

By: Senator(s) Harden

To: Education;  
Appropriations

SENATE BILL NO. 2633

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 \* \* \*

454       (8) Discussions that occur during the mediation process  
455 shall be confidential and may not be used as evidence in any  
456 subsequent due process hearings or civil proceedings and the  
457 parties to the mediation process may be required to sign a  
458 confidentiality pledge prior to the commencement of such process.

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

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

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

476       \* \* \*

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

487 members of the judiciary to serve as due process hearing officers.  
488 The State Superintendent of Public Education shall select  
489 qualified persons or organizations to establish and conduct  
490 training programs for hearing officers, completion of which shall  
491 be a prerequisite to service as a hearing officer. Such training  
492 shall be conducted in an unbiased manner by education and legal  
493 experts, including persons from outside the public education  
494 system. Training for due process hearing officers shall include,  
495 at a minimum, instruction in federal and state laws, rules,  
496 regulations, regulatory interpretations and court decisions  
497 relating to special education, relevant general education issues,  
498 evidence, diagnostic procedures, information about disabilities  
499 and techniques and procedures for conducting effective and  
500 impartial hearings.

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

505 (a) Failure to accept assigned cases without good  
506 cause;

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

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

511 (d) Violating applicable laws regarding privacy and  
512 confidentiality of records of information;

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

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



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

521           (h) Other malfeasance or misfeasance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

572           (e) A determination regarding the sequestration of  
573 witnesses;

574           (f) Identification of the type of recording to be used  
575 in the hearing; and

576           (g) A determination of the date and time for sharing of  
577 evidence.

578 \* \* \*

579       (11) At least five (5) business days prior to a hearing  
580 being conducted, each party shall disclose to all other parties  
581 all evaluations completed by that date and recommendations based  
582 on the offering party's evaluations that the party intends to use  
583 at the hearing. A hearing officer may bar any party that fails to  
584 comply with this requirement from introducing the relevant

585 evaluation or recommendation at the hearing without the consent of  
586 the other party.

587 (12) The State Department of Education shall maintain a  
588 reporting system of all decisions rendered as a result of due  
589 process hearings and shall make such decisions available for  
590 review by the public after deleting all child-identifying  
591 information.

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

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

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

614 (16) Except as provided under IDEA, during the pendency of  
615 any proceedings conducted pursuant to this section, unless the  
616 public agency and the parents otherwise agree, the child will  
617 remain in the then-current educational placement of such child,

618 or, if applying for initial admission to a public school, shall,  
619 with the consent of the parents, be placed in the public school  
620 program until all such proceedings have been completed. This  
621 requirement does not limit any party from obtaining a temporary  
622 restraining order from any court of competent jurisdiction, as  
623 deemed necessary by that party.

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

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

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

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

651 (a) Parents of children with disabilities;  
652 (b) Individuals with disabilities;  
653 (c) Teachers;  
654 (d) Representatives of institutions of higher education  
655 that prepare special education and related services personnel;  
656 (e) State and local education officials;  
657 (f) Administrators of programs for children with  
658 disabilities;  
659 (g) Representatives of other state agencies involved in  
660 the financing or delivery of related services to children with  
661 disabilities;  
662 (h) Representatives of private schools and public  
663 charter schools;  
664 (i) At least one (1) representative of a vocational,  
665 community, or business organization concerned with the provision  
666 of transition services to children with disabilities; and  
667 (j) Representatives from the state juvenile and adult  
668 correction agencies.

669 (3) A majority of the members of the panel shall be  
670 individuals with disabilities or parents of children with  
671 disabilities.

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

673 (a) Advising the State Department of Education of unmet  
674 needs within the state in the education of children with  
675 disabilities;

676 (b) Commenting publicly on any rules or regulations  
677 proposed by the State Department of Education regarding the  
678 education of children with disabilities;

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

682           (d) Advising the State Department of Education in  
683 developing and implementing policies relating to the coordination  
684 of services for children with disabilities; and

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

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

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

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