

By: Representatives Brown, Thomas,
Huddleston, Holloway, Whittington, Ketchings,
Mayo

To: Education;
Appropriations

HOUSE BILL NO. 860

1 AN ACT TO REVISE STATUTES RELATING TO THE EDUCATION OF
2 EXCEPTIONAL CHILDREN; TO AMEND SECTION 37-23-133, MISSISSIPPI CODE
3 OF 1972, TO DEFINE CERTAIN TERMS RELATING TO THE EDUCATION OF SUCH
4 CHILDREN; TO AMEND SECTION 37-23-135, MISSISSIPPI CODE OF 1972, TO
5 REQUIRE THE STATE TO PROVIDE FULL EDUCATIONAL OPPORTUNITIES TO ALL
6 CHILDREN WITH DISABILITIES FROM BIRTH TO 21 YEARS OF AGE BY THE
7 YEAR 2005; TO AMEND SECTION 37-23-137, MISSISSIPPI CODE OF 1972,
8 TO REQUIRE NOTICE TO PARENTS WHEN EDUCATIONAL AGENCIES CONTRACT
9 FOR THE ASSESSMENT OF A CHILD; TO AMEND SECTIONS 37-23-141,
10 37-23-143 AND 37-23-145, MISSISSIPPI CODE OF 1972, TO REVISE
11 COMPLAINT PROCEDURES FOR PARENTS OF SUCH CHILDREN, TO PROVIDE FOR
12 MEDIATION AND DUE PROCESS HEARINGS, AND TO ESTABLISH AND EMPOWER
13 THE STATE ADVISORY COMMITTEE ON THE EDUCATION OF CHILDREN WITH
14 DISABILITIES; TO REPEAL SECTION 37-23-11, MISSISSIPPI CODE OF
15 1972, WHICH PROVIDES FOR HEARINGS REGARDING A CHILD'S
16 IDENTIFICATION, EVALUATION AND PLACEMENT AND FOR DUE PROCESS
17 HEARINGS IN SUCH MATTERS; AND FOR RELATED PURPOSES.

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

19 SECTION 1. Section 37-23-133, Mississippi Code of 1972, is
20 amended as follows:

21 37-23-133. Words and terms, unless otherwise defined below,
22 when used in Sections 37-23-1 through 37-23-159 shall be defined
23 in the same manner as those words and terms used in the
24 Individuals with Disabilities Education Act 1997 Amendments
25 (IDEA), applicable federal regulations and relevant court cases:

26 (a) "Access to education records" means a review of
27 education records or receipt of an accurate copy of an education
28 record and a request to release a copy of any education record.

29 (b) "Assistive technology device" means any item, piece
30 of equipment or product system, whether acquired commercially off
31 the shelf, modified or customized, that is used to increase,
32 maintain or improve the functional capabilities of children with
33 disabilities.



34 (c) "Assistive technology service" means any service
35 that directly assists a student with a disability in the
36 selection, acquisition or use of an assistive technology device.
37 The term includes:

38 (i) The evaluation of the needs of a student with
39 a disability, including a functional evaluation of the student in
40 his or her customary environment;

41 (ii) Purchasing, leasing or otherwise providing
42 for the acquisition of assistive technology devices by students
43 with disabilities;

44 (iii) Selecting, designing, fitting, customizing,
45 adapting, applying, maintaining, repairing or replacing assistive
46 devices;

47 (iv) Coordinating and using other therapies,
48 interventions or services with assistive technology devices, such
49 as those associated with existing education and rehabilitation
50 plans and programs;

51 (v) Training or technical assistance for a student
52 with a disability or, if appropriate, that student's family; and

53 (vi) Training or technical assistance for
54 professionals (including individuals providing education or
55 rehabilitation services), employers or other individuals who may
56 provide services to, employ, or are otherwise substantially
57 involved in the major life functions of students with
58 disabilities.

