

By: Senator(s) Harden

To: Education;  
Appropriations

SENATE BILL NO. 2443

1 AN ACT TO REVISE STATUTES RELATING TO THE EDUCATION OF  
 2 EXCEPTIONAL CHILDREN; TO AMEND SECTION 37-23-135, MISSISSIPPI CODE  
 3 OF 1972, TO REQUIRE A JOINT REPORT BY THE STATE DEPARTMENT OF  
 4 EDUCATION AND THE STATE DEPARTMENT OF HEALTH ON THE STATUS OF  
 5 PROVIDING FULL EDUCATIONAL OPPORTUNITIES TO ALL CHILDREN WITH  
 6 DISABILITIES AGE BIRTH THROUGH 21 IN COMPLIANCE WITH THE FEDERAL  
 7 IDEA LAW; TO AMEND SECTION 37-23-139, MISSISSIPPI CODE OF 1972, TO  
 8 REQUIRE THAT PARENTS OF EXCEPTIONAL CHILDREN SHALL BE GIVEN THE  
 9 OPPORTUNITY TO PARTICIPATE IN AN ON-SITE SCHOOL INVESTIGATION AND  
 10 TO PROVIDE FOR THE FORWARDING OF INFORMATION OBTAINED AT SUCH  
 11 INVESTIGATION; TO AMEND SECTION 37-23-141, MISSISSIPPI CODE OF  
 12 1972, TO PROVIDE PROCEDURES WHEN THE SCHOOL CHOOSES NOT TO USE THE  
 13 MEDIATION PROCESS AND TO PROVIDE CERTAIN STANDARDS FOR THE  
 14 MEDIATOR IF THE MEDIATION PROCESS IS USED; TO AMEND SECTION  
 15 37-23-143, MISSISSIPPI CODE OF 1972, TO REVISE COMPLAINT  
 16 PROCEDURES FOR PARENTS OF SUCH CHILDREN, TO PROVIDE FOR  
 17 PRE-HEARING CONFERENCES AND TO REQUIRE A REPORTING SYSTEM OF ALL  
 18 DUE PROCESS DECISIONS RENDERED; TO AMEND SECTION 37-23-145,  
 19 MISSISSIPPI CODE OF 1972, TO ESTABLISH AND EMPOWER A STATE  
 20 ADVISORY COMMITTEE ON THE EDUCATION OF CHILDREN WITH DISABILITIES;  
 21 AND FOR RELATED PURPOSES.

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

23 **SECTION 1.** Section 37-23-135, Mississippi Code of 1972, is  
 24 amended as follows:

25 37-23-135. (1) For the purposes of this section, each local  
 26 educational agency is eligible for assistance under IDEA Part B  
 27 for a fiscal year if, in providing for the education of children  
 28 with disabilities within its jurisdiction, policies, procedures  
 29 and programs are in effect that are consistent with the  
 30 regulations established by the State Department of Education.

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

34 (a) A free appropriate public education is available to  
 35 all children with disabilities residing in the state between the  
 36 ages of three (3) and twenty (20), inclusive. Educational



37 services for children with disabilities who have been suspended or  
38 expelled from school shall be provided based on the requirements  
39 of IDEA, applicable federal regulations and state regulations;

40 (b) The full educational opportunity goal established  
41 by the state is implemented. The State Department of Education  
42 and the Department of Health shall jointly prepare a report for  
43 the 2003 Regular Session of the Legislature to be submitted to the  
44 Chairman of the Education Committees of the Senate and of the  
45 House of Representatives by December 1, 2002, on the status of  
46 providing full educational opportunities to all children with  
47 disabilities ages birth through twenty-one (21) years of age no  
48 later than the year 2005. This report shall include, but not be  
49 limited to, the projected number of children with disabilities as  
50 defined under Part B and Part C of IDEA who will likely be in need  
51 of services by 2005, an estimate of the increased number of  
52 children that would be eligible for services if the age range of  
53 eligibility is expanded, the additional services necessary to  
54 provide a free appropriate education to children as defined under  
55 IDEA, and the cost of expanding appropriate services as defined  
56 under IDEA to eligible children with disabilities ages birth  
57 through twenty-one (21), including any projected increases of  
58 teacher units. In preparing the report, the State Department of  
59 Education shall collaborate with a representative from other  
60 public agencies and organizations that are responsible for  
61 providing or paying for services to children with disabilities  
62 ages birth through twenty-one (21), including the Mississippi  
63 Department of Mental Health, Early Head Start and Head Start,  
64 State Department of Vocational Rehabilitation, Division of  
65 Vocational and Technical Education of the State Department of  
66 Education, Division of Medicaid, state institutions of higher  
67 learning, State Board for Community and Junior Colleges, and the  
68 federal Social Security Administration. Representatives of parent  
69 and advocacy organizations, as well as the Council of



