Superintendent of
335 Education;

336 (i) * * * One (1) representative of a vocational,
337 community, or business organization concerned with the provision
338 of transition services to children with disabilities appointed by
339 the State Superintendent of Education; * * *

340 (j) One (1) representative from the state juvenile and
341 adult correction agencies appointed by the Attorney General; and

342 (k) Two (2) members of the State Legislature: the
343 Chairman of the House of Representatives Education Committee, or
344 his designee, and the Chairman of the Senate Education Committee,
345 or his designee.

346 (3) A majority of the members of the panel shall be
347 individuals with disabilities or parents of children with
348 disabilities.

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

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

353 (b) Review annually all information collected,
354 maintained or used by the State Department of Education relating
355 to special education;

356 (c) Advise the State Department of Education of unmet
357 needs within the State in the education of children with
358 disabilities;

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

361 (e) Comment publicly on any rules or regulations
362 proposed by the State Department of Education regarding the
363 education of children with disabilities;

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

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

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

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

375 (j) Establish and implement guidelines and bylaws for
376 the committee to follow; and

377 (k) Develop an annual report to be given to the State
378 Superintendent of Education and state legislators by July 1
379 regarding the unmet needs of children with disabilities in the
380 state. Co-chairs of the committee will present the annual report
381 to the State Board of Education during the August meeting.

382 (5) The advisory panel shall be provided the opportunity to
383 provide comments to the State Board of Education on rules or
384 regulations proposed by the State Department of Education relating
385 to the implementation of the IDEA 1997 Amendments.

386 SECTION 4. Any and all cost related to implementing the
387 provisions of this act shall be the sole responsibility of the
388 State Department of Education, subject to the availability of
389 funds specifically appropriated therefor by the Legislature.

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

394 SECTION 6. This act shall take effect and be in force from
395 and after July 1, 2000.