59 (d) "Computer media" means any manner of maintaining
60 information that is stored through and retrieved by a computer,
61 including information stored on CD-ROM.

62 (e) "Consent" means agreement in writing from the
63 parent of a child with a disability pertaining to the activities
64 as required under IDEA and the Family Rights and Privacy Act.
65 Local educational agencies shall ensure that the parent:



66 (i) Has been fully informed of all information
67 relevant to the activity for which consent is required;

68 (ii) Understands the activity for which consent is
69 requested; and

70 (iii) Understands that the granting of consent is
71 voluntary and may be revoked at any time prior to the time the
72 activity is conducted.

73 (f) "Free appropriate public education" means special
74 education and related services provided by local educational
75 agencies that:

76 (i) Have been provided at public expense, under
77 public supervision and direction, and without charge;

78 (ii) Meet the standards of the State Department of
79 Education;

80 (iii) Include an appropriate preschool,
81 elementary, or secondary school education; and

82 (iv) Are provided in conformity with the
83 individualized education program required under IDEA, applicable
84 federal and state regulations and relevant court cases.

85 (g) "Education records" means those records that are
86 directly related to a student and maintained by an educational
87 agency or institution or by a party acting for the agency or
88 institution.

89 (h) "Individualized education program" or "IEP" means a
90 written statement for each child with a disability that is
91 developed, reviewed, and revised in accordance with the
92 requirements under IDEA, applicable federal and state regulations
93 and relevant court cases.

94 (i) "Least restrictive environment" means to the
95 maximum extent appropriate, children with disabilities, are
96 educated with children who are not disabled, and special classes,
97 separate schooling, or other removal of children with disabilities
98 from the regular educational environment occurs only when the



99 nature or severity of the disability of a child is such that
100 education in regular classes with the use of supplementary aids
101 and services cannot be achieved satisfactorily.

102 (j) "Parent" means a person who is legally responsible
103 for a child's welfare or acting for the child in the absence of
104 the legally responsible person. Parent may also mean a natural
105 parent, a guardian, or a surrogate parent.

106 (k) "Personally identifiable information" means, but is
107 not limited to:

108 (i) The student's name;

109 (ii) The name of the student's parent or parents
110 or other family members;

111 (iii) The address of the student or student's
112 family; and

113 (iv) A list of personal characteristics that would
114 make the student's identity easily traceable.

115 (l) "Record" means any information recorded in any way,
116 including, but not limited to, handwriting, print, computer media,
117 video or audiotape, film, microfilm or microfiche.

118 (m) "Related services" means transportation, and such
119 developmental, corrective, and other supportive services
120 (including speech-language pathology and audiology services,
121 psychological services, physical and occupational therapy,
122 recreation, including therapeutic recreation, social work
123 services, counseling services, including rehabilitation
124 counseling, orientation and mobility services, and medical
125 services, except that such medical services shall be for
126 diagnostic and evaluation purposes only) as may be required to
127 assist a child with a disability to benefit from special
128 education, and includes the early identification and assessment of
129 disabling conditions in children.

130 (n) "Special education" means specially designed
131 instruction provided by local educational agencies, at no cost to



132 parents, to meet the unique needs of a child with a disability,
133 including instruction conducted in the classroom, in the home, in
134 hospitals and institutions, and in other settings. This term also
135 includes instruction in physical education.

136 (o) "Supplementary aids and services" means aids,
137 services, and other supports that are provided in regular
138 education classes or other education-related settings to enable
139 children with disabilities to be educated with nondisabled
140 children to the maximum extent appropriate in accordance with the
141 least restrictive environment requirements under IDEA, applicable
142 federal regulations and relevant court cases.

