MISSISSIPPI LEGISLATURE
REGULAR SESSION 2002

By: Senator(s) Harden
To: Education; Appropriations

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2443

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

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

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

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

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

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

(b) The full educational opportunity goal established by the state is implemented. The State Department of Education and the Department of Health shall jointly prepare a report for the 2003 Regular Session of the Legislature to be submitted to the Chairman of the Education Committees of the Senate and of the House of Representatives by December 1, 2002, on the status of providing full educational opportunities to all children with disabilities ages birth through twenty-one (21) years of age no later than the year 2005. This report shall include, but not be limited to, the projected number of children with disabilities as defined under Part B and Part C of IDEA who will likely be in need of services by 2005, an estimate of the increased number of children that would be eligible for services if the age range of eligibility is expanded, the additional services necessary to provide a free appropriate education to children as defined under IDEA, and the cost of expanding appropriate services as defined under IDEA to eligible children with disabilities ages birth through twenty-one (21), including any projected increases of teacher units. In preparing the report, the State Department of Education shall collaborate with a representative from other public agencies and organizations that are responsible for providing or paying for services to children with disabilities ages birth through twenty-one (21), including the Mississippi Department of Mental Health, Early Head Start and Head Start, State Department of Vocational Rehabilitation, Division of Vocational and Technical Education of the State Department of Education, Division of Medicaid, state institutions of higher learning, State Board for Community and Junior Colleges, and the federal Social Security Administration. Representatives of parent and advocacy organizations, as well as the Council of
Administrators for Special Education, the Mississippi Association of School Superintendents and the Mississippi School Boards Association, shall also be included in the collaborative development of recommendations for the report to the Legislature;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The State Department of Education, after reasonable
notice and an opportunity for a hearing, shall reduce or shall not
provide any further payments to the local educational agency until
the department is satisfied that the violations have been
corrected.
(6) Nothing contained in the amendments to Sections
37-23-135 through 37-23-145, Mississippi Code of 1972, enacted by
Senate Bill No. 2443, 2002 Regular Session, shall be construed to
supplant federal funds with State General Funds.

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

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

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

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

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

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

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

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

(5) If the State Department of Education determines an
on-site investigation is needed regarding the complaint, then the
complainants must be given the opportunity to participate in the
on-site investigation.
(6) A copy of all information, records and documents, including computer media sent to or received from the local educational agency involved in the complaint and the State Department of Education, will be sent to the complainant and the Mississippi Commission on School Accreditation at the same time such information, records and/or documents are sent to or received from the local educational agency involved in the complaint and the State Department of Education. Nothing in this subsection shall be construed to require duplication of legal reporting requirements.

(7) The State Department of Education shall provide the State Advisory Panel on the Education of Children with Disabilities a copy of all recent State Department of Education complaint findings on a quarterly basis.

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

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

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

(a) Voluntary on the part of the parties;

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

(c) Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
(3) The State Department of Education may establish procedures to require:

(a) Parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with a parent training and information center or community parent resource center in the state established under IDEA, or an appropriate alternative dispute resolution entity. The purpose of the meeting is to encourage the use, and explain the benefits, of the mediation process to the parents.

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

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

(5) An individual who serves as a mediator:

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

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

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

(7) The complainant or the school district shall not bear the cost of the mediation process, including the costs of all meetings described in this section.
Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties in dispute.

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

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

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

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

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

(3) The State Department of Education shall recruit applicants for due process hearing officers who shall meet the criteria set forth in this section. Each applicant shall provide a comprehensive disclosure of his or her professional background,
affiliated organizations and work experience. In the selection of individuals to serve as due process hearing officers, the State Department of Education shall solicit actively former members of the judiciary to serve as due process hearing officers. The department shall make every effort to select individuals with at least a master's level degree in an area of education or a Doctor of Jurisprudence degree. The State Superintendent of Education shall select qualified persons or organizations to establish and conduct training programs for hearing officers, completion of which shall be a prerequisite to service as a hearing officer. Such training shall be conducted in an unbiased manner by education and legal experts, including persons from outside the public education system. Training for due process hearing officers shall include, at a minimum, regulatory interpretations and court decisions relating to special education, relevant general education issues, evidence, diagnostic procedures, methodologies relating to education, information about disabilities and techniques, and procedures for conducting effective and impartial hearings.

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

(5) The State Department of Education shall provide all hearing officers, relevant court decisions, impartial hearing officer decisions (with child identifying information deleted) and updates on revisions to applicable laws and regulations. Hearing officers appointed by the State Department of Education shall serve for a term of five (5) years. Due process hearing officers shall receive reasonable compensation for each hearing at a rate established from time to time by the State Board of Education.
(6) A request for due process hearing will be made to the State Department of Education with a copy of the request being sent to all parties involved.

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

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

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

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

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

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

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

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

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

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

(e) A determination regarding the sequestration of witnesses;
(f) Identification of the type of recording to be used in the hearing; and

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

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

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

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

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

(13) The State Department of Education shall prepare an annual written report by September 1 of each year beginning in 2002 on due process hearings concluded in this state during the preceding year. This report shall be submitted to the members of the State Board of Education, the State Advisory Panel on the Education of Children with Disabilities and shall be made available to the public. This report shall include a listing of all current hearing officers and their qualifications, a current list of mediators and their qualifications, the name of each school district involved in a due process hearing, the date each due process hearing request was filed, the name of the hearing officer assigned to each due process hearing, if mediation procedures were used, the hearing date for each due process hearing, the prevailing party in each due process hearing, and the date of the hearing officer's decision in each due process hearing.

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

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

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

(a) Parents of children with disabilities;

(i) One (1) parent representing children from birth to two (2) years of age appointed by the Governor;
(ii) Two (2) parents representing preschool-age children, one (1) appointed by the Governor and one (1) appointed by the Lieutenant Governor;

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

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

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

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

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

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

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

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

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

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

(h) The Executive Director of the Mississippi Department of Rehabilitation Services, or his designee;
(i) The Director of the Mississippi Department of Health, Early Intervention Program, or his designee;
(j) One (1) representative of private schools and public charter schools appointed by the State Superintendent of Education;
(k) One (1) representative of a vocational, community or business organization concerned with the provision of transition services to children with disabilities appointed by the State Superintendent of Education; and
(l) One (1) representative from the state juvenile and adult correction agencies appointed by the Attorney General.

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

(4) The duties of the advisory panel shall include:
(a) Review annually the state regulations, standards and guidelines pertaining to special education and recommend to the State Board of Education any changes which it finds necessary;
(b) Review all information collected, maintained or used by the State Department of Education relating to special education;
(c) Advise the State Department of Education of unmet needs within the state in the education of children with disabilities;
(d) Advise the State Board of Education on any legislative issues involving the provision of special education;
(e) Comment publicly on any rules or regulations proposed by the State Department of Education regarding the education of children with disabilities;
(f) Advise the State Department of Education in developing evaluations and reporting on data to the secretary in accordance with the requirements under IDEA;
(g) Advise the State Department of Education in developing and implementing policies relating to the coordination of services for children with disabilities; * * *

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

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

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

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

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

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