

By: Senator(s) Harden

To: Education;
Appropriations

SENATE BILL NO. 2162

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 AGES 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 2005 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, 2004, 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 2006. 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

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 (6) Nothing contained in the amendments to Sections
137 37-23-135 through 37-23-145, Mississippi Code of 1972, enacted by
138 Senate Bill No. 2162, 2004 Regular Session, shall be construed to
139 supplant federal funds with State General Funds.

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

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

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

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

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

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

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

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

165 (5) If the State Department of Education conducts an on-site
166 investigation regarding any complaint, then the parent(s) of the
167 student involved in the complaint will be given the opportunity to

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

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

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

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

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

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

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

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

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

197 (3) The State Department of Education may establish
198 procedures to require:

199 (a) Parents who choose not to use the mediation process
200 to meet, at a time and location convenient to the parents, with a

201 disinterested party who is under contract with a parent training
202 and information center or community parent resource center in the
203 state established under IDEA, or an appropriate alternative
204 dispute resolution entity. The purpose of the meeting is to
205 encourage the use, and explain the benefits, of the mediation
206 process to the parents.

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

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

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

220 (a) Shall not be a full-time employee of the State
221 Department of Education, a local school district or a state agency
222 receiving a subgrant from the State Department of Education under
223 IDEA.

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

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

228 (7) The complainant or the school district shall not bear
229 the cost of the mediation process, including the costs of all
230 meetings described in this section.

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

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

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

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

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

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

259 * * *

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

265 (4) The State Department of Education shall provide all
266 hearing officers, relevant court decisions, impartial hearing

267 officer decisions (with child identifying information deleted) and
268 updates on revisions to applicable laws and regulations. Hearing
269 officers appointed by the State Department of Education shall
270 serve for a term of five (5) years. Due process hearing officers
271 shall receive reasonable compensation for each hearing at a rate
272 established from time to time by the State Board of Education.

273 (5) A request for due process hearing will be made to the
274 State Department of Education with a copy of the request being
275 sent to all parties involved.

276 (6) The State Department of Education shall designate due
277 process hearing officers to preside over due process hearings
278 using a rotation system and shall notify each hearing officer of
279 his or her designation. The State Department of Education will
280 develop and implement guidelines for the State Department of
281 Education staff to follow regarding the rotation process. The
282 guidelines will ensure the impartiality of the rotation process.
283 All contact between the State Department of Education and due
284 process hearing officers will be in written form. A hearing
285 officer having a personal or professional interest that would
286 conflict with his or her objectivity in the hearing shall so
287 notify the State Department of Education and shall be replaced by
288 the next scheduled impartial due process hearing officer under the
289 rotation system.

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

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

295 (i) The right of either party to be accompanied
296 and advised by counsel and by individuals with special knowledge
297 or training with respect to the problems of children with
298 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 * * *

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

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

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

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

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

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

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

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

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

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

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

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

364 (2) The advisory panel shall consist of members appointed by
365 the State Superintendent of Education who are representative of
366 the state's population and who are composed of individuals
367 involved in, or concerned with, the education of children with
368 disabilities * * *.

369 * * *

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

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

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

377 (b) Review all information collected, maintained or
378 used by the State Department of Education relating to special
379 education;

380 (c) Advise the State Department of Education of unmet
381 needs within the state in the education of children with
382 disabilities;

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

385 (e) Comment publicly on any rules or regulations
386 proposed by the State Department of Education regarding the
387 education of children with disabilities;

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

391 (g) Advise the State Department of Education in
392 developing and implementing policies relating to the coordination
393 of services for children with disabilities; * * *

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

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

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

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

408 **SECTION 6.** This act shall take effect and be in force from
409 and after July 1, 2004.