143 (p) "Transition services" means a coordinated set of
144 activities for a student with a disability that:

145 (i) Is designed within an outcome-oriented
146 process, which promotes movement from school to post-school
147 activities, including post-secondary education, vocational
148 training, integrated employment (including supported employment),
149 continuing and adult education, adult services, independent
150 living, or community participation;

151 (ii) Is based upon the individual student's needs,
152 taking into account the student's preferences and interests;

153 (iii) Includes instruction, related services,
154 community experiences, the development of employment and other
155 post-school adult living objectives, and, when appropriate,
156 acquisition of daily living skills and functional vocational
157 evaluation.

158 SECTION 2. Section 37-23-135, Mississippi Code of 1972, is
159 amended as follows:

160 37-23-135. (1) For the purposes of this section, each local
161 educational agency is eligible for assistance under IDEA Part B
162 for a fiscal year if, in providing for the education of children
163 with disabilities within its jurisdiction, policies, procedures



164 and programs are in effect that are consistent with the
165 regulations established by the State Department of Education.

166 (2) The local educational agency shall have in effect
167 policies and procedures, and programs that are consistent with the
168 State Department of Education's policies and procedures, to
169 ensure:

170 (a) A free appropriate public education is available to
171 all children with disabilities residing in the state between the
172 ages of three (3) and twenty (20), inclusive. Educational
173 services for children with disabilities who have been suspended or
174 expelled from school shall be provided based on the requirements
175 of IDEA, applicable federal regulations and state regulations;

176 (b) The full educational opportunity goal established
177 by the state is implemented in a manner such that the State of
178 Mississippi will provide full educational opportunities to all
179 children with disabilities ages birth through twenty-one (21)
180 years no later than the year 2005;

181 (c) All children with disabilities, who are in need of
182 special education and related services, including children with
183 disabilities attending private school, regardless of the severity
184 of their disabilities, are identified, located, and evaluated;

185 (d) An individualized education program is developed,
186 reviewed and revised for each child with a disability;

187 (e) Children with disabilities are provided services
188 within their least restrictive environment;

189 (f) Children with disabilities and their parents are
190 afforded the procedural safeguards required under IDEA;

191 (g) Children with disabilities are evaluated as
192 required under IDEA;

193 (h) The State Department of Education and local
194 education agencies will assure the protection of the
195 confidentiality of any personally identifiable data, information



196 and records collected or maintained as required under IDEA and the
197 Family Rights and Privacy Act;

198 (i) Children with disabilities participating in early
199 intervention programs assisted under IDEA Part C who will
200 participate in preschool programs assisted under IDEA Part B shall
201 experience a smooth transition. An individualized educational
202 program shall be developed and implemented by the child's third
203 birthday;

204 (j) Children with disabilities enrolled in private
205 schools by their parents shall be provided special education and
206 related services to the extent required under IDEA;

207 (k) Children with disabilities who are placed in
208 private schools or facilities by the local educational agency
209 shall be provided special education and related services, in
210 accordance with an individualized education program, at no cost to
211 their parents;

212 (l) A comprehensive system of personnel development has
213 been developed to ensure appropriately qualified personnel are
214 available and personnel are trained in accordance with the
215 requirements of the State Department of Education and IDEA;

216 (m) Personnel providing educational services to
217 children with disabilities meet the personnel standards of the
218 State Department of Education;

219 (n) The performance goals and indicators shall be
220 implemented as established by the State Board of Education; and

221 (o) Children with disabilities are included in
222 statewide and district-wide assessment programs, with appropriate
223 accommodations, in accordance with regulations established by the
224 State Board of Education.

225 (3) The local educational agency shall make available to
226 parents of children with disabilities and to the general public
227 all documents relating to the agency's eligibility under IDEA.



228 (4) If the State Department of Education determines that a
229 local educational agency is not eligible to receive federal funds
230 due to compliance violations not being resolved within a specified
231 timeline, the local educational agency shall be notified of that
232 determination and shall be provided with reasonable notice and an
233 opportunity for a hearing. The local educational agency in
234 receipt of such notice, shall, by means of public notice, take
235 such measures as may be necessary to bring the pendency of an
236 action to withhold funds to the attention of the public within the
237 jurisdiction of such agency.

