

(PRE-FILED)

By: **Delegate Campbell**

Requested: September 18, 2001

Introduced and read first time: January 9, 2002

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Special Education - Student Placement - Hearing Rights**

3 FOR the purpose of authorizing parents of a student with disabilities to require a
4 prehearing conference within a certain time frame; providing for the purpose of
5 the prehearing conference; authorizing parties in a student disciplinary action
6 to require an expedited hearing if the student meets certain criteria; and
7 generally relating to the hearing rights of a student with disabilities regarding
8 placement decisions in special education programs.

9 BY repealing and reenacting, with amendments,
10 Article - Education
11 Section 8-413
12 Annotated Code of Maryland
13 (1999 Replacement Volume and 2001 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 8-413.

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

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

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

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

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

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

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

9 (c) (1) A parent or guardian of a student with disabilities or the public
10 agency may make a written request to the Office of Administrative Hearings for a
11 review of the identification, evaluation, or educational placement of the child or the
12 provision of a free appropriate education for the child.

13 (2) In order to conduct a hearing, the Office of Administrative Hearings
14 shall appoint an impartial administrative law judge who:

15 (i) Is an administrative law judge in the Office of Administrative
16 Hearings;

17 (ii) Has received and continues to receive specialized training in
18 matters significant to the educational review of students with disabilities; and

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

21 (3) The Office of Administrative Hearings shall inform the parent of any
22 free or low cost legal and other relevant services available upon request or whenever
23 a hearing is initiated under this section.

24 (4) Unless the parent and the public agency otherwise agree, during the
25 course of any administrative or judicial proceeding, the student must remain in the
26 last approved placement.

27 (5) If the hearing concerns the initial admission of a child into a public
28 school, the student with the consent of the parent must be placed in the public school
29 program until the proceedings have been completed.

30 (d) (1) The administrative law judge appointed under subsection (c) of this
31 section shall conduct the hearing in accordance with federal law, Title 10 of the State
32 Government Article, and the Office of Administrative Hearings Rules of
33 Administrative Procedure, and may:

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

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

3 (iii) Hear any testimony that it considers relevant;

4 (iv) Require an independent evaluation or call an impartial expert
5 witness in the diagnosis or education of students with disabilities whose testimony
6 shall be on the record and whose costs shall be paid by the State Education Agency;
7 and

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

10 (2) The provisions of the Family Educational Rights and Privacy Act and
11 34 C.F.R. Part 99 shall apply to school records sought by the impartial expert witness.

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

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

16 (i) REQUIRE THAT A PREHEARING CONFERENCE BE HELD NO LESS
17 THAN 10 CALENDAR DAYS PRIOR TO THE SCHEDULED HEARING FOR EACH PARTY TO
18 IDENTIFY THE SPECIFIC ISSUES TO BE ADDRESSED AT THE HEARING AND EACH
19 PARTY'S RESPONSE TO THE SPECIFIC ISSUES;

20 (II) Be accompanied and be advised by counsel and individuals with
21 special knowledge or training with respect to the problems of children with
22 disabilities;

23 [(ii)] (III) Present evidence and confront, cross-examine, and compel
24 the attendance of witnesses;

25 [(iii)] (IV) Prohibit the introduction of any evidence at the hearing
26 which has not been disclosed to all parties at least 5 days before the hearing;

27 [(iv)] (V) Obtain a written or electronic verbatim record of the
28 hearing; and

29 [(v)] (VI) Obtain written findings of fact and decisions.

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

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

32 (ii) Open the hearing to the public.

33 (f) The hearing shall be held and a written decision shall be issued within 45
34 calendar days from the request for the hearing. The administrative law judge may

1 grant a specific extension of time not to exceed 60 calendar days for good cause
2 shown.

3 (g) (1) If, at the time of the hearing request, the student who is the subject of
4 the hearing is not enrolled and attending an educational program, an expedited
5 hearing schedule shall apply. In these cases, the hearing shall be held within 20
6 calendar days and a written decision shall be issued within 15 calendar days of the
7 hearing.

8 (2) (I) AN EXPEDITED HEARING SHALL OCCUR IF REQUESTED BY
9 EITHER PARTY IN A STUDENT DISCIPLINARY ACTION AND THE STUDENT HAS BEEN:

- 10 1. SUSPENDED FROM SCHOOL;
- 11 2. EXPELLED FROM SCHOOL; OR
- 12 3. REMOVED FROM SCHOOL TO AN ALTERNATIVE
13 EDUCATIONAL SETTING.

14 (II) THE EXPEDITED HEARING SHALL BE HELD NOT LESS THAN 2
15 BUSINESS DAYS AFTER THE REQUEST OR WITHIN 20 CALENDAR DAYS FROM THE
16 REQUEST.

17 (h) Within 180 calendar days of the issuance of the hearing decision, any party
18 to the hearing may file an appeal from a final review decision of the Office of
19 Administrative Hearings to the federal District Court for Maryland or to the circuit
20 court for the county in which the student resides.

21 (i) (1) If a local school system has made a free appropriate public education
22 available to a child with a disability and the parent of the child chooses to place the
23 child in a nonpublic school, the local school system is not required to pay for the
24 child's education at the nonpublic school.

25 (2) Before removing a child from the local school system, a parent of the
26 child shall notify the local school system of the parent's:

- 27 (i) Decision to reject the local school system's proposed placement;
- 28 (ii) Concerns leading to the decision to remove the child from the
29 local school system; and
- 30 (iii) Intention to enroll the child in a nonpublic school at public
31 expense.

32 (3) The parent shall provide notice by:

33 (i) Informing the individualized education program team at the
34 most recent meeting the parent attended before the removal of the child; or

1 (ii) Providing the local school system with written notice at least 10
2 business days, including holidays that occur on business days, before the removal of
3 the child.

4 (4) If the parent decides to enroll the child in a nonpublic school without
5 the consent of or referral by the local school system, an impartial hearing officer or a
6 court may require the local school system to reimburse the parent for the costs of the
7 placement if the:

8 (i) Child had previously received special education and related
9 services under the authority of the local school system; and

10 (ii) An impartial hearing officer or court determines that the local
11 school system had not made a free appropriate public education available to the child
12 in a timely manner before the parent enrolled the child in the nonpublic school.

13 (5) Reimbursement may be reduced or denied by the impartial hearing
14 officer or court if the:

15 (i) Parent failed to notify the local school system of the decision as
16 required under paragraph (3) of this subsection;

17 (ii) Parent's actions were unreasonable; or

18 (iii) Parent failed to make the child available for evaluation before
19 the child's removal and after the local school system provided the parent with written
20 notice of its intention to evaluate the child, including an appropriate and reasonable
21 statement of the purpose of the evaluation.

22 (6) An impartial hearing officer or court may not reduce or deny
23 reimbursement for failure to provide notice as required under paragraph (3) of this
24 subsection if:

25 (i) The parent is illiterate and cannot write in English;

26 (ii) Providing notice would likely result in physical or serious
27 emotional harm to the child;

28 (iii) The local school system prevented the parent from providing
29 notice; or

30 (iv) The parent was not provided with a copy of the procedural
31 safeguards notice in accordance with COMAR 13A.05.01.11A, including the
32 requirements of this subsection.

33 (7) Disagreements between a parent and a local school system regarding
34 the availability of a free appropriate public education and the question of financial
35 responsibility are subject to the provisions of subsections (c) through (h) of this section
36 and COMAR 13A.05.01.15C.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2002.