

By: Senator(s) Harden, Williamson, Burton

To: Education

SENATE BILL NO. 2607

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 2004 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, 2003, 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 2006, 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



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



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.



(6) Nothing contained in the amendments to Sections 37-23-135 through 37-23-145, Mississippi Code of 1972, enacted by Senate Bill No. 2607, 2003 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 conducts an on-site investigation regarding any complaint, then the parent(s) of the student involved in the complaint will be given the opportunity to



participate in the on-site investigation interview with the State Department of Education staff.

(6) The State Department of Education shall ensure that the parent(s) of the student involved in the complaint receives a copy of all information, records and documents including computer media sent and received between the local educational agency involved in the complaint and the State Department of Education.

(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 a full-time 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.

(8) 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.



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

(10) 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) 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.

(4) 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.

(5) 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.

(6) 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. The State Department of Education will develop and implement guidelines for the State Department of Education staff to follow regarding the rotation process. The guidelines will ensure the impartiality of the rotation process. All contact between the State Department of Education and due process hearing officers will be in written form. 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.

(7) 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.



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

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

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

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

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

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

310 (e) A determination regarding the sequestration of
311 witnesses;

312 (f) Identification of the type of recording to be used
313 in the hearing; and

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

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

324 (9) The decision made by the hearing officer shall be final,
325 except that any party aggrieved by the findings and decision made
326 by the hearing officer shall have the right to bring a civil
327 action with respect to the issues of the due process hearing.
328 Such civil action may be brought in any court of competent
329 jurisdiction within forty-five (45) days from the date of the
330 decision of the impartial due process hearing officer.



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

341 (11) The State Department of Education shall prepare an
342 annual written report by September 1 of each year beginning in
343 2003 on due process hearings concluded in this state during the
344 preceding year. This report shall be submitted to the members of
345 the State Board of Education, the State Advisory Panel on the
346 Education of Children with Disabilities and shall be made
347 available to the public. This report shall include a listing of
348 all current hearing officers and their qualifications, a current
349 list of mediators and their qualifications, the name of each
350 school district involved in a due process hearing, the date each
351 due process hearing request was filed, the name of the hearing
352 officer assigned to each due process hearing, if mediation
353 procedures were used, the hearing date for each due process
354 hearing, the prevailing party in each due process hearing, and the
355 date of the hearing officer's decision in each due process
356 hearing.

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

359 37-23-145. (1) The State Board of Education shall establish
360 and maintain an advisory panel for the purpose of providing policy
361 guidance with respect to special education and related services
362 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 * * *.

* * *

(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;



396 (i) Establish and implement guidelines and bylaws for
397 the committee to follow; and

398 (j) Develop an annual report to be given to the State
399 Superintendent of Education and the Legislature by July 1
400 regarding the unmet needs of children with disabilities in the
401 state. Cochairs of the panel shall present the annual report to
402 the State Board of Education during the July meeting.

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

407 **SECTION 6.** This act shall take effect and be in force from
408 and after July 1, 2003.