238 (5) The State Department of Education, after reasonable
239 notice and an opportunity for a hearing, shall reduce or shall not
240 provide any further payments to the local educational agency until
241 the department is satisfied that the violations have been
242 corrected.

243 SECTION 3. Section 37-23-137, Mississippi Code of 1972, is
244 amended as follows:

245 37-23-137. (1) Consent shall be obtained:

246 (a) Prior to initial evaluation;

247 (b) Prior to implementation of the initial
248 individualized educational program for a child with a disability;

249 (c) Prior to reevaluation, except that such consent is
250 not required, if the local educational agency can demonstrate that
251 it had taken reasonable measures to obtain such consent and the
252 parent failed to respond; and

253 (d) Prior to the release of educational records as
254 required under the Family Rights and Privacy Act and IDEA.

255 (2) If the parent of a child with a disability refuses
256 consent for the evaluation, the local educational agency may
257 continue to pursue an evaluation by utilizing the due process
258 hearing procedures under IDEA, except to the extent these are not
259 in conflict with Mississippi law relating to parental consent.



260 (3) Written prior notice shall be provided to the parents of
261 the child whenever a local educational agency proposes to initiate
262 or change or refuses to initiate or change the identification,
263 evaluation, or educational placement of the child, or the
264 provision of a free appropriate public education to that child.

265 (4) Written prior notice shall be provided in the native
266 language of the parents, unless it clearly is not feasible to do
267 so.

268 (5) Written prior notice shall include:

269 (a) A description of the action proposed or refused by
270 the local educational agency;

271 (b) An explanation of why the local educational agency
272 proposes or refuses to take the action;

273 (c) A description of any other options that the local
274 educational agency considered and the reasons why those options
275 were rejected;

276 (d) A description of any other factors that are
277 relevant to the local educational agency's proposal or refusal;

278 (e) A description of each evaluation procedure, test,
279 record, or report the local educational agency used as a basis for
280 the proposed or refused action;

281 (f) A description of any factors that are relevant to
282 the local educational agency's proposal or refusal;

283 (g) A statement that the parents of a child with a
284 disability have protection under the procedural safeguards under
285 IDEA and, if the notice is not an initial referral for evaluation,
286 notification of an individualized educational program meeting or
287 notice for reevaluation, the means by which a copy of a
288 description of procedural safeguards can be obtained; and

289 (h) Sources for parents to contact to obtain assistance
290 in understanding the provisions under IDEA.

291 (6) A copy of the procedural safeguards established by the
292 State Department of Education shall be given to the parents upon:



293 (a) Initial referral for evaluation;
294 (b) Each notification of an individualized education
295 program meeting;
296 (c) Reevaluation; and
297 (d) Registration of a complaint under IDEA to the State
298 Department of Education.

299 (7) The State Department of Education and each local
300 educational agency shall establish procedures to ensure parents of
301 children with disabilities have the opportunity to participate in
302 meetings with respect to the identification, evaluation, and
303 education placement of the child, and the provision of a free
304 appropriate public education of such child. Local educational
305 agencies shall provide parents of children with disabilities an
306 opportunity to provide input in the development of the agencies'
307 application for funding, as required under IDEA.

308 (8) In conducting the evaluation, the local educational
309 agency shall:

310 (a) Use a variety of assessment tools and strategies to
311 gather relevant functional and developmental information,
312 including information provided by the parent, that may assist in
313 determining whether the child is a child with a disability and the
314 content of the child's individualized education program including
315 information related to enabling the child to be involved in and
316 progress in the general curriculum or, for preschool children, to
317 participate in appropriate activities;

318 (b) Not use any single procedure as the sole criterion
319 for determining whether a child is a child with a disability or
320 determining an appropriate educational program for the child; and

321 (c) Use technically sound instruments that may assess
322 the relative contribution of cognitive and behavioral factors, in
323 addition to physical or developmental factors.

