
By: Chairman, Ways and Means Committee (Departmental - Education)

Introduced and read first time: January 17, 1996

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Education - Review of Educational Placements of Students With Disabilities**

3 FOR the purpose of altering certain procedures for review of educational decisions of
4 students with disabilities; establishing a system for mediation of disputes concerning
5 the educational placement of students with disabilities; eliminating the initial local
6 level tier of review; authorizing an appeal of a decision of the Office of
7 Administrative Hearings; defining certain terms; and generally relating to the
8 review of educational placements of students with disabilities.

9 BY repealing and reenacting, with amendments,
10 Article - Education
11 Section 8-415
12 Annotated Code of Maryland
13 (1992 Replacement Volume and 1995 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article - Education**

17 8-415.

18 [(a) (1) If a county board makes a placement decision for a student with
19 disabilities, the parent or guardian of the student with disabilities may make a written
20 request to the county board for a review of the identification, evaluation, or educational
21 placement of the child or the provision of a free appropriate public education for the
22 child.

23 (2) Within 45 days after it receives a request for review, the county board,
24 pursuant to the provisions of paragraphs (3) and (4), shall appoint:

25 (i) A hearing officer, knowledgeable in the fields and areas significant
26 to the educational review of the student with disabilities, to hear the case and make a
27 decision; or

28 (ii) A hearing board consisting of individuals who meet the
29 qualifications of subparagraph (i).

30 (3) The county board shall maintain a list of at least 10 hearing officers who:

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1 (i) May be selected from the list of State-approved hearing officers
2 under subsection (b)(2) of this section; and

3 (ii) Shall have a general knowledge of the law relating to the
4 placement of students with disabilities.

5 (4) Unless otherwise agreed by both parties, the hearing officer or panel
6 members shall be chosen in rotating alphabetical sequence from those officers on the list
7 maintained by the county board who satisfy the requirements of paragraph (2).

8 (5) An individual may not serve as the hearing officer or a board member if
9 he:

10 (i) Is an employee of the State Board or any county board; or

11 (ii) Has an interest that would conflict with his objectivity in the
12 hearing.

13 (6) Within the same 45-day period, the hearing officer or the hearing board
14 shall review the request and make a decision.]

15 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
16 INDICATED.

17 (2) "ADMINISTRATIVE LAW JUDGE" MEANS AN INDIVIDUAL SERVING IN
18 THE ROLE OF AN IMPARTIAL HEARING OFFICER AS REQUIRED UNDER THE
19 FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

20 (3) "FEDERAL LAW" MEANS THE INDIVIDUALS WITH DISABILITIES
21 EDUCATION ACT AND REGULATIONS ADOPTED UNDER THAT ACT.

22 (4) "PUBLIC AGENCY" MEANS THE STATE DEPARTMENT OF EDUCATION,
23 A LOCAL SCHOOL SYSTEM, OR ANY STATE AGENCY RESPONSIBLE FOR PROVIDING
24 EDUCATION TO STUDENTS WITH DISABILITIES, INCLUDING THE MARYLAND
25 SCHOOL FOR THE BLIND AND THE MARYLAND SCHOOL FOR THE DEAF.

26 (B) (1) IF A PARENT SEEKS REVIEW OF THE DECISION OF A PUBLIC AGENCY
27 CONCERNING THE IDENTIFICATION, EVALUATION, OR EDUCATIONAL PLACEMENT
28 OF A STUDENT OR THE PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION,
29 ANY PARTY SHALL BE GIVEN THE OPPORTUNITY TO REQUEST MEDIATION OF
30 THOSE ASPECTS OF THE DECISION SUBJECT TO DISPUTE.

31 (2) THE REQUEST FOR MEDIATION MAY NOT BE USED TO DENY OR
32 DELAY THE PARENT'S RIGHTS UNDER FEDERAL LAW OR THIS SECTION.

33 [(b)] (C) (1) [After exhausting all locally available administrative remedies and
34 procedures, a] A parent or guardian of a student with disabilities or the [county board
35 that is responsible for providing special educational services for the child] PUBLIC
36 AGENCY may make a written request to the Office of Administrative Hearings for a
37 review of the identification, evaluation, or educational placement of the child or the
38 provision of a free appropriate education for the child.

