

By: Senator(s) Harden

To: Education;
Appropriations

COMMITTEE SUBSTITUTE
FOR
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 (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. 2443, 2002 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 determines an
166 on-site investigation is needed regarding the complaint, then the
167 complainants must be given the opportunity to participate in the
168 on-site investigation.



169 (6) A copy of all information, records and documents,
170 including computer media sent to or received from the local
171 educational agency involved in the complaint and the State
172 Department of Education, will be sent to the complainant and the
173 Mississippi Commission on School Accreditation at the same time
174 such information, records and/or documents are sent to or received
175 from the local educational agency involved in the complaint and
176 the State Department of Education. Nothing in this subsection
177 shall be construed to require duplication of legal reporting
178 requirements.

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

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

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

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

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

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

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



201 (3) The State Department of Education may establish
202 procedures to require:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

262 * * *

263 (3) The State Department of Education shall recruit
264 applicants for due process hearing officers who shall meet the
265 criteria set forth in this section. Each applicant shall provide
266 a comprehensive disclosure of his or her professional background,



267 affiliated organizations and work experience. In the selection of
268 individuals to serve as due process hearing officers, the State
269 Department of Education shall solicit actively former members of
270 the judiciary to serve as due process hearing officers. The
271 department shall make every effort to select individuals with at
272 least a master's level degree in an area of education or a Doctor
273 of Jurisprudence degree. The State Superintendent of Education
274 shall select qualified persons or organizations to establish and
275 conduct training programs for hearing officers, completion of
276 which shall be a prerequisite to service as a hearing officer.
277 Such training shall be conducted in an unbiased manner by
278 education and legal experts, including persons from outside the
279 public education system. Training for due process hearing
280 officers shall include, at a minimum, regulatory interpretations
281 and court decisions relating to special education, relevant
282 general education issues, evidence, diagnostic procedures,
283 methodologies relating to education, information about
284 disabilities and techniques, and procedures for conducting
285 effective and impartial hearings.

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

291 (5) The State Department of Education shall provide all
292 hearing officers, relevant court decisions, impartial hearing
293 officer decisions (with child identifying information deleted) and
294 updates on revisions to applicable laws and regulations. Hearing
295 officers appointed by the State Department of Education shall
296 serve for a term of five (5) years. Due process hearing officers
297 shall receive reasonable compensation for each hearing at a rate
298 established from time to time by the State Board of Education.



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

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

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

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

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

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

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

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

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

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

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

330 (e) A determination regarding the sequestration of
331 witnesses;



332 (f) Identification of the type of recording to be used
333 in the hearing; and

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

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

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

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

358 (12) Except as provided under IDEA, during the pendency of
359 any proceedings conducted pursuant to this section, unless the
360 local educational agency and the parents otherwise agree, the
361 child will remain in the then-current educational placement of
362 such child, or, if applying for initial admission to a public
363 school, shall, with the consent of the parents, be placed in the
364 public school program until all such proceedings have been



365 completed. This requirement does not limit the local educational
366 agency from obtaining a temporary restraining order from any court
367 of competent jurisdiction, as deemed necessary by the agency.

368 (13) The State Department of Education shall prepare an
369 annual written report by September 1 of each year beginning in
370 2002 on due process hearings concluded in this state during the
371 preceding year. This report shall be submitted to the members of
372 the State Board of Education, the State Advisory Panel on the
373 Education of Children with Disabilities and shall be made
374 available to the public. This report shall include a listing of
375 all current hearing officers and their qualifications, a current
376 list of mediators and their qualifications, the name of each
377 school district involved in a due process hearing, the date each
378 due process hearing request was filed, the name of the hearing
379 officer assigned to each due process hearing, if mediation
380 procedures were used, the hearing date for each due process
381 hearing, the prevailing party in each due process hearing, and the
382 date of the hearing officer's decision in each due process
383 hearing.

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

386 37-23-145. (1) The State Board of Education shall establish
387 and maintain an advisory panel for the purpose of providing policy
388 guidance with respect to special education and related services
389 for children with disabilities in the state.

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

395 (a) Parents of children with disabilities;

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



398 (ii) Two (2) parents representing preschool-age
399 children, one (1) appointed by the Governor and one (1) appointed
400 by the Lieutenant Governor;

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

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

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

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

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

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

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

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

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

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

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



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

432 (j) One (1) representative of private schools and
433 public charter schools appointed by the State Superintendent of
434 Education;

435 (k) One (1) representative of a vocational, community
436 or business organization concerned with the provision of
437 transition services to children with disabilities appointed by the
438 State Superintendent of Education; and

439 (l) One (1) representative from the state juvenile and
440 adult correction agencies appointed by the Attorney General.

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

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

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

448 (b) Review all information collected, maintained or
449 used by the State Department of Education relating to special
450 education;

451 (c) Advise the State Department of Education of unmet
452 needs within the state in the education of children with
453 disabilities;

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

456 (e) Comment publicly on any rules or regulations
457 proposed by the State Department of Education regarding the
458 education of children with disabilities;

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



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

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

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

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

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

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

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