324 (9) Each local educational agency shall ensure that:



325 (a) Tests and other evaluation materials used to assess
326 a child are:

327 (i) Selected and administered so as not to be
328 discriminatory on a racial or cultural basis; and

329 (ii) Provided and administered in the child's
330 native language or other mode of communication, unless it is
331 clearly not feasible to do so;

332 (b) Any standardized tests that are given to the child:

333 (i) Have been validated for the specific purpose
334 for which they are used;

335 (ii) Are administered by trained and knowledgeable
336 personnel; and

337 (iii) Are administered in accordance with any
338 instructions provided by the producer of such tests;

339 (c) The child is assessed in all areas of suspected
340 disability; and

341 (d) Assessment tools and strategies that provide
342 relevant information that directly assist persons in determining
343 the educational needs of the child are provided.

344 (10) Upon completion of administration of tests and other
345 evaluation materials:

346 (a) The determination of whether the child is a child
347 with a disability as defined under IDEA and state regulations
348 established by the State Board of Education shall be made by a
349 team of qualified professionals and the parent of the child and
350 certified by a Screening Team as defined by the State Board of
351 Education;

352 (b) In making such a determination of eligibility, a
353 child shall not be determined to be a child with a disability if
354 the determinant factor for such determination is lack of
355 instruction in reading or math or limited English proficiency; and



356 (c) A copy of the evaluation report and the
357 documentation of determination of eligibility will be given to the
358 parent.

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

362 (12) Written prior notice shall be provided to the parents
363 or guardian of the child whenever a local educational agency
364 contracts with any individual or entity to performed an
365 assessment, evaluation or observation of the child.

366 (13) An individual or entity contracting with a local
367 educational agency shall submit a written report on the findings,
368 decisions and recommendations regarding the child resulting from
369 the assessment, evaluation or observation. The parents or
370 guardian will receive a copy of any written report submitted to
371 the local educational agency resulting from the assessment,
372 evaluation or observation of the child.

373 (14) Individuals or entities contracting to perform an
374 assessment, evaluation or observation of a child with a local
375 educational agency shall retain all information and records sent
376 to or received from the local educational agency.

377 (15) Parents and guardians shall have the right to review or
378 receive copies of all information collected, maintained or used by
379 individuals or entities contracting with a local educational
380 agency to perform an assessment, evaluation or observation of a
381 child.

382 SECTION 4. Section 37-23-141, Mississippi Code of 1972, is
383 amended as follows:

384 37-23-141. (1) The State Department of Education shall
385 promulgate the necessary rules and regulations to establish a
386 mediation system which, at a minimum, shall be available whenever
387 a due process hearing under IDEA is requested. The mediation
388 system shall allow parties the opportunity to resolve such



389 disputes involving any matter relating to the identification,
390 evaluation or educational placement of the child, or the provision
391 of a free appropriate public education to such child.

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

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

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

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

400 (3) The State Department of Education may establish
401 procedures to require parents who choose not to use the mediation
402 process to meet, at a time and location convenient to the parents,
403 with a disinterested party who is under contract with a parent
404 training and information center or community parent resource
405 center in the state established under IDEA, or an appropriate
406 alternative dispute resolution entity. The purpose of the meeting
407 is to encourage the use, and explain the benefits, of the
408 mediation process to the parents.

409 (4) (a) The State Department of Education shall maintain a
410 list of individuals who are qualified mediators and knowledgeable
411 in laws and regulations relating to the provision of special
412 education and related services. The qualified mediators shall be
413 selected by the State Board of Education.

414 (b) An individual who serves as a mediator:

415 (i) May not be an employee of the State Department
416 of Education or a local school district;

417 (ii) May not have a personal or professional
418 conflict of interest which impacts his or her objectivity in the
419 mediation; and

420 (iii) Must be trained in effective mediation
421 techniques and must be knowledgeable in laws and regulations



422 relating to the provision of special education and related
423 services.

