3/23 4:22P

Chapter No. 439
11/SS26/R891
JN / HW/sg

SENATE BILL NO. 2362

Originated in Senate Secretary

SENATE BILL NO. 2362

AN ACT TO AMEND SECTION 37-23-143, MISSISSIPPI CODE OF 1972, TO REVISE THE TIME LIMITATION FOR BRINGING A CIVIL ACTION WITH RESPECT TO A STUDENT WITH DISABILITIES DUE PROCESS HEARING; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 37-23-143, Mississippi Code of 1972, is amended as follows:

37-23-143. (1) When any public agency directly responsible for the education of children with disabilities initiates or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision 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.

(2) The State Department of Education shall promulgate rules and regulations consistent with the requirements under IDEA to establish a system for the provision of state-level impartial due process hearings. Such provisions shall include:

(a) 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.

(b) A hearing may not be conducted by an employee of the State Department of Education or the local educational agency involved in the education or care of the child.

(c) 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.

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

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

(f) The right, at the option of parents, to electronic findings of fact and decisions.

(g) Findings and facts shall be made available to the public and transmitted to the advisory panel consistent with the requirements under IDEA.

(3) 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 ninety (90) days from the date of the decision of the impartial due process hearing officer.

(4) 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.

SECTION 2. This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE SENATE
February 8, 2011

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 9, 2011

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

3/23/11 4:27 pm