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1 (2) IN ORDER TO CONDUCT A HEARING, THE OFFICE OF
2 ADMINISTRATIVE HEARINGS SHALL APPOINT AN IMPARTIAL ADMINISTRATIVE LAW
3 JUDGE WHO:

4 (I) IS AN ADMINISTRATIVE LAW JUDGE IN THE OFFICE OF
5 ADMINISTRATIVE HEARINGS;

6 (II) HAS RECEIVED SPECIALIZED TRAINING IN MATTERS
7 SIGNIFICANT TO THE EDUCATIONAL REVIEW OF STUDENTS WITH DISABILITIES; AND

8 (III) HAS NO INTEREST THAT WOULD CONFLICT WITH THE
9 ADMINISTRATIVE LAW JUDGE'S OBJECTIVITY IN THE REVIEW.

10 (3) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL INFORM THE
11 PARENT OF ANY FREE OR LOW COST LEGAL AND OTHER RELEVANT SERVICES
12 AVAILABLE UPON REQUEST OR WHENEVER A HEARING IS INITIATED UNDER THIS
13 SECTION.

14 (4) UNLESS THE PARENT AND THE PUBLIC AGENCY OTHERWISE AGREE,
15 DURING THE COURSE OF ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING, THE
16 STUDENT MUST REMAIN IN THE LAST APPROVED PLACEMENT.

17 (5) IF THE HEARING CONCERNS THE INITIAL ADMISSION OF A CHILD
18 INTO A PUBLIC SCHOOL, THE STUDENT WITH THE CONSENT OF THE PARENT MUST
19 BE PLACED IN THE PUBLIC SCHOOL PROGRAM UNTIL THE PROCEEDINGS HAVE
20 BEEN COMPLETED.

21 [(2) The Office of Administrative Hearings shall maintain a list of at least 30
22 hearing officers who are knowledgeable regarding the education of students with
23 disabilities.

24 (3) An individual may not serve as a hearing board member if he:

25 (i) Is an employee of the State Board or of any county board; or

26 (ii) Has an interest that would conflict with his objectivity in the
27 hearing.

28 (4) Training and experience gained, including areas of expertise, shall be
29 summarized by each hearing officer listed and made available to public scrutiny.

30 (5) The panel for any State level hearing shall be selected in the following
31 manner:

32 (i) The Office of Administrative Hearings shall provide the parents
33 with the names of two judges from the Office of Administrative Hearings and three
34 hearing officers, from which the parents shall select one judge and two hearing officers;

35 (ii) Unless otherwise agreed upon by both parties, the names of the
36 judges and hearing officers shall be chosen in rotating alphabetical sequence from lists of
37 judges and hearing officers; and

38 (iii) The parents shall notify the Office of Administrative Hearings of
39 their selection within 15 days of the Office of Administrative Hearings' notification. In

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1 the absence of such notification by parents, the Office of Administrative Hearings shall
2 assign hearing officers in rotating alphabetical sequence starting with the list in
3 subparagraph (i) above.

4 (6) If it becomes necessary to provide a substitute hearing officer for a
5 member of the panel chosen by the method prescribed in paragraph (5) of this subsection,
6 the Office of Administrative Hearings shall choose from the list in rotating alphabetical
7 sequence the next available person.

8 (7) The Office of Administrative Hearings shall maintain and make publicly
9 available a complete record of all requests, successful or not, of hearing officers to serve
10 on panels.]

11 [(c)] (D) The [State hearing panel] ADMINISTRATIVE LAW JUDGE appointed
12 under subsection [(b)] (C) of this section [may] SHALL CONDUCT THE HEARING IN
13 ACCORDANCE WITH TITLE 10 OF THE STATE GOVERNMENT ARTICLE AND THE
14 OFFICE OF ADMINISTRATIVE HEARINGS RULES OF ADMINISTRATIVE PROCEDURE,
15 AND MAY:

16 [(i)] (1) After review of the educational records of the child, dismiss
17 any request for review which does not relate to a matter described in subsection [(b)](1)
18 (C)(1) of this section;

19 (2) REQUIRE THE PARTIES TO ATTEND A PREHEARING CONFERENCE
20 PRIOR TO THE DUE PROCESS HEARING;

21 [(ii)] (3) Hear any testimony that it considers relevant;

22 (4) REQUIRE AN INDEPENDENT EVALUATION OR CALL AN IMPARTIAL
23 EXPERT WITNESS IN THE DIAGNOSIS OR EDUCATION OF STUDENTS WITH
24 DISABILITIES WHOSE TESTIMONY SHALL BE ON THE RECORD AND WHOSE COSTS
25 SHALL BE PAID BY THE STATE EDUCATION AGENCY; AND

26 (5) ADMINISTER OATHS TO WITNESSES AT THE HEARING ON REQUEST
27 OF A PARTY.