70 Administrators for Special Education, the Mississippi Association  
71 of School Superintendents and the Mississippi School Boards  
72 Association, shall also be included in the collaborative  
73 development of recommendations for the report to the Legislature;

74 (c) All children with disabilities, who are in need of  
75 special education and related services, including children with  
76 disabilities attending private school, regardless of the severity  
77 of their disabilities, are identified, located and evaluated;

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

80 (e) Children with disabilities are provided services  
81 within their least restrictive environment;

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

84 (g) Children with disabilities are evaluated as  
85 required under IDEA;

86 (h) The State Department of Education and local  
87 education agencies will assure the protection of the  
88 confidentiality of any personally identifiable data, information  
89 and records collected or maintained as required under IDEA and the  
90 Family Educational Rights and Privacy Act.

91 (i) Children with disabilities participating in early  
92 intervention programs assisted under IDEA Part C who will  
93 participate in preschool programs assisted under IDEA Part B shall  
94 experience a smooth transition. An individualized educational  
95 program shall be developed and implemented by the child's third  
96 birthday;

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

100 (k) Children with disabilities who are placed in  
101 private schools or facilities by the local educational agency  
102 shall be provided special education and related services, in



103 accordance with an individualized education program, at no cost to  
104 their parents;

105 (l) A comprehensive system of personnel development has  
106 been developed to ensure appropriately qualified personnel are  
107 available and personnel are trained in accordance with the  
108 requirements of the State Department of Education and IDEA;

109 (m) Personnel providing educational services to  
110 children with disabilities meet the personnel standards of the  
111 State Department of Education;

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

114 (o) Children with disabilities are included in  
115 statewide and district-wide assessment programs, with appropriate  
116 accommodations, in accordance with regulations established by the  
117 State Board of Education.

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

121 (4) If the State Department of Education determines that a  
122 local educational agency is not eligible to receive federal funds  
123 due to compliance violations not being resolved within a specified  
124 timeline, the local educational agency shall be notified of that  
125 determination and shall be provided with reasonable notice and an  
126 opportunity for a hearing. The local educational agency in  
127 receipt of such notice shall, by means of public notice, take such  
128 measures as may be necessary to bring the pendency of an action to  
129 withhold funds to the attention of the public within the  
130 jurisdiction of such agency.

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



136           **SECTION 2.** Section 37-23-139, Mississippi Code of 1972, is  
137 amended as follows:

138           37-23-139. (1) The State Department of Education shall  
139 establish the necessary rules and regulations in accordance with  
140 IDEA to provide for an organization or individual to file a signed  
141 written complaint with respect to a violation of federal or state  
142 regulations by a local educational agency relating to the  
143 identification, evaluation or educational placement of the child,  
144 or the provision of a free appropriate public education to such  
145 child.

146           (2) Procedures that require the parent of a child with a  
147 disability, or the attorney representing the child, to provide  
148 notice to the State Department of Education shall include:

149           (a) The name of the child, the address of the residence  
150 of the child, and the name of the school the child is attending;

151           (b) A description of the nature of the problem of the  
152 child relating to such proposed initiation or change, including  
153 facts relating to such problem; and

154           (c) A proposed resolution of the problem to the extent  
155 known and available to the parents at the time.

156           (3) The State Department of Education shall develop a model  
157 form to assist parents in filing a complaint in accordance with  
158 the requirements under IDEA.

159           (4) All complaints shall remain protected by the  
160 confidentiality requirements under IDEA.

161           (5) If the State Department of Education determines an  
162 on-site investigation is needed regarding the complaint, then the  
163 complaint(s) must be given the opportunity to participate in the  
164 on-site investigation.

165           (6) A copy of all information, records and documents,  
166 including computer media sent to or received from the local  
167 educational agency involved in the complaint and the State  
168 Department of Education, will be sent to the complainant and the



169 Mississippi Commission on School Accreditation at the same time  
170 such information, records and/or documents are sent to or received  
171 from the local educational agency involved in the complaint and  
172 the State Department of Education.

173 (7) The State Department of Education shall provide the  
174 State Advisory Panel on the Education of Children with  
175 Disabilities a copy of all recent State Department of Education  
176 complaint findings at each meeting.