424 (c) The role of the mediator is to:

425 (i) Facilitate communication between the parties
426 in an impartial manner;

427 (ii) Chair the meeting;

428 (iii) Assist the parties in reaching an agreement;

429 and

430 (iv) Terminate mediation if, in the mediator's
431 judgment, the parties are not making progress toward resolving the
432 issue or issues in dispute.

433 (d) All mediators shall receive training in the
434 following areas:

435 (i) State and federal special education laws and
436 regulations;

437 (ii) Procedures for conducting mediation
438 conferences in an orderly and controlled manner;

439 (iii) Group process skills essential to achieving
440 consensus agreement;

441 (iv) Phases of mediation;

442 (v) Procedures for writing a consensus agreement;

443 (vi) Procedures for debriefing the parties; and

444 (vii) Any other topics deemed necessary by the
445 State Department of Education.

446 (5) Unless otherwise agreed upon by both parties, mediators
447 will be designated for mediation on a rotation basis.

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

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

453 (8) Discussions that occur during the mediation process
454 shall be confidential and may not be used as evidence in any



455 subsequent due process hearings or civil proceedings and the
456 parties to the mediation process may be required to sign a
457 confidentiality pledge prior to the commencement of such process.

458 SECTION 5. Section 37-23-143, Mississippi Code of 1972, is
459 amended as follows:

460 37-23-143. (1) The State Department of Education shall
461 follow the due process procedures for parents and public agencies
462 requesting hearings under the federal Individuals with
463 Disabilities Education Act (IDEA), 20 USCS et seq., and
464 regulations promulgated thereunder.

465 (2) When any public agency directly responsible for the
466 education of exceptional children shall (a) initiate or change the
467 identification, evaluation, or educational placement of the child
468 or the provision of a free appropriate public education to the
469 child, or (b) refuse to initiate or change the identification,
470 evaluation or educational placement of the child or the provision
471 of a free appropriate public education to the child, the parent of
472 a child with a disability or the agency shall have the opportunity
473 to request a state-level impartial due process hearing.

474 (3) The State Department of Education shall recruit
475 applicants for due process hearing officers who shall meet the
476 criteria set forth in this section. Each applicant shall provide
477 a comprehensive disclosure of his or her professional background
478 and work experience. Applicants must have at least a master's
479 level degree in an area of education or a Doctor of Jurisprudence
480 degree and knowledge of laws and regulations relating to the
481 provision of special education and related services. In the
482 selection of individuals to serve as due process hearing officers,
483 the State Department of Education shall solicit actively former
484 members of the judiciary to serve as due process hearing officers.
485 The State Superintendent of Public Education shall select
486 qualified persons or organizations to establish and conduct
487 training programs for hearing officers, completion of which shall



488 be a prerequisite to service as a hearing officer. Such training
489 shall be conducted in an unbiased manner by education and legal
490 experts, including persons from outside the public education
491 system. Training for due process hearing officers shall include,
492 at a minimum, instruction in federal and state laws, rules,
493 regulations, regulatory interpretations and court decisions
494 relating to special education, relevant general education issues,
495 evidence, diagnostic procedures, information about disabilities
496 and techniques and procedures for conducting effective and
497 impartial hearings.

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

502 (a) Failure to accept assigned cases without good
503 cause;

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

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

508 (d) Violating applicable laws regarding privacy and
509 confidentiality of records of information;

510 (e) Failure to recuse himself or herself from a hearing
511 in which he or she has a personal, professional or financial
512 conflict of interest which he or she knew or should have known
513 existed at any time before or during the hearing;

514 (f) Conviction in any jurisdiction of any felony or of
515 a misdemeanor involving moral turpitude or dishonesty;

516 (g) Falsification of a material fact on his or her
517 application to serve as a due process hearing officer; or

518 (h) Other malfeasance or misfeasance.

