# By: Delegate Petzold

Introduced and read first time: February 13, 1998 Assigned to: Ways and Means

# 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
5 6 7 8 9 10 11 12 13	FOR the purpose of allowing a surrogate parent of a student with disabilities to make a written request to the Office of Administrative Hearings for a review of certain educational decisions; requiring that requests for a review of certain decisions of the Office of Administrative Hearings regarding a student with disabilities be made within a certain period of time; altering the period of time following the final review decision of the Office of Administrative Hearings that a party has to file a civil action in the federal District Court of Maryland or an appeal to the circuit court for the county in which the student with disabilities resides; and generally relating to the review of decisions of the Office of Administrative 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
	WHEREAS, Parents have the right to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a free appropriate public education for a child with a disability; and

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

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, SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 5 MARYLAND, That the Laws of Maryland read as follows: **Article - Education** 7 8-413. In this section the following words have the meanings indicated. (a) (1) (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. (3)"Federal law" means the Individuals with Disabilities Education Act 13 and regulations adopted under that Act. 14 "Public agency" means the State Department of Education, a local (4)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. (b) If a parent seeks review of the decision of a public agency concerning (1)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. (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 Any party to the mediation has the right to be accompanied and (3)25 advised by counsel. A parent [or], guardian, OR SURROGATE PARENT of a student with 26 (c) (1)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. THE PARENT, GUARDIAN, OR SURROGATE PARENT SHALL MAKE THE 30 (2)31 WRITTEN REQUEST WITHIN 90 DAYS OF: THE DECISION OF A PUBLIC AGENCY TO INITIATE OR REFUSE **(I)** 33 TO INITIATE A CHANGE IN:

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

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THE PROVISION OF A FREE APPROPRIATE EDUCATION

1 2 FOR THE CHILD; OR

(II)ANY OTHER ACTION TO WHICH THE HEARING PROVISIONS OF 4 THIS SECTION APPLY.

5 In order to conduct a hearing, the Office of Administrative [(2)](3) 6 Hearings shall appoint an impartial administrative law judge who:

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7 Is an administrative law judge in the Office of Administrative (i) 8 Hearings;

9 (ii) Has received and continues to receive specialized training in 10 matters significant to the educational review of students with disabilities: and

11 (iii) Has no interest that would conflict with the administrative law 12 judge's objectivity in the review.

13 The Office of Administrative Hearings shall inform the parent [(3)] (4) 14 of any free or low cost legal and other relevant services available upon request or 15 whenever a hearing is initiated under this section.

16 Unless the parent and the public agency otherwise agree, [(4)](5) during the course of any administrative or judicial proceeding, the student must 17 18 remain in the last approved placement.

19 [(5)] If the hearing concerns the initial admission of a child into a (6)20 public school, the student with the consent of the parent must be placed in the public 21 school program until the proceedings have been completed.

22 (d) (1)The administrative law judge appointed under subsection (c) of this

23 section shall conduct the hearing in accordance with federal law, Title 10 of the State

24 Government Article, and the Office of Administrative Hearings Rules of

25 Administrative Procedure, and may:

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

29 Require the parties to attend a prehearing conference prior to (ii) 30 the due process hearing;

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(iii) Hear any testimony that it considers relevant;

32 (iv) Require an independent evaluation or call an impartial expert

33 witness in the diagnosis or education of students with disabilities whose testimony

34 shall be on the record and whose costs shall be paid by the State Education Agency;

35 and

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1 2 party.	(v)	Administer oaths to witnesses at the hearing on request of a		
3 (2) 4 34 C.F.R. Part 99 sha	(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 pa	rty to the hearing has the right to:		
9 10 special knowledge o 11 disabilities;	(i) r training	Be accompanied and be advised by counsel and individuals with with respect to the problems of children with		
<ul><li>12</li><li>13 attendance of witnes</li></ul>	(ii) sses;	Present evidence and confront, cross-examine, and compel the		
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 17 and	(iv)	Obtain a written or electronic verbatim record of the hearing;		
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.		
<ul> <li>(f) The hearing shall be held and a written decision shall be issued within 45</li> <li>calendar days from the request for the hearing. The administrative law judge may</li> <li>grant a specific extension of time not to exceed 60 calendar days for good cause</li> <li>shown.</li> </ul>				
<ul> <li>(g) If, at the time of the hearing request, the student who is the subject of the</li> <li>hearing is not enrolled and attending an educational program, an expedited hearing</li> <li>schedule shall apply. In these cases, the hearing shall be held within 20 calendar days</li> <li>and a written decision shall be issued within 15 calendar days of the hearing.</li> </ul>				
30 (h) Within	[180] 90	calendar days of the issuance of the [hearing decision]		

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.