177 **SECTION 3.** Section 37-23-141, Mississippi Code of 1972, is  
178 amended as follows:

179 37-23-141. (1) The State Department of Education shall  
180 promulgate the necessary rules and regulations to establish a  
181 mediation system which, at a minimum, shall be available whenever  
182 a due process hearing under IDEA is requested. The mediation  
183 system shall allow parties the opportunity to resolve such  
184 disputes involving any matter relating to the identification,  
185 evaluation or educational placement of the child, or the provision  
186 of a free appropriate public education to such child.

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

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

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

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

195 (3) The State Department of Education may establish  
196 procedures to require:

197 (a) Parents who choose not to use the mediation process  
198 to meet, at a time and location convenient to the parents, with a  
199 disinterested party who is under contract with a parent training  
200 and information center or community parent resource center in the  
201 state established under IDEA, or an appropriate alternative



202 dispute resolution entity. The purpose of the meeting is to  
203 encourage the use, and explain the benefits, of the mediation  
204 process to the parents.

205 (b) A local educational agency who chooses not to use  
206 the mediation process to meet, at a time and location convenient  
207 to the local school district, with a disinterested party who is  
208 under contract with the State Department of Education, or an  
209 appropriate alternative dispute resolution entity. The purpose of  
210 the meeting is to encourage the use and explain the benefits of  
211 the mediation process to the local educational agency.

212 (4) The State Department of Education shall maintain a list  
213 of individuals who are qualified mediators and knowledgeable in  
214 laws and regulations relating to the provision of special  
215 education and related services. The qualified mediators shall be  
216 appointed by the State Board of Education.

217 (5) An individual who serves as a mediator:

218 (a) Shall not be an employee of the State Department of  
219 Education, a local school district or a state agency receiving a  
220 subgrant from the State Department of Education under IDEA.

221 (b) May not have a personal or professional conflict of  
222 interest which impacts his or her objectivity in the mediation.

223 (6) Mediators shall be designated for mediation on a  
224 rotation basis.

225 (7) The state shall bear the cost of the mediation process,  
226 including the costs of all meetings described in this section.

227 (8) Each session in the mediation process shall be scheduled  
228 in a timely manner and shall be held in a location that is  
229 convenient to the parties in dispute.

230 (9) An agreement reached by the parties to the dispute in  
231 the mediation process shall be set forth in a written mediation  
232 agreement.

233 (10) Discussions that occur during the mediation process  
234 shall be confidential and may not be used as evidence in any



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

238 **SECTION 4.** Section 37-23-143, Mississippi Code of 1972, is  
239 amended as follows:

240 37-23-143. (1) The State Department of Education shall  
241 follow the due process procedures for parents and public agencies  
242 requesting hearings under the Individuals with Disabilities  
243 Education Act (IDEA), 20 USCS et seq., and regulations promulgated  
244 thereunder.

245 (2) When any public agency directly responsible for the  
246 education of exceptional children \* \* \* shall (a) \* \* \* initiate  
247 or change the identification, evaluation or educational placement  
248 of the child or the provision of a free appropriate public  
249 education to the child, or (b) refuse to initiate or change the  
250 identification, evaluation or educational placement of the child  
251 or the revision of a free appropriate public education to the  
252 child, the parent of a child with a disability or the agency shall  
253 have the opportunity to request a state-level impartial due  
254 process hearing.

255 \* \* \*

256 (3) The State Department of Education shall recruit  
257 applicants for due process hearing officers who shall meet the  
258 criteria set forth in this section. Each applicant shall provide  
259 a comprehensive disclosure of his or her professional background,  
260 affiliated organizations and work experience. Applicants must  
261 have at least a master's level degree in an area of education or a  
262 Doctor of Jurisprudence degree. In the selection of individuals  
263 to serve as due process hearing officers, the State Department of  
264 Education shall solicit actively former members of the judiciary  
265 to serve as due process hearing officers. The State  
266 Superintendent of Education shall select qualified persons or  
267 organizations to establish and conduct training programs for





268 hearing officers, completion of which shall be a prerequisite to  
269 service as a hearing officer. Such training shall be conducted in  
270 an unbiased manner by education and legal experts, including  
271 persons from outside the public education system. Training for  
272 due process hearing officers shall include, at a minimum,  
273 regulatory interpretations and court decisions relating to special  
274 education, relevant general education issues, evidence, diagnostic  
275 procedures, methodologies relating to education, information about  
276 disabilities and techniques, and procedures for conducting  
277 effective and impartial hearings.