519 (5) The State Department of Education shall provide all
520 hearing officers access to relevant court decisions, impartial



521 hearing officer decisions (with child identifying information
522 deleted) and updates on revisions to applicable laws and
523 regulations. Hearing officers appointed by the State Department
524 of Education shall serve for an initial term of four (4) years,
525 and any reappointments following expiration of the four-year term
526 shall be for a period of two (2) years. Due process hearing
527 officers shall receive reasonable compensation for each hearing at
528 a rate established from time to time by the State Board of
529 Education.

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

533 (7) The State Department of Education shall designate due
534 process hearing officers to preside over due process hearings
535 using a rotating system and shall notify each hearing officer of
536 his or her designation. A hearing officer having a personal or
537 professional interest that would conflict with his or her
538 objectivity in the hearing shall so notify the State
539 Superintendent of Public Education and shall be replaced by the
540 next scheduled impartial due process hearing officer under the
541 rotation system.

542 (8) Once designated for a hearing, the impartial due process
543 hearing officer shall notify promptly all parties or their
544 representatives of the substance of the communication between any
545 party to the due process hearing as a matter of record.

546 (9) A prehearing conference will be scheduled within ten
547 (10) days of the State Department of Education receiving the
548 request for a hearing.

549 (10) The State Department of Education shall establish, by
550 rule, procedures of the conduct of prehearing conferences to be
551 used by all hearing officers. Prehearing conference procedures
552 shall include, but not be limited to, the following:

553 (a) An explanation of the parties rights, as follows:



554 (i) The right of either party to be accompanied
555 and advised by counsel and by individuals with special knowledge
556 or training with respect to the problems of children with
557 disabilities;

558 (ii) The right of either party to present evidence
559 and confront and cross-examine witnesses;

560 (iii) The right, at the option of parents, to a
561 written or electronic verbatim record of such hearing; and

562 (iv) The right, at the option of parents, to
563 written or electronic findings of fact and decisions;

564 (b) A determination of issues in dispute and the
565 specific relief being sought;

566 (c) A determination of the parties' access to records;

567 (d) A determination if the hearing will be open or
568 closed to the public;

569 (e) A determination regarding the sequestration of
570 witnesses;

571 (f) Identification of the type of recording to be used
572 in the hearing; and

573 (g) A determination of the date and time for sharing of
574 evidence.

575 * * *

576 (11) At least five (5) business days prior to a hearing
577 being conducted, each party shall disclose to all other parties
578 all evaluations completed by that date and recommendations based
579 on the offering party's evaluations that the party intends to use
580 at the hearing. A hearing officer may bar any party that fails to
581 comply with this requirement from introducing the relevant
582 evaluation or recommendation at the hearing without the consent of
583 the other party.

584 (12) The State Department of Education shall maintain a
585 reporting system of all decisions rendered as a result of due
586 process hearings and shall make such decisions available for



587 review by the public after deleting all child-identifying
588 information.

589 (13) At any time before the conclusion of the hearing, the
590 hearing officer shall have the authority to require additional
591 information and order independent evaluations for the student at
592 the expense of the school district.

593 (14) The hearing officer shall issue a written decision, and
594 a copy of the decision shall be mailed to the parents or guardian,
595 the school district and the State Department of Education. Unless
596 the hearing officer has granted specific extensions of time at the
597 request of a party, a final decision shall be reached and mailed
598 to the parties named in this subsection not later than forty-five
599 (45) days after the request for a due process hearing.

600 (15) The decision made by the hearing officer shall be
601 final, except that any party aggrieved by the findings and
602 decision made by the hearing officer shall have the right to bring
603 a civil action with respect to the issues of the due process
604 hearing. Such civil action may be brought in any court of
605 competent jurisdiction within thirty (30) days from the date of
606 the decision of the impartial due process hearing officer or
607 within thirty (30) days from the date of delivery of the official
608 transcripts of all hearings conducted in connection with the due
609 process hearing to the appealing party, whichever period is
610 longer.