28 [(iii)] Require a complete and independent diagnosis, evaluation, and
29 prescription of educational programs by qualified persons, the cost of which shall be paid
30 by the State Board; and

31 (iv) Subject to § 8-409 of this subtitle, confirm, modify, or reject any
32 diagnosis, evaluation, educational program, or exclusion or exemption of the child from
33 school privileges and require alternate special educational programs for the child.

34 (2) The State hearing panel shall make its decision within the time
35 prescribed by the bylaws of the State Board of Education and applicable federal law or
36 regulations.

37 (3) Each panel member is entitled to a reasonable fee and expenses as
38 established by the State Board.

39 (d) In accordance with the bylaws of the State Board and applicable federal law or
40 regulations, the time limits imposed by subsections (a) and (c) of this section for a

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1 decision on a request for review shall be extended or waived on written request to the
2 reviewing authority by the parent or guardian who requested the review.

3 (e) At any hearing held under this section, upon the request of a party, the
4 hearing officer shall administer oaths to all witnesses.]

5 (E) (1) ANY PARTY TO THE HEARING HAS THE RIGHT TO:

6 (I) BE ACCOMPANIED AND BE ADVISED BY COUNSEL AND
7 INDIVIDUALS WITH SPECIAL KNOWLEDGE OR TRAINING WITH RESPECT TO THE
8 PROBLEMS OF CHILDREN WITH DISABILITIES;

9 (II) PRESENT EVIDENCE AND CONFRONT, CROSS-EXAMINE, AND
10 COMPEL THE ATTENDANCE OF WITNESSES;

11 (III) PROHIBIT THE INTRODUCTION OF ANY EVIDENCE AT THE
12 HEARING WHICH HAS NOT BEEN DISCLOSED TO ALL PARTIES AT LEAST 5 DAYS
13 BEFORE THE HEARING;

14 (IV) OBTAIN A WRITTEN OR ELECTRONIC VERBATIM RECORD OF
15 THE HEARING; AND

16 (V) OBTAIN WRITTEN FINDINGS OF FACT AND DECISIONS.

17 (2) PARENTS INVOLVED IN THE HEARINGS MUST BE GIVEN THE RIGHT
18 TO:

19 (I) HAVE THE CHILD WHO IS THE SUBJECT OF THE HEARING
20 PRESENT; AND

21 (II) OPEN THE HEARING TO THE PUBLIC.

22 (F) THE HEARING SHALL BE HELD AND A WRITTEN DECISION SHALL BE
23 ISSUED WITHIN 45 CALENDAR DAYS FROM THE REQUEST FOR THE HEARING. THE
24 ADMINISTRATIVE LAW JUDGE MAY GRANT A SPECIFIC EXTENSION OF TIME NOT TO
25 EXCEED 60 CALENDAR DAYS FOR GOOD CAUSE SHOWN.

26 (G) IF, AT THE TIME OF THE HEARING REQUEST, THE STUDENT WHO IS THE
27 SUBJECT OF THE HEARING IS NOT ENROLLED AND ATTENDING AN EDUCATIONAL
28 PROGRAM, AN EXPEDITED HEARING SCHEDULE SHALL APPLY. IN THESE CASES, THE
29 HEARING SHALL BE HELD WITHIN 20 CALENDAR DAYS AND A WRITTEN DECISION
30 SHALL BE ISSUED WITHIN 15 CALENDAR DAYS OF THE HEARING.

31 [(f)] (H) [(1) Under this section, any public agency, parent or guardian]
32 WITHIN 90 CALENDAR DAYS OF THE ISSUANCE OF THE HEARING DECISION, ANY
33 PARTY TO THE HEARING may file an appeal from a final review decision of the Office of
34 Administrative Hearings to the federal District Court for Maryland or to the circuit court
35 for the county in which the student resides.

36 [(2) An appeal under this section shall be filed within 180 days after the date
37 that notice of the decision of the State hearing panel is sent.

38 (g) Any review requested by a parent or guardian of a student with disabilities
39 shall be conducted in conformity with this section and any applicable federal law.]

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1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 1996.