278 (4) A due process hearing officer shall be removed from the  
279 list of state-level hearing officers by the State Department of  
280 Education if, in the determination of the State Department of  
281 Education, the hearing officer has failed to conduct due process  
282 hearings in accordance with state rules and regulations and IDEA.

283 (5) The State Department of Education shall provide all  
284 hearing officers, relevant court decisions, impartial hearing  
285 officer decisions (with child identifying information deleted) and  
286 updates on revisions to applicable laws and regulations. Hearing  
287 officers appointed by the State Department of Education shall  
288 serve for a term of five (5) years. Due process hearing officers  
289 shall receive reasonable compensation for each hearing at a rate  
290 established from time to time by the State Board of Education.

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

294 (7) The State Department of Education shall designate due  
295 process hearing officers to preside over due process hearings  
296 using a rotation system and shall notify each hearing officer of  
297 his or her designation. A hearing officer having a personal or  
298 professional interest that would conflict with his or her  
299 objectivity in the hearing shall so notify the State Department of



300 Education and shall be replaced by the next scheduled impartial  
301 due process hearing officer under the rotation system.

302 (8) The State Department of Education shall establish, by  
303 rule, procedures of the conduct of pre-hearing conferences to be  
304 used by all hearing officers. Pre-hearing conferences procedures  
305 shall include, but not be limited to, the following:

306 (a) An explanation of the parties' rights as follows:

307 (i) The right of either party to be accompanied  
308 and advised by counsel and by individuals with special knowledge  
309 or training with respect to the problems of children with  
310 disabilities.

311 (ii) The right of either party to present evidence  
312 and confront and cross-examine witnesses.

313 (iii) The right, at the option of parents, to a  
314 written or electronic verbatim record of such hearing.

315 (iv) The right, at the option of parents, to a  
316 written or electronic findings of fact and decisions.

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

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

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

322 (e) A determination regarding the sequestration of  
323 witnesses;

324 (f) Identification of the type of recording to be used  
325 in the hearing; and

326 (g) A determination of the date and time for sharing of  
327 evidence.

328 (9) At least five (5) business days prior to a hearing being  
329 conducted, each party shall disclose to all other parties all  
330 evaluations completed by that date and recommendations based on  
331 the offering party's evaluations that the party intends to use at  
332 the hearing. A hearing officer may bar any party that fails to



333 comply with this requirement from introducing the relevant  
334 evaluation or recommendation at the hearing without the consent of  
335 the other party.

336 (10) The State Department of Education shall maintain a  
337 reporting system of all decisions rendered as a result of due  
338 process hearings and shall make such decisions available for  
339 review by the public after deleting all child-identifying  
340 information and shall provide the State Advisory Panel on the  
341 Education of Children with Disabilities a copy of all recent  
342 decisions at each scheduled meeting.

343 (11) The decision made by the hearing officer shall be  
344 final, except that any party aggrieved by the findings and  
345 decision made by the hearing officer shall have the right to bring  
346 a civil action with respect to the issues of the due process  
347 hearing. Such civil action may be brought in any court of  
348 competent jurisdiction within one (1) year from the date of the  
349 decision of the impartial due process hearing officer.

350 (12) Except as provided under IDEA, during the pendency of  
351 any proceedings conducted pursuant to this section, unless the  
352 local educational agency and the parents otherwise agree, the  
353 child will remain in the then-current educational placement of  
354 such child, or, if applying for initial admission to a public  
355 school, shall, with the consent of the parents, be placed in the  
356 public school program until all such proceedings have been  
357 completed. This requirement does not limit the local educational  
358 agency from obtaining a temporary restraining order from any court  
359 of competent jurisdiction, as deemed necessary by the agency.

360 (13) The State Department of Education shall prepare an  
361 annual written report by September 1 of each year beginning in  
362 2002 on due process hearings concluded in this state during the  
363 preceding year. This report shall be submitted to the members of  
364 the State Board of Education, the State Advisory Panel on the  
365 Education of Children with Disabilities and shall be made



366 available to the public. This report shall include a listing of  
367 all current hearing officers and their qualifications, a current  
368 list of mediators and their qualifications, the name of each  
369 school district involved in a due process hearing, the date each  
370 due process hearing request was filed, the name of the hearing  
371 officer assigned to each due process hearing, if mediation  
372 procedures were used, the hearing date for each due process  
373 hearing, the prevailing party in each due process hearing, and the  
374 date of the hearing officer's decision in each due process  
375 hearing.