611 (16) Except as provided under IDEA, during the pendency of
612 any proceedings conducted pursuant to this section, unless the
613 public agency and the parents otherwise agree, the child will
614 remain in the then-current educational placement of such child,
615 or, if applying for initial admission to a public school, shall,
616 with the consent of the parents, be placed in the public school
617 program until all such proceedings have been completed. This
618 requirement does not limit any party from obtaining a temporary



619 restraining order from any court of competent jurisdiction, as
620 deemed necessary by that party.

621 (17) The State Department of Education shall prepare an
622 annual written report by September 1 of each year, beginning in
623 2001, on due process hearings concluded in this state during the
624 preceding year. This report shall be submitted to the members of
625 the State Board of Education and the State Advisory Committee on
626 the Education of Children with Disabilities and shall be made
627 available to the public. This report shall include a listing of
628 all current hearing officers and their qualifications, a current
629 list of mediators and their qualifications, the name of each
630 school district involved in a due process hearing, the date each
631 due process hearing request was filed, the name of the hearing
632 officer assigned to each due process hearing, if mediation
633 procedures were used, the hearing date for each due process
634 hearing, and the date of the hearing officer's decision in each
635 due process hearing.

636 SECTION 6. Section 37-23-145, Mississippi Code of 1972, is
637 amended as follows:

638 37-23-145. (1) The State Board of Education shall establish
639 and maintain the State Advisory Committee on the Education of
640 Children with Disabilities for the purpose of providing policy
641 guidance with respect to special education and related services
642 for children with disabilities in the state.

643 (2) The advisory panel shall consist of members appointed by
644 the State Superintendent of Public Education who are
645 representative of the state's population and who are * * *
646 individuals involved in, or concerned with, the education of
647 children with disabilities, including:

- 648 (a) Parents of children with disabilities;
649 (b) Individuals with disabilities;
650 (c) Teachers;



651 (d) Representatives of institutions of higher education
652 that prepare special education and related services personnel;

653 (e) State and local education officials;

654 (f) Administrators of programs for children with
655 disabilities;

656 (g) Representatives of other state agencies involved in
657 the financing or delivery of related services to children with
658 disabilities;

659 (h) Representatives of private schools and public
660 charter schools;

661 (i) At least one (1) representative of a vocational,
662 community, or business organization concerned with the provision
663 of transition services to children with disabilities; and

664 (j) Representatives from the state juvenile and adult
665 correction agencies.

666 (3) A majority of the members of the panel shall be
667 individuals with disabilities or parents of children with
668 disabilities.

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

670 (a) Advising the State Department of Education of unmet
671 needs within the state in the education of children with
672 disabilities;

673 (b) Commenting publicly on any rules or regulations
674 proposed by the State Department of Education regarding the
675 education of children with disabilities;

676 (c) Advising the State Department of Education in
677 developing evaluations and reporting on data to the secretary in
678 accordance with the requirements under IDEA;

679 (d) Advising the State Department of Education in
680 developing and implementing policies relating to the coordination
681 of services for children with disabilities; and



682 (e) Advising the State Department of Education in
683 developing corrective action plans to address findings identified
684 in federal monitoring reports under IDEA.

685 (5) The advisory panel shall be provided the opportunity to
686 provide comments to the State Board of Education on rules or
687 regulations proposed by the State Department of Education relating
688 to the implementation of the IDEA 1997 Amendments.

689 SECTION 7. Section 37-23-11, Mississippi Code of 1972, which
690 provides for hearings regarding a child's identification,
691 evaluation and placement and for due process hearings in such
692 matters, is repealed.

693 SECTION 8. This act shall take effect and be in force from
694 and after July 1, 2001.

