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By: **Delegate Petzold**

Introduced and read first time: February 13, 1998

Assigned to: Ways and Means

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Education - Students with Disabilities - Review of Services and Placement**  
3                                   **Decisions of the Office of Administrative Hearings**

4 FOR the purpose of allowing a surrogate parent of a student with disabilities to make  
5 a written request to the Office of Administrative Hearings for a review of certain  
6 educational decisions; requiring that requests for a review of certain decisions of  
7 the Office of Administrative Hearings regarding a student with disabilities be  
8 made within a certain period of time; altering the period of time following the  
9 final review decision of the Office of Administrative Hearings that a party has to  
10 file a civil action in the federal District Court of Maryland or an appeal to the  
11 circuit court for the county in which the student with disabilities resides; and  
12 generally relating to the review of decisions of the Office of Administrative  
13 Hearings regarding the educational services and placement of a student with  
14 disabilities.

15 BY repealing and reenacting, with amendments,  
16 Article - Education  
17 Section 8-413  
18 Annotated Code of Maryland  
19 (1997 Replacement Volume and 1997 Supplement)

20                                   Preamble

21       WHEREAS, Parents and schools need to work together with mutual respect for  
22 each other to strengthen the partnership between families and schools; and

23       WHEREAS, Parents have the right to participate in meetings with respect to  
24 the identification, evaluation, educational placement, and the provision of a free  
25 appropriate public education for a child with a disability; and

26       WHEREAS, Parents have the right to seek resolution through mediation or due  
27 process when the parents and the school do not agree upon appropriate services and  
28 placement proposed for a child with a disability; and

1 WHEREAS, There is a need for timely resolution of disputes between parents  
2 and schools to ensure that a child with a disability receives appropriate educational  
3 services; now, therefore,

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

6 **Article - Education**

7 8-413.

8 (a) (1) In this section the following words have the meanings indicated.

9 (2) "Administrative law judge" means an individual serving in the role of  
10 an impartial hearing officer as required under the federal Individuals with  
11 Disabilities Education Act.

12 (3) "Federal law" means the Individuals with Disabilities Education Act  
13 and regulations adopted under that Act.

14 (4) "Public agency" means the State Department of Education, a local  
15 school system, or any State agency responsible for providing education to students  
16 with disabilities, including the Maryland School for the Blind and the Maryland  
17 School for the Deaf.

18 (b) (1) If a parent seeks review of the decision of a public agency concerning  
19 the identification, evaluation, or educational placement of a student or the provision  
20 of a free appropriate public education, any party shall be given the opportunity to  
21 request mediation of those aspects of the decision subject to dispute.

22 (2) The request for mediation may not be used to deny or delay the  
23 parent's rights under federal law or this section.

24 (3) Any party to the mediation has the right to be accompanied and  
25 advised by counsel.

26 (c) (1) A parent [or], guardian, OR SURROGATE PARENT of a student with  
27 disabilities or the public agency may make a written request to the Office of  
28 Administrative Hearings for a review of the identification, evaluation, or educational  
29 placement of the child or the provision of a free appropriate education for the child.

30 (2) THE PARENT, GUARDIAN, OR SURROGATE PARENT SHALL MAKE THE  
31 WRITTEN REQUEST WITHIN 90 DAYS OF:

32 (I) THE DECISION OF A PUBLIC AGENCY TO INITIATE OR REFUSE  
33 TO INITIATE A CHANGE IN:

34 1. THE IDENTIFICATION, EVALUATION, OR EDUCATIONAL  
35 PLACEMENT OF THE CHILD; OR



1 (v) Administer oaths to witnesses at the hearing on request of a  
2 party.

3 (2) The provisions of the Family Educational Rights and Privacy Act and  
4 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

5 (3) If the parties cannot agree on an impartial expert witness, each party  
6 shall be given the opportunity to submit a list of possible experts, and the  
7 administrative law judge shall decide which impartial expert witness to call.

8 (e) (1) Any party to the hearing has the right to:

9 (i) Be accompanied and be advised by counsel and individuals with  
10 special knowledge or training with respect to the problems of children with  
11 disabilities;

12 (ii) Present evidence and confront, cross-examine, and compel the  
13 attendance of witnesses;

14 (iii) Prohibit the introduction of any evidence at the hearing which  
15 has not been disclosed to all parties at least 5 days before the hearing;

16 (iv) Obtain a written or electronic verbatim record of the hearing;  
17 and

18 (v) Obtain written findings of fact and decisions.

19 (2) Parents involved in the hearings must be given the right to:

20 (i) Have the child who is the subject of the hearing present; and

21 (ii) Open the hearing to the public.

22 (f) The hearing shall be held and a written decision shall be issued within 45  
23 calendar days from the request for the hearing. The administrative law judge may  
24 grant a specific extension of time not to exceed 60 calendar days for good cause  
25 shown.

26 (g) If, at the time of the hearing request, the student who is the subject of the  
27 hearing is not enrolled and attending an educational program, an expedited hearing  
28 schedule shall apply. In these cases, the hearing shall be held within 20 calendar days  
29 and a written decision shall be issued within 15 calendar days of the hearing.

30 (h) Within [180] 90 calendar days of the issuance of the [hearing decision]  
31 FINAL REVIEW DECISION OF THE OFFICE OF ADMINISTRATIVE HEARINGS, any party  
32 to the hearing may file [an appeal from a final review decision of the Office of  
33 Administrative Hearings to] A CIVIL ACTION IN the federal District Court for  
34 Maryland or AN APPEAL to the circuit court for the county in which the student  
35 resides.

1 (i) If the parent or guardian of a student with disabilities, eligible to receive  
2 special education and related services from a county board, enrolls the child in a  
3 nonpublic school, the county board is not required to reimburse the parent or  
4 guardian for tuition or related costs associated with the enrollment if:

5 (1) The parent or guardian does not provide to the county board prior  
6 written notice rejecting the program proposed by the county board, including the  
7 reason for the rejection, and stating an intention to enroll the student in a nonpublic  
8 school;

9 (2) The nonpublic school placement of the student is found  
10 inappropriate; or

11 (3) The proposed county board program is found appropriate.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 July 1, 1998.