376 **SECTION 5.** Section 37-23-145, Mississippi Code of 1972, is  
377 amended as follows:

378 37-23-145. (1) The State Board of Education shall establish  
379 and maintain an advisory panel for the purpose of providing policy  
380 guidance with respect to special education and related services  
381 for children with disabilities in the state.

382 (2) The advisory panel shall consist of members appointed by  
383 the State Superintendent of Education who are representative of  
384 the state's population and who are composed of individuals  
385 involved in, or concerned with, the education of children with  
386 disabilities, including:

387 (a) Parents of children with disabilities;

388 (i) One (1) parent representing children from  
389 birth to two (2) years of age appointed by the Governor;

390 (ii) Two (2) parents representing preschool-age  
391 children, one (1) appointed by the Governor and one (1) appointed  
392 by the Lieutenant Governor;

393 (iii) Two (2) parents representing elementary-age  
394 children, one (1) appointed by the Governor and one (1) appointed  
395 by the Lieutenant Governor;

396 (iv) Two (2) parents representing middle  
397 school-age children, one (1) appointed by the Governor and one (1)  
398 appointed by the Lieutenant Governor;



399                   (v) Two (2) parents representing high school-age  
400 children, one (1) appointed by the Governor and one (1) appointed  
401 by the Lieutenant Governor;

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

405                   (b) Four (4) individuals with disabilities, two (2)  
406 appointed by the Governor and two (2) appointed by the Lieutenant  
407 Governor;

408                   (c) One (1) special education teacher and one (1)  
409 regular education teacher appointed by the State Superintendent of  
410 Education;

411                   (d) One (1) representative of institutions of higher  
412 education that prepare special education and related services  
413 personnel appointed by the Governor;

414                   (e) One (1) principal and one (1) school superintendent  
415 appointed by the State Superintendent of Public Education;

416                   (f) One (1) administrator of special education programs  
417 appointed by the State Superintendent of Public Education;

418                   (g) The Executive Director of the Mississippi  
419 Department of Mental Health, or his designee;

420                   (h) The Executive Director of the Mississippi  
421 Department of Rehabilitation Services, or his designee;

422                   (i) The Director of the Mississippi Department of  
423 Health, Early Intervention Program, or his designee;

424                   (j) One (1) representative of private schools and  
425 public charter schools appointed by the State Superintendent of  
426 Education;

427                   (k) One (1) representative of a vocational, community  
428 or business organization concerned with the provision of  
429 transition services to children with disabilities appointed by the  
430 State Superintendent of Education;



431           (l) One (1) representative from the state juvenile and  
432 adult correction agencies appointed by the Attorney General; and  
433           (m) Two (2) members of the Legislature: the Chairman  
434 of the House of Representatives Education Committee, or his/her  
435 designee, and the Chairman of the Senate Education Committee, or  
436 his/her designee. Members from the Legislature shall be nonvoting  
437 advisory members.

438           (3) A majority of the members of the panel shall be  
439 individuals with disabilities or parents of children with  
440 disabilities.

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

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

445           (b) Review all information collected, maintained or  
446 used by the State Department of Education relating to special  
447 education;

448           (c) Advise the State Department of Education of unmet  
449 needs within the state in the education of children with  
450 disabilities;

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

453           (e) Comment publicly on any rules or regulations  
454 proposed by the State Department of Education regarding the  
455 education of children with disabilities;

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

459           (g) Advise the State Department of Education in  
460 developing and implementing policies relating to the coordination  
461 of services for children with disabilities; \* \* \*



462           (h) Advise the State Department of Education in  
463 developing corrective action plans to address findings identified  
464 in federal monitoring reports under IDEA;

465           (i) Annually elect its own co-chairs, one (1) of whom  
466 shall be a parent of a child with a disability and one (1) of whom  
467 shall be a professional;

468           (j) Establish and implement guidelines and bylaws for  
469 the committee to follow; and

470           (k) Develop an annual report to be given to the State  
471 Superintendent of Education and the Legislature by July 1  
472 regarding the unmet needs of children with disabilities in the  
473 state. Co-chairs of the panel shall present the annual report to  
474 the State Board of Education during the July meeting.

475           (5) The advisory panel shall be provided the opportunity to  
476 provide comments to the State Board of Education on rules or  
477 regulations proposed by the State Department of Education relating  
478 to the implementation of the IDEA 1997 Amendments.

479           **SECTION 6.** This act shall take effect and be in force from  
480 and after July 1, 2002.

