

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1079
HOUSE BILL 364

AN ACT TO SIMPLIFY AND EXPEDITE THE PROCESS FOR REVIEWING
DECISIONS REGARDING EXCEPTIONAL CHILDREN AND TO PROVIDE
FOR MEDIATION OF DISAGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-116 is rewritten to read as follows:

"§ 115C-116. **Notice of decisions; mediation, administrative review, and judicial review of disagreements.**—(a) Notice. - The parent, guardian, or surrogate parent of a child shall be notified promptly when:

- (1) The local educational agency proposes to initiate or change, or refuses to initiate or change, the identification of a child as a child with special needs; or
- (2) The local educational agency proposes to initiate or change, or refuses to initiate or change, the child's individualized education program.

The notice shall be in writing and shall contain a statement advising the parent, guardian, or surrogate parent of the right to review the proposed decision; a statement offering the parent, guardian, or surrogate parent the opportunity for mediation; and a copy of this statute and G.S. 150B-23 through 37 or an explanation of the rights afforded by these statutes. It shall be hand-delivered to the parent, guardian, or surrogate parent or forwarded by certified or registered mail, return receipt requested.

(b) Mediation. - Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of special education for children with special needs prior to formal administrative review is encouraged. If a request for formal administrative review has not been filed, the superintendent, upon the request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or associate superintendent to meet, with the parent, guardian, or surrogate parent to attempt to resolve the dispute or disagreement. The meeting shall be informal and the General Assembly intends that the meeting shall be nonadversarial, as required by G.S. 150B-22.

(c) Right of Review. - The parent, guardian, or surrogate parent may obtain review of proposed decisions on the following grounds:

- (1) The child has not been identified or has been incorrectly identified as a child with special needs;
- (2) The child's individualized education plan is not appropriate to meet his needs;
- (3) The child's individualized education plan is not being implemented; or

(4) The child is otherwise being denied a free, appropriate education. In addition, a local educational agency may obtain review as provided by this section if a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child for the purpose of determining whether the child is a child with special needs or for the purpose of developing a free appropriate educational program for the child.

(d) Administrative Review. - Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) Scope of Review. - Notwithstanding the provisions of G.S. 150B-23(a) and G.S. 150B-33(b)(9), the issues for review shall be limited to those set forth in subsection (c).

(f) Venue of Hearing. - Notwithstanding the provisions of G.S. 150B-24, the hearing shall be conducted in the county where the child attends school or is entitled to enroll pursuant to G.S. 115C-366.

(g) Hearing Closed. - Notwithstanding the provisions of G.S. 150B-23(e), the hearing shall be closed to the public unless the parent, guardian, or surrogate parent, prior to the beginning of the hearing, requests in writing that the hearing be open to the public.

(h) Recommended Decision. - Following the hearing, the administrative law judge shall make a recommended decision to the State Board of Education. The recommended decision shall conform to and be prepared in accordance with G.S. 150B-34.

(i) Final Decision by the State Board of Education. - The final decision shall be made by the State Board of Education in accordance with G.S. 150B-36. In its discretion, the State Board may appoint a panel of at least two members of the Board to make the final decision for and on its behalf in accordance with G.S. 150B-36, and if the Board elects to exercise its discretion the decision of the panel shall be the final decision.

(j) Power to Enforce Final Decision. - The State Board shall have the power to enforce its final decision by ordering a local educational agency:

- (1) To provide a child with an appropriate education;
- (2) To place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or
- (3) To reimburse parents for reasonable private school placement costs in accordance with the provisions of G.S. 115C-115 in the event it determines that the local educational agency did not offer or provide the child with an appropriate education and the private school in which the parent, guardian, or surrogate parent placed the child was an approved school and did provide the child an appropriate education.

(k) Judicial Review. - Any party aggrieved by the State Board's decision may seek judicial review in the State courts as provided in Chapter 150B, Article 4 of the General Statutes, or in federal court as provided in 20 U.S.C. § 1415.

(l) Change in Placement. - Upon the filing of a petition, no change may be made in the child's status or program by school officials during the period of the

administrative review or subsequent judicial review, unless the parent, guardian, or surrogate parent gives written consent."

Sec. 2. Chapter 115C of the General Statutes is amended by adding a new section after G.S. 115C-113 to read:

"§ **115C-113.1. Surrogate parents.**—(a) In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public Instruction and the Secretary of Human Resources, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent."

Sec. 3. G.S. 115C-115(3) is amended by deleting the last sentence.

Sec. 4. This act shall become effective upon ratification, and shall apply to all petitions for review filed on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1988.