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

Introduced and read first time: January 17, 1996

Assigned to: Ways and Means

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 1996

CHAPTER ____

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:

2

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

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

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

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

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

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

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

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

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

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

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

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

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

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

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

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

1 (3) ANY PARTY TO THE MEDIATION HAS THE RIGHT TO BE
2 ACCOMPANIED AND ADVISED BY COUNSEL.

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

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

12 (I) IS AN ADMINISTRATIVE LAW JUDGE IN THE OFFICE OF
13 ADMINISTRATIVE HEARINGS;

14 (II) HAS RECEIVED AND CONTINUES TO RECEIVE SPECIALIZED
15 TRAINING IN MATTERS SIGNIFICANT TO THE EDUCATIONAL REVIEW OF STUDENTS
16 WITH DISABILITIES; AND

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

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

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

26 (5) IF THE HEARING CONCERNS THE INITIAL ADMISSION OF A CHILD
27 INTO A PUBLIC SCHOOL, THE STUDENT WITH THE CONSENT OF THE PARENT MUST
28 BE PLACED IN THE PUBLIC SCHOOL PROGRAM UNTIL THE PROCEEDINGS HAVE
29 BEEN COMPLETED.

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

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

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

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

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

4

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

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

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

9 (iii) The parents shall notify the Office of Administrative Hearings of
10 their selection within 15 days of the Office of Administrative Hearings' notification. In
11 the absence of such notification by parents, the Office of Administrative Hearings shall
12 assign hearing officers in rotating alphabetical sequence starting with the list in
13 subparagraph (i) above.

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

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

21 [(c)] (D) (1) The [State hearing panel] ADMINISTRATIVE LAW JUDGE
22 appointed under subsection [(b)] (C) of this section [may] SHALL CONDUCT THE
23 HEARING IN ACCORDANCE WITH FEDERAL LAW, TITLE 10 OF THE STATE
24 GOVERNMENT ARTICLE, AND THE OFFICE OF ADMINISTRATIVE HEARINGS RULES
25 OF ADMINISTRATIVE PROCEDURE, AND MAY:

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

29 ~~(ii)~~ (II) REQUIRE THE PARTIES TO ATTEND A PREHEARING
30 CONFERENCE PRIOR TO THE DUE PROCESS HEARING;

31 [(ii)] ~~(ii)~~ (III) Hear any testimony that it considers relevant;

32 ~~(iii)~~ (IV) REQUIRE AN INDEPENDENT EVALUATION OR CALL AN
33 IMPARTIAL EXPERT WITNESS IN THE DIAGNOSIS OR EDUCATION OF STUDENTS
34 WITH DISABILITIES WHOSE TESTIMONY SHALL BE ON THE RECORD AND WHOSE
35 COSTS SHALL BE PAID BY THE STATE EDUCATION AGENCY; AND

36 ~~(iv)~~ (V) ADMINISTER OATHS TO WITNESSES AT THE HEARING ON
37 REQUEST OF A PARTY.

38 (2) THE PROVISIONS OF THE FAMILY EDUCATIONAL RIGHTS AND
39 PRIVACY ACT AND 34 C.F.R. PART 99 SHALL APPLY TO SCHOOL RECORDS SOUGHT BY
40 THE IMPARTIAL EXPERT WITNESS.

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

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

10 [(f)] (H) [(1) Under this section, any public agency, parent or guardian]
11 WITHIN ~~90~~ 180 CALENDAR DAYS OF THE ISSUANCE OF THE HEARING DECISION, ANY
12 PARTY TO THE HEARING may file an appeal from a final review decision of the Office of
13 Administrative Hearings to the federal District Court for Maryland or to the circuit court
14 for the county in which the student resides.